

Injunction against Linee Stampalibera Società Cooperativa S.r.l. - November 23, 2022

Register of measures

no. 22/2023

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, components, and the cons. Fabio Mattei, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 (legislative decree 30 June 2003, n. 196, as amended by legislative decree 10 August 2018, n. 101, hereinafter "Code");

HAVING REGARD to the complaint presented to the Guarantor on 13 January 2021, pursuant to art. 77 of the Regulation, with which Ms. XX complained of a violation of the current legislation on the protection of personal data in relation to the dissemination on the XX website of numerous articles published, in particular on the XX days (<https://...>), XX (<https://...>), XX (<https://...>), XX (<https://...>) and XX (<https://...>), showing identification data of the complainant (name, surname, date of birth, residence and tax code) and the full text of the contract for the purchase of a property, as well as other detailed information on a series of events concerning the sale of a property located in an area also frequented by the journalist who signed the contributions in question;

CONSIDERING that the complainant has, in particular, highlighted that:

- in the article of the XX, in reporting - erroneously - that he would have built an illegal hut, the purchase contract is published in full, including personal data (name and surname; date of birth; address of residence; tax code);
- in the articles of the XX and XX, in reporting that a pipe would have been sawn to harass the journalist's family, the purchase contract is published again and in full, with all the personal data indicated above;
- in the XX article, the information according to which for some years the complainant has been "stalkerizing" the journalist's family members is excessive - as well as false;

- in the article of the XX the information reported according to which "XX left Mrs. XX" is excessive, given that we are dealing with personal data concerning a strictly personal situation, not relating to a public figure, whose publication on the Internet makes them available to an unlimited number of people;

- the journalistic campaign is not animated by public interests, but by an exclusively personal interest;

GIVEN the note of 22 June 2021 with which this Authority asked Linee Stampalibera Società Cooperativa S.r.l., through its legal representative geom. Alessandro Romiti, to provide feedback to the claims of the complainant and to make known if there was the intention to comply with them;

HAVING REGARD to the note dated June 22, 2021, in which the director responsible for the website declared that:

- it is incorrect to believe that the data published in the articles in question are excessive, as they are complete and exact, packaged in notarial form and available in deeds by anyone;

- the information was not disclosed for exclusively personal reasons, as the author of the articles, Mr. XX, does not own assets in the places in question and has reported a series of building abuses that have occurred in the reference area;

- the complainant mentioned the issue of "stalkerage", which does not exist, but would in any case be irrelevant for privacy purposes;

- has never been a party in the administrative and ordinary proceedings invoked by the claimant;

- exercises the profession of journalist and the information has been disseminated for the exclusive pursuit of journalistic purposes, pursuant to articles 136 et seq. of the Code.

GIVEN the note of this Authority dated 5 April 2022, with which, pursuant to art. 166, paragraph 5 of the Code, the data controller was notified of the start of the procedure for the possible adoption of the provisions pursuant to art. 58, par. 2 of the Regulation and the alleged violations of the law were also notified to the same owner, identified, in the specific case, in the violation of art. 5 of the Regulation and of the articles 2-quater, paragraph 4, 137 and 139 of the Code and of the articles 6 of the Deontological rules relating to the processing of personal data in the exercise of journalistic activity published pursuant to art. 20, paragraph 4, of Legislative Decree 10 August 2018, n. 101 (attachment A1 of the Code);

HAVING REGARD to the note of 7 August 2022, with which the director responsible for the website in question declared that:

- the complainant has carried out a series of "hostile, aggressive, abusive, unpleasant and violent" events and behaviors that have continued over time from 1995 to the present, including building abuses, false testimony in court, attempts to take

possession of the common parts of the town where buildings are found in the possession, but not the property, of the claimant;

- date of birth, residence, work activity, tax code do not appear to be sensitive data subject to the duty of secrecy;
- there is no misdirection attempt nor any risk of identity theft, elements that form part of a clumsy attempt at dramatization;
- the assertion of the complainant that the function of the conservatory would be quite different from the online publication of personal data is incorrect, given that the data present in the conservatory can be obtained by any citizen, including by issuing copies;

CONSIDERING that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor";

Whereas:

- the disputed article must be traced back to the treatments carried out in the exercise of freedom of expression and which therefore find application in their entirety of the articles 136-139 of the Code and the ethical rules pursuant to art. 139 of the Code itself;
- the art. 137, paragraph 3, of the Code and art. 6 of the Deontological Rules identify as a limit to the dissemination of personal data for the purposes described the respect of the principle of the "essential nature of information regarding facts of public interest", to which the journalist is bound;

NOTING that compliance with the aforementioned Rules of Conduct is an essential condition for the lawfulness and correctness of the processing of personal data (Article 2-quater of the Code);

NOTING that:

- the argument that the fact that such data are present and freely available in the real estate conservatory would in itself make them indiscriminately reproducible on the Internet cannot be accepted, given that the acquisition of a cadastral data is regulated by sector regulations. The reproduction of such data, albeit public and lawfully acquired, in online newspapers ends up making data of single persons available on the internet to an indeterminate multiplicity of people, especially where they are not public figures and, therefore, is subject to the usual parameters of essentiality with respect to the fact of public interest narrated, of correctness, pertinence and non-excess (see Privacy and journalism. Some clarifications in response to questions

from the Order of Journalists - 6 May 2004 [web doc. n. 1007634];

- the images in which the complainant's home appears, due to the location of the property in an area characterized by a low population density, have a negative impact on the private life of the same and of her family, being able to cause damage to personal safety and tranquility of the interested parties (see provision of 27 November 2019 [web doc. n. 9236666] and provision of 18 April 2019 [web doc. n. 9113894];

- therefore the articles in question are in contrast with these provisions as they repeatedly disseminate identification data of the complainant, including tax code and date of birth, also reporting photos of cadastral documents and images of the places in question, thus exceeding the essential information for the 'public interest;

Therefore, HAVING DETECTED the illegality of the treatment carried out through the dissemination of the name and surname of the complainant, together with the date of birth, address of residence and tax code, in the articles object of the complaint as in contrast with the aforementioned provisions - in particular, with the articles 137, paragraph 3, and 139 of the Code and the articles 6 and 10 of the Deontological Rules - and therefore with the general principles of lawfulness and correctness of the processing of personal data pursuant to art. 5, par. 1 lit. a), of the Regulation;

CONSIDERED therefore pursuant to articles 57 par. 1, lit. f) of the Regulation to accept the complaint in the terms described above and:

- pursuant to art. 58, par. 2, lit. f), to have towards Linee Stampalibera Società Cooperativa S.r.l. the prohibition of further processing of the complainant's name and surname, together with date of birth, residential address and tax code, in the terms described above, as in contrast with articles 2 quater, paragraph 4, 137, paragraph 3, and 139 of the Code and art. 5, 6 and 10 of the Deontological Rules, and with the general principles referred to in art. 5, par. 1 lit. a) and c) of the Regulation, except for mere conservation for the purpose of their possible use in court;

- adopt an order-injunction, pursuant to articles 166, paragraph 7, of the Code and 18 of the law n. 689/1981, for the application against Linee Stampalibera Società Cooperativa S.r.l. of the pecuniary administrative sanction envisaged combined with the provisions of articles 2-quater, 166, paragraph 2, of the Code, and 83, par. 3 and 5, of the Regulation;

RECALLING that, in the event of non-compliance with the provisions of the Guarantor contained in this provision, the criminal sanction referred to in art. 170 of the Code, in addition to the administrative sanction pursuant to art. 83, par. 5, letter. e), of the Regulation;

NOTING that for the determination of the amount of the pecuniary sanction, it is necessary to take into account the elements indicated in art. 83, par. 2 of the Regulation and that in the present case it is necessary to take into consideration, on the one hand:

a) the particular harm to the confidentiality of the interested person deriving from the dissemination of data relating to the same home which may cause damage to the safety and tranquility of the claimant;

b) the effects of the processing, in consideration of the negative impact it has had on the personal sphere of the claimant in the social context of reference as well as the risks generated by the aforementioned diffusion for the rights and freedoms of the interested party, which would not have occurred if such information had not been disclosed (article 83, paragraph 2, letter a) of the Regulation);

c) the owner has not taken action and has not cooperated with the Authority, since the start of the investigation, in order to guarantee the non-republication of the complainant's data;

d) the relevant conditions on the organisational, economic and professional level of the offender;

and, on the other:

e) the purposes pursued by the owner, attributable to the exercise of the right to report and freedom of information and, therefore, the need to ensure in this context the relative balance with the fundamental right of the complainant to the protection of personal data concerning him, according to the provisions of the Regulation (art. 85) and the Code (art. 136 et seq.);

f) the absence of previous similar violations committed by the same controller (Article 83, paragraph 2, letter e) of the Regulation);

CONSIDERING the above parameters and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulation;

CONSIDERING that, on the basis of all the elements indicated above, the pecuniary administrative sanction should be applied in the amount of Euro 1,000.00 (one thousand Euros);

CONSIDERING also that, pursuant to articles 166, paragraph 7, of the Code, and 16, paragraph 1, of the Guarantor's Regulation n. 1/2019, it is necessary to proceed with the publication of this provision on the website of the Guarantor, by way of ancillary sanction;

HAVING DEEMED that the conditions exist for proceeding with the annotation in the internal register of the Authority pursuant

to art. 57, par. 1, lit. u), of the Regulation, in relation to the measures adopted in the specific case in compliance with art. 58, par. 2, of the same Regulation;

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Prof. Pasquale Stanzione;

ALL THIS CONSIDERED

pursuant to articles 57 par. 1, lit. f) of the Regulations, declares the complaint to be well founded and the conduct described in the introduction to be unlawful and, as a result, requires Linee Stampalibera Società Cooperativa S.r.l. the prohibition of processing the complainant's name and surname, together with date of birth, residential address and tax code, in the terms described above;

ORDER

pursuant to articles 58, paragraph 2 lett. i) and 83 of the Regulation on Stampalibera Società Cooperativa S.r.l. to pay the sum of 1,000 euros (one thousand euros) as an administrative fine for the violations indicated in the justification, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute, by paying, within the term of thirty days, an amount equal to half of the fine imposed;

ENJOYS

to Linee Stampalibera Società Cooperativa S.r.l., in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of 1,000 (one thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law n. 689/1981.

HAS

pursuant to art. 166, paragraph 7, of the Code, the entire publication of this provision on the website of the Guarantor and believes that the conditions set forth in art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 78 of the Regulation, as well as the articles 152 of the Code and 10 of Legislative Decree lg. 1 September

2011, no. 150, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal filed, alternatively, with the court of the place where the data controller resides or has its registered office or with the court of the place of residence of the interested party within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 24 November 2022

PRESIDENT

station

THE SPEAKER

station

THE SECRETARY GENERAL

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