

Injunction order against Ministry of Justice, Prison Administration Department - 26 July 2018

Register of measures

no. 444 of 26 July 2018

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dott.ssa Augusta Iannini, vice president, of dott.ssa Giovanna Bianchi Clerici and of prof.ssa Licia Califano, members and of dott. Giuseppe Busia, general secretary;

NOTING that the Guarantor for the protection of personal data (hereinafter Guarantor) has defined, with provision no. 507 of 1 October 2015, the administrative procedure relating to a report presented by the Guarantor of persons subject to restrictive measures of personal freedom relating to the processing of sensitive data of prisoners at the Florence-Solliciano prison, carried out for disciplinary purposes by the Directorate of prison following the death of an inmate from a drug overdose. With this provision, the Guarantor declared the aforementioned processing unlawful both "because no information was provided to the interested parties regarding the disciplinary purpose of the processing itself, as prescribed by art. 13 of the Code" (legislative decree n. 196/2003 containing the Code regarding the protection of personal data, hereinafter "Code") and "due to the failure to foresee this type of treatment of sensitive data (of detained for disciplinary purposes) in the reference sources, pursuant to the provisions of art. 20, paragraph 2, of the Code" and "because the authorization of the judicial authority does not appear in the records either, pursuant to articles 116 and following. c.p.p., to be considered with reference to art. 11 of the Code". The Guarantor has thus ordered, pursuant to articles 143 lett. c) and 154, paragraph 1, lett. d) of the Code, against the Ministry of Justice, Penitentiary Administration Department - Florence Prison, the prohibition of any further processing for disciplinary purposes of biological samples taken from inmates and related analysis reports;

HAVING REGARD TO the appeal filed by the Ministry of Justice against the aforementioned provision, pursuant to articles 152 of the Code and 10 of Legislative Decree lgs. no. 150/2011, before the Court of Florence, which declared its incompetence for the territory in favor of the Court of Rome, which in turn rejected, with decree of 27 December 2016, the request for suspension of the contested provision;

HAVING REGARD TO the dispute report of 18 December 2015 n. 35852/96982 (which is understood to be referred to in its entirety here), with which the Ministry of Justice, Department of Penitentiary Administration, based in Rome, Largo Luigi Daga,

n. 2 (Tax Code 80184430587), in relation to the processing of personal data of the prison of Florence/Sollicciano, the administrative violations envisaged: 1) by article 162, paragraph 2-bis, of the Code for having carried out the aforementioned treatments in the absence of a regulatory source which, pursuant to art. 20 of the Code, indicate the type of sensitive data and the processing operations that can be performed in the context of disciplinary proceedings; 2) by art. 161 of the Code, for having carried out the processing of personal data aimed at the imposition of disciplinary sanctions against the inmates of the aforementioned Prison without having given them the information required by art. 13 of the Code. Both violations were contested in conjunction with the aggravating circumstance pursuant to art. 164-bis, paragraph 3, of the Code;

READ the report drawn up by the Office pursuant to art. 17 of the law n. 689/1981, from which it appears that the offender has not made the payment in a reduced amount, for the disputed violations;

NOTING that the party did not submit written defenses or request to be heard, as required by art. 18 of the law n. 689/1981;

NOTING that, with regard to the alleged violation of art. 162 paragraph 2-bis of the Code, the articles 38 et seq. of the law of 26 July 1975 n. 354 and the articles 77 et seq. of the Presidential Decree 30 June 2000 no. 230, containing the rules on the penitentiary system and on the execution of deprivation and limitation measures of freedom (hereafter "Prison system"), provide for the imposition of disciplinary sanctions against the detained persons, but do not specify the types of sensitive data and the processing operations that can be performed in the context of disciplinary proceedings;

NOTING that the Regulation referred to in the Decree of the Ministry of Justice 12 December 2006, n. 306, which governs the processing of sensitive and judicial data by the Ministry, pursuant to articles 20 and 21 of the Code, does not provide for the processing of sensitive data relating to prisoners for disciplinary purposes, as also ascertained during the procedure from which provision no. 507 of 1 October 2015;

NOTING that the other provisions of the prison system which provide for the treatment of prisoners' health data do not concern the use of such data for disciplinary purposes, but rather their use for entirely different purposes (for example, the protection of the health of the prison population, recovery paths for drug addicts managed by the SERT, formation of the prisoners' personal file);

NOTING, again, that the treatment for disciplinary purposes of the sensitive data of prisoners is not attributable to the provision pursuant to art. 86 of the Code, which considers the purposes pursued through the processing of sensitive data to be of significant public interest, relating to administrative activities related to the application of the discipline on narcotic drugs and

psychotropic substances since, as indicated by the same art. 86, this treatment is carried out for social and health assistance to drug addicts and not for disciplinary purposes. This provision, moreover, is placed within Chapter III of Title V of the Code concerning the "Processing of personal data in the health sector";

HAVING REGARD TO the aforementioned decree of 27 December 2016 with which the Court of Rome, in rejecting the Ministry's request for the suspension of the Guarantor's provision no. 507 of 1 October 2015, clearly highlighted that the contested provision "limits itself to prohibiting the processing of biological data collected in the Sollicciano prison for the purpose of imposing disciplinary sanctions, while it does not prohibit the collection and use of the same data for reasons protection of the health of prisoners; therefore no health and safety risk derives from the validity of the Guarantor's decision";

NOTING, therefore, that the Ministry of Justice, Department of Penitentiary Administration - Prison of Florence has carried out a treatment of sensitive data aimed at the imposition of disciplinary sanctions against the inmates of the aforementioned Prison in the absence of a regulatory source which, pursuant to art. 20 of the Code, indicate the type of sensitive data and the processing operations that can be performed in the context of disciplinary proceedings;

NOTING that, with regard to the alleged violation of art. 161 of the Code, the art. 13 of the Code prescribes that the interested party or the person from whom the personal data are collected are informed in advance, among other things, of the purposes of the processing for which the data are intended, as well as of the mandatory or optional nature of the provision of the same data and that in the case in question it was ascertained that the aforementioned inmates were not provided with information regarding the disciplinary purposes of the processing or information regarding the optional nature of the processing itself (see provision no. 507 of 1 October 2015);

NOTING that the purposes pertaining to the disciplinary proceedings of the detainees are distinct, by their nature, from those relating to the activities of the Judicial Police (Article 47 of the Code), also ascertained in the case in question, with the aforementioned provision no. 507 of 1 October 2015);

NOTING, also, that the treatment in question is not attributable to art. 80 of the Code, which, in providing for simplified information procedures, concerns the processing of personal data in the health sector and is aimed exclusively at public entities operating in the health sector or occupational prevention and safety;

NOTING, therefore, that the Ministry of Justice, Department of Penitentiary Administration - Prison of Florence has processed sensitive data aimed at imposing disciplinary sanctions against the inmates of the aforementioned Prison without having given

them the information provided for by art. 13 of the Code;

CONSIDERING the art. 161 of the Code which punishes the violation of the provisions of art. 13 with the administrative sanction of the payment of a sum from six thousand euros to thirty-six thousand euros;

CONSIDERING the art. 162 paragraph 2-bis of the Code which punishes the violation of the provision pursuant to art. 20, with the administrative sanction of the payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, it is necessary to take into account, pursuant to art. 11 of the law of 24 November 1981 n. 689, of the work carried out by the agent to eliminate or mitigate the consequences of the violation, the seriousness of the violation, the personality and economic conditions of the offender;

WHEREAS, in the present case:

a) in terms of the aspect of gravity with reference to the elements of the extent of the injury or danger and the intensity of the psychological element, the violations concern the processing for disciplinary purposes of data relating to the state of health of 66 inmates;

b) about the personality of the perpetrator of the violation, notes that the Ministry - DAP has already been the recipient of an injunction order no. 111 of 10 March 2016 for the violation provided for by art. 162 paragraph 2-bis of the Code in relation to art. 19, paragraph 3, of the Code, for having disseminated the list of personnel belonging to the Penitentiary Police Corps in respect of whom the payment of compensation for overtime work had been ordered, in the absence of a law or regulation that legitimized such processing;

c) regarding the economic conditions of the agent, in the case of a public entity;

CONSIDERING, therefore, that the amount of the pecuniary fine referred to in Article 161 of the Code must be quantified as 12,000.00 (twelve thousand) euros and the amount of the pecuniary fine referred to in Article 162 paragraph 2-bis of the Code must be quantified in the amount of Euro 20,000.00 (twenty thousand);

HAVING REGARD to the law of 24 November 1981 n. 689, and subsequent modifications and additions;

HAVING REGARD TO the observations of the Office formulated by the Secretary General pursuant to art. 15 of the Guarantor's regulation n. 1/2000, adopted with resolution of 28 June 2000;

SPEAKER Prof. Licia Califano;

ORDER

to the Ministry of Justice, Department of Penitentiary Administration, with headquarters in Rome, Largo Luigi Daga, n. 2, in the person of the pro-tempore legal representative, to pay the total sum of 32,000.00 (thirty-two thousand) euros as a pecuniary administrative sanction for the violations envisaged by articles 162, paragraph 2-bis, and 161 of the Code as indicated in the justification;

ENJOYS

to the same Ministry of Justice, Department of Penitentiary Administration to pay the sum of 32,000.00 (thirty-two thousand) euros according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to the 'art. 27 of the law of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 26 July 2018

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia