[doc. web no. 9574101]

Injunction order against Istituto Superiore Statale "Pitagora" - 11 February 2021

Register of measures

no. 60 of 11 February 2021

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, concerning the protection of natural persons with regard to the processing of personal data, as well as the free movement of such data and repealing Directive 95/46/ CE, “General Data Protection Regulation” (hereinafter, “Regulation”);

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of natural persons with regard to the processing of personal data, as well as to the free movement of such data and which repeals Directive 95/46/EC (hereinafter the "Code");

CONSIDERING the Regulation n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved with resolution no. 98 of 4/4/2019, published in the Official Gazette no. 106 of 8/5/2019 and in www.gpdp.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

Given the documentation in the deeds;

Given the observations made by the general secretary pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the Guarantor's office for the protection of personal data, doc. web no. 1098801;

Speaker Prof. Pasquale Stanzione;

WHEREAS

1. The complaint.

With a complaint presented to this Authority on the 20th date, and subsequently integrated with a communication of the 20th, the publication, on the website of the Istituto Superiore Statale "Pythagoras" of Pozzuoli, of the third band ranking of ATA

personnel was complained of, containing personal data of the complainant and other candidates, including the name, surname, date of birth, gender, residential address, e-mail address, telephone number and tax code (https://.. .).

2. The preliminary investigation.

From the preliminary investigation carried out by the Office, it was ascertained that on the 20th date the ranking of the third tier of ATA personnel, containing the personal data of the complainant and of the other candidates, was still published on the Institute's website.

On the basis of the elements acquired, the Office notified the Istituto Superiore Statale "Pitagora" of Pozzuoli (note prot. XX of XX), in its capacity as data controller, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, inviting the aforesaid owner to produce defense writings or documents to the Guarantor or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, of law no. 689 of 11/24/1981).

With the note mentioned above, the Office found that the educational institution had published, on its institutional website, a ranking containing the personal data relating to the complainant and to other candidates, including the name, surname, date of birth , gender, residential address, email address, telephone number and tax code.

In particular, the Office considered that the publication of the aforementioned ranking took place in the absence of a suitable regulatory prerequisite, in violation of art. 6, par. 1, lit. c) and e), par. 2 and 3, lett. b) of the Regulation, as well as art. 2-ter, paragraphs 1 and 3 of the Code and the principles of "lawfulness, correctness and transparency" as well as "minimization" of the processing, of art. 5, par. 1, lit. a) and c), of the Regulation.

The institute sent its defense briefs, with a note of the XX, acquired under prot. no. XX of the XX, representing, in particular, that:

- "the infringement raised is due exclusively to a mere material error in the insertion on the website of the complete ranking instead of the one prepared for Privacy. Error, in the digitization or in the selection of one file instead of the other";
- "the printout that forms the published document and object of the violation is generated, by the management/application software, in two different ways: the first complete with all the data, useful for checking the data entered, the second without the non-essential elements and usable for publication. In both cases the system names the file, automatically, in the same way. And, precisely in this phase, an exchange between the two documents took place, in a completely accidental way, giving rise

to an exchange between the two files";

- "the commission of the excusable error was also influenced by [...] the period in which the violation was committed [...] characterized by an intense work linked to the exhausting data control carried out on the aforementioned rankings [...and] the Institute was undersized in terms of personnel";

- "the entire data processing/modification process takes place in computerized mode, so the check is not carried out on the paper document, where, conversely, the error is more easily detectable. For all intents and purposes, when the violation was realized, the document was promptly removed, thus integrating the extenuating factor of the active repentance of the conduct".

Furthermore, the Institute, during the hearing, pursuant to art. 166, paragraph 6, of the Code, represented that (see report prot.n. 42670 of 12 November 2020):

- "the ranking published on the Institute's website, as well as all the other contents of the site, was not indexed on search engines and, therefore, the scope of knowledge of the same was in any case limited";

- "the facts that are the subject of the complaint occurred in a context in which all the subjects with responsibility for the protection of personal data acted correctly, as a fortuitous human error occurred, to which the configuration of the web application also contributed used by the Ministry of Education, which does not allow to easily distinguish the file to be published online from the one destined to remain in the archives".

3. Applicable legislation.

Pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation"), the processing of personal data by public entities, such as this Institute, even when they operate in the in the context of bankruptcy and personnel selection procedures, it is lawful, in particular, if the processing is necessary "to fulfill a legal obligation to which the data controller is subject" or "for the execution of a task of public interest or connected to the 'exercise of public powers vested in the data controller" (Article 6, paragraph 1, letters c) and e) of the Regulation).

European legislation also provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this regulation with regard to treatment, in accordance with paragraph 1, letters c) and e), by determining more precisely requirements specific for the treatment and other measures aimed at guaranteeing a lawful and correct treatment (...)" with the consequence that, in the present case, the provision contained in the art. 2-ter of the Code, according to which the operation of dissemination of personal data, such as publication on the Internet, in the public sphere is

permitted only when provided for by a law or, in the cases provided for by law, by regulation.

In this context, the processing of personal data must take place in compliance with the principles indicated in the art. 5 of the Regulation, including those of "lawfulness, correctness and transparency" as well as "data minimization", according to which personal data must be - respectively - "processed in a lawful, correct and transparent manner in relation to the interested party" as well as "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (par. 1, letters a) and c)).

With particular reference to the publication of the rankings, moreover, the Guarantor in provision no. 243 of 15 May 2014 (web doc. n.3134436) containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents carried out for the purpose of advertising and transparency on the web by public subjects and other obliged entities " with reference to the publicity of the results of the competition tests and the final rankings, he highlighted that "only the pertinent and not excessive data referring to the interested parties must be disclosed. Therefore, data relating to the contact details of the interested parties cannot be published (think of landline or mobile phone numbers, residential or e-mail address, tax code, ISEE indicator, number of disabled children, aptitude test results or educational qualifications). In a similar manner, the Guarantor had expressed himself in provision no. 23 of 14 June 2007, containing "Guidelines on the processing of personal data of workers for the purpose of managing the employment relationship in the public sector" (in www.gpdp.it, web doc. n. 1417809) highlighting that: " It is not lawful to include other types of irrelevant information in the ranking documents to be published, such as, for example, landline or mobile telephone numbers or the tax code.".

4. Conclusions.

In the light of the assessments referred to above, taking into account the statements made by the data controller during the preliminary investigation □ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code □ it should b noted that the elements provided by the data controller in the defense briefs, although worthy of consideration, do not allow the findings notified by the Office to be overcome with the act of initiating the procedure and are insufficient to allow the filing of the present proceeding, since none of the cases envisaged by art. 11 of the Regulation of the Guarantor n. 1/2019.

The processing of the data of the interested parties, which occurred in violation of the regulations on the processing of personal data, began with the publication of the ranking on the institute's website at the address https://... il XX, in full force of the Regulation. The violation of personal data, which led to their online dissemination, lasted, according to what was declared,

until the institute received news of the violation (see note of the XX with which the institute declared that it having removed the document "when the infringement was discovered"). In the absence of further elements provided by the owner, the date of termination of the treatment is to be traced back, presumably, to the act of notification of the initiation of the procedure by the Guarantor, with a note dated XX.

Therefore, the preliminary assessments of the Office are confirmed, and the illegality of the processing of personal data carried out by the Istituto Superiore Statale "Pythagoras" is noted, for having disseminated the third band ranking of ATA personnel online on its institutional website , bearing in plain text, in addition to the identification data of the interested parties, also personal data not necessary with respect to the purposes pursued with the publication of the ranking, concerning the complainant and the other interested parties (about 12,000) included in the aforementioned rankings, including the tax code, the address, landline and mobile telephone number, e-mail address, as well as preference codes and the number of dependent children, resulting in the dissemination of personal data, in violation of articles 6, paragraph 1, lett. c) and e), paragraphs 2 and 3 of the Regulation and 2-ter, paragraphs 1 and 3, of the Code, as well as the basic principles of treatment contained in art. 5, par. 1, lit. a) and c) of the Regulation (see Part II par.3b) “Guidelines on the processing of personal data, also contained in administrative deeds and documents carried out for the purpose of advertising and transparency on the web by public subjects and other obliged bodies " cit., as well as Provision 6 June 2013, n. 275, web doc. n. 2536184, 2536409 and 2535862).

For these reasons, it is therefore believed that the publication of the third tier ranking of ATA personnel, containing personal data of the complainant and other candidates, took place:

- in a manner that does not comply with the principles of "lawfulness, correctness and transparency", as well as "minimization" of the processing, in violation of art. 5, par. 1, lit. a) and c) of the Regulation; And
- in the absence of a suitable regulatory prerequisite, in violation of articles 2-ter, paragraphs 1 and 3 of the Code, of art. 6, paragraph 1, lett. c) and e), paragraphs 2 and 3, lett. b) of the Regulation.

In this context, considering, in any case, that the conduct has exhausted its effects, given that the school has declared that it has taken steps to remove the ranking from its institutional website (see note of 20 November 2019), there are no the conditions for the adoption of corrective measures, pursuant to art. 58, par. 2, of the Regulation.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction and accessory sanctions (articles

58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

The Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation as well as art. 166 of the Code, has the power to "impose a pecuniary administrative sanction pursuant to article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, according to the circumstances of each single case" and, in this context, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in whole or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

In this regard, taking into account the art. 83, par. 3, of the Regulation, in the present case - also considering the reference contained in art. 166, paragraph 2, of the Code – the violation of the aforementioned provisions is subject to the application of the same pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

The aforementioned pecuniary administrative sanction imposed, depending on the circumstances of each individual case, must be determined in the amount taking into due account the elements provided for by art. 83, par. 2, of the Regulation.

In relation to the aforementioned elements, it was considered that the violation of the regulations on the protection of personal data involved the dissemination of numerous personal data (the name accompanied by the address of residence, email address, telephone number and tax code), not necessary with respect to the purposes underlying the publication of the results of the insolvency proceedings, also in the light of the indications that, since 2014, the Guarantor has provided to all public entities in the Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of publicity and transparency on the web by public subjects and other obliged bodies, mentioned above.

This dissemination of personal data lasted for a considerable period of time (about 1 year).

On the other hand, the following were considered: the culpable nature of the conduct since the publication is due to a mere clerical error; that the data was not indexed and found on search engines; that the Institute has taken action to remove the personal data of the interested parties and has therefore collaborated with the Authority during the investigation of the present proceeding in order to remedy the violation and mitigate its possible negative effects; that the Institute has launched a series of actions aimed at implementing the technical and organizational measures. It was also noted that there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine the amount of the

pecuniary sanction, in the amount of 5,000.00 (five thousand) euros for the violation of articles 5, par. 1, lit. a) and c), 6, paragraph 1, lett. c) and e), of the Regulation, as well as of the art. 2-ter, paragraphs 1 and 3, as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive. In quantifying the fine, the Guarantor took into particular consideration the fact that the violations are connected to a treatment started immediately after the definitive application of the Regulation.

Taking into account the time frame during which the aforementioned data were made available on the net, it is also believed that the ancillary sanction of publication on the website of the Guarantor of this provision should be applied, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019.

Finally, it should be noted that the conditions pursuant to 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.

ALL THIS CONSIDERING THE GUARANTOR

pursuant to art. 57, par. 1, lit. f), of the Regulation, declares the conduct held by the Istituto Superiore Statale "Pitagora" of Pozzuoli, described in the terms referred to in the motivation, consisting in the violation of articles 5, par. 1, lit. a) and c), 6, paragraph 1, lett. c) and e), 2 and 3, lett. b), of the Regulation, as well as of the art. 2-ter, paragraphs 1 and 3 of the Code, in the terms set out in the justification

ORDER

To the Istituto Superiore Statale "Pitagora", in the person of its pro-tempore legal representative, with registered office in Via Tiberio, 1 - 80078 Pozzuoli (NA), Tax Code 96012430631, to pay the sum of 5,000.00 (five thousand) euros as an administrative fine for the violations indicated in this provision. It is represented that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within 30 days, an amount equal to half of the fine imposed;

ENJOYS

To the aforementioned Institute, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of Euro 5,000.00 (five thousand) according to the methods indicated in the annex, within 30 days of notification of this provision, under penalty of the adoption of 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 publication of this provision on the website of the Guarantor, also acknowledging the occurrence of the conditions referred to 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 articles 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision it is possible to lodge an appeal before the ordinary judicial authority, under penalty of inadmissibility, within thirty days from the date of communication of the provision itself or within sixty days if the appellant resides abroad.

Rome, 11 February 2021

PRESIDENT

Station

THE SPEAKER

Station

THE SECRETARY GENERAL

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