[doc. web n. 9777200]

Injunction order against the “Isabella Gonzaga” State High School - April 28, 2022

Record of measures

n. 150 of 28 April 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, concerning the protection of individuals with regard to the processing of personal data, as well as the free circulation of such data and which repeals Directive 95/46 / CE, "General Data Protection Regulation" (hereinafter, "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to to the processing of personal data, as well as to the free circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

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

Having seen the documentation in the deeds;

Given the observations made by the secretary general pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. The complaint.

With a complaint of the XXth, the publication in a special section dedicated to teachers ("bulletin board containing notices to teachers") of the electronic register used by the "Isabella Gonzaga" State High School of Chieti (hereinafter the "Institute"), of a

document "relating to the definitive timetable for the 2020-2021 School Year" bearing, in correspondence with the name of the complainant, the reference to the use of the benefits deriving from the law of 5 February 1992, n. 104 and, in particular, the indication "law 104 not serious".

2. The preliminary activity.

With a note of the XX (Prot. No. XX) responding to the request for information formulated by the Authority, the Institute represented, in particular, that:

- "the employees / collaborators with secretarial duties [have] received a specific appointment as a subject authorized to process (previously called" person in charge ") and have undergone training in the field of GDPR. [...] both in the deed of designation and in the formation, it is expressly repeated that, unless required by law, it is absolutely forbidden to publish particularly sensitive data ";
- "All secretarial staff are therefore perfectly aware of this prohibition, a circumstance that highlights the involuntary nature of the incident";
- "[...] it happened that the document" ORARIO DEFINITIVO 20 21 ", [...] instead of being published in the version in which only the first of the three sheets appeared (without sensitive data) was published in a version intended for internal use, also including sheet 2 (with sensitive data) and sheet 3 with signatures. This second version was obviously intended for the secretariat only, having no different meaning, among other things, in the presence of a signature sheet ";
- "The publication took place on the electronic register, in the part accessible only to teachers (moreover mutually aware of the fact that some of them are recipients of benefits according to Law 104, such as, by way of example, exclusion from internal rankings institute for the determination of any surplus staff). These are undoubtedly health data, however it should be noted that the same have been disclosed over the years by the interested parties, who have shared their situation with their colleagues, being able to apply the exception provided for by art. 9 paragraph 1 e) GDPR which considers possible the processing of data (therefore also disclosure) when "it concerns personal data made manifestly public by the interested party";
- "In any case, it is noted that from the initial screen of the teacher's personal area that appeared in the register, also attached to this report, it is not possible to become aware of any sensitive data".
- "To view the data in question it is necessary: 1- enter the teacher's credentials to enter the personal area; 2- access the Notice Board section; 3- click on the notice of interest and open the file; 4- proceed to open the second sheet (which does not

open automatically when the file is opened, but sheet 1 "Time" is automatically displayed). Several steps are therefore required to access the data. Therefore, it is not a question of a publication with an unlimited number but a number restricted to teachers only (moreover already aware of such information) ";

- "66 teachers opened the file in the period between the twentieth and the twentieth, but it is not possible to be sure that all the teachers have viewed sheet 2, since it was sheet 1 that had the title" Timetable "and therefore, this sheet referred to the subject of the communication. Finally, it should be noted that, on 5 November, as soon as the news of this error was received, the owner promptly proceeded to delete the file, a circumstance which, once again, highlights the good faith and industriousness of the Institute in question. . ";

- "everything that happened [is] due to a mere clerical error that materialized in the publication of a file in place of another file intended for disclosure".

On the basis of the elements acquired, the Office notified, with a note of the XX (prot. No. XX), to the Institute, as data controller, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, as the document containing the personal data, including health related data, of the complainant, even if published in a reserved area of the electronic register, not accessible to anyone, would have given rise, in this case, to a communication of personal data to unauthorized third parties in violation of articles 5, par. 1, lett. a) and c), 6 and 9 of the Regulation and 2-ter and 2-sexies of the Code. Therefore, he invited the aforementioned owner to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code; as well as Article 18, paragraph 1, of Law no. 24/11/1981).

The Institute sent its defense briefs, with a note of the XX, (prot. No. XX), representing, in particular, that:

- “The nature of the violation is obviously culpable […] as it is due to a mere material error in the publication of a file in place of another file in which“ sensitive ”data had been purged”;

- “the reason that led the employee to have recognized the benefits pursuant to Law 104/92 was not disclosed. There was therefore no publication of a real health data but only an index from which to deduce a certain disability of a person ";

- "the file was published in an area of the electronic register, reserved for teachers only, in the period between the twentieth and the twentieth;

- "The writer, as seen, moved promptly in order to delete the document, published in an area accessible only to teachers, and

replace it with one without sensitive data, thus limiting any negative effect of the violation, which , on the other hand, it must be remembered, it concerns a data already known by the colleagues of the interested party ";

- “the staff has received adequate training in which it is recalled that sensitive data should not be disclosed unless required by law and, in any case, even in that case, it is necessary to minimize, as the Guarantor of provision no. 243 of May 15, 2014. […] all staff received a designation deed (also available on the school website) in which the absolute prohibition against disclosing sensitive data is recalled ”;

- “The school, in concert with the DPO, is drafting a policy aimed at further limiting the risk of such negligent leaks of information. The use of digital stamps and different colored sheets is under consideration depending on whether the document is internal or intended for publication ".

3. Applicable law.

3.1 The regulatory framework.

The personal data protection discipline provides that public subjects, even if they operate in the performance of their duties as employers, can process the personal data of workers, if the processing is necessary, in general, for the management of the employment relationship. and to fulfill specific obligations or tasks provided for by the national sector regulations (articles 6, par. 1, lett. c), 9, par. 2, lett. b), and 4, and 88 of the Regulation) or "for the execution of a task of public interest or connected to the exercise of public authority vested in the data controller" (Article 6, paragraph 1, lett e), of the Regulation).

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to processing, in accordance with paragraph 1, letters c) and e), by determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing […] ”(Article 6, par. 2, of the Regulation). In this regard, it should be noted that the "communication" of personal data by public entities is permitted only when required by a law or, in the cases provided for by law, by regulation (Article 2-ter, paragraphs 1, 3 and 4, letter a), of the Code in the text prior to the amendments referred to in Legislative Decree 8 October 2021, n. 139).

The employer, the data controller, is, in any case, required to comply with the general principles regarding the protection of personal data (Article 5 of the Regulation) and must process the data through "authorized" and "trained" personnel regarding access and data processing (articles 4, point 10), 29, and 32, par. 4, of the Regulation).

3.2 The processing of personal data carried out by the Institute.

As is clear from the deeds and declarations made by the data controller during the investigation as well as from the assessment made on the basis of the elements acquired following the investigation and subsequent assessments of this Department, the Institute has made available in the section of the electronic register reserved for teachers only, a document containing the definitive timetable of the teaching staff containing the reference to the use of the benefits deriving from the law 5 February 1992, n. 104 by the complainant and other teachers, as well as other detailed information relating to personal and family events or related to the specific employment relationship of each (eg transfer, part-time, maternity ban, law 104 not serious).

Preliminarily, in recalling that, pursuant to art. 4 paragraph 1, no. 15 of the Regulation are considered health data "personal data relating to the physical and mental health of a natural person, including the provision of health care services, which reveal information on his state of health", it should be noted that, as recently clarified from the Guarantor, also the reference to law 104, which notoriously regulates benefits and guarantees for the assistance, social and work integration of disabled people or their families, allows information on the state of health of a person to be obtained (provision 28 May 2020, n.92, web doc. 9434609).

Although also, the state of pregnancy, as such, is not suitable for disclosing the health conditions of the person concerned, however the information relating to the interdiction from work of pregnant workers pursuant to art. 17 paragraph 2, lett. a), Legislative Decree no. 151/2001 is considered data on health as this provision refers to "serious complications of pregnancy or [a] persistent morbid forms that are presumed to be aggravated by the state of pregnancy", a case in relation to which the competent offices of the Provincial Directorate del Lavoro and the Local Health Authority "have [...] the ban from work for pregnant workers up to the period of abstention [so-called mandatory] "(on this point, with regard to the communication of such information referring to a university employee, Provv. of 27 June 2013, web doc. no. 2576686).

As traditionally clarified by the Guarantor, the personal data of employees cannot be disclosed to subjects other than those who are part of the employment relationship (see definitions of "personal data" and "interested party", contained in art. 4, paragraph 1, n. 1) of the Regulation) and who are not entitled, due to the organizational choices of the data controller and the specific tasks performed, to process the same data, as authorized personnel (Article 29 of the Regulation and 2-quaterdecies of the Code; see, definition of "third party" contained in Article 4, paragraph 1, no. 10) of the Regulation). This principle, already contained in the "Guidelines on the processing of personal data of workers for the purpose of managing the employment

relationship in the public sphere" (Provision no. 23 of June 14, 2007, web doc no. 1417809, was reiterated over time by the Guarantor in the context of decisions on individual cases and, more recently, with regard to the posting of service shifts and working hours on bulletin boards or in sections of the website with restricted access and also showing data relating to health or however related to personal events of colleagues (cf. with specific reference to the school context see in particular provision no.322 of 16 September 2021, web doc. no. 9711517, as well as provisions no. 214 of 27 May 2021 doc. web. 9689234 but also see provision no.105 of 18 June 2020, web doc. 1 of Legislative Decree 10 August 2018, n. 101, n. 146, of 5 June 2019, doc. web n. 9124510, annex 1, par. 1.5. lett. d)).

Although, therefore, by mistake, the making available of the document in question, in its full version and containing personal data including data relating to the health of the interested parties, took place in a restricted access area of the Institute's electronic register - not accessible to anyone and such as to determine a dissemination of personal data - the knowledge of the data contained therein occurred in any case in favor of a very large number, determined or determinable, of subjects, i.e. all the colleagues of the complainant belonging to the teaching staff and not, instead, exclusively for the benefit of the secretarial staff authorized to process such information.

For these reasons, the Institute has unjustifiedly made available to other employees, colleagues of the complainant, personal data, also relating to health, of the complainant and other interested parties. Nor can it be considered relevant, for the purposes of assessing the overall conduct of the employer, what was declared regarding the fact that the teachers were "mutually aware of the fact that some of them [were] recipients of benefits under Law 104" having the interested parties "shared their situation with colleagues".

In light of the foregoing considerations, the consultation in the reserved area of the electronic register of the full version of the aforementioned document - containing the reference to the enjoyment of the benefits deriving from law no. 104 of the complainant and other colleagues, as well as the interdiction for maternity and other personal information (such as transfer, part-time) - has in fact made available to all the teaching staff of the Institute information, also relating to health, of the complainant and of other interested parties and has also made the teachers themselves acquainted with each other regarding personal, family situations or in any case relating to the specific employment relationship of each one (see the definition of "communication" of personal data contained in art. ter paragraph 4 letter a) of the Code). Considering that all school staff cannot be considered authorized to process the data in question, the provision of personal data - especially if related to health

or related to events - cannot be considered compliant with the regulatory framework on data protection. linked to the individual employment relationship - of all staff in service in a generalized and indistinct way (see lastly, with reference to the processing carried out through information protocol systems, provision no. 98 of 24 March 2022, currently being published, as well as provision of 11 February 2021, no. 50 web doc. no. 9562866). For these reasons, the Institute, albeit following a mere error, has put in place a processing of personal data, in violation of Articles 5, 6, 9 of the Regulation and 2-ter and 2 sexies of the Code in the text prior to the changes made by the Legislative Decree. 8 October 2021, n. 139, converted, with modifications, by the l. 3 December 2021, n. 205).

4. Conclusions.

In light of the aforementioned assessments, taking into account the statements made by the data controller during the investigation □ the truthfulness of which one may be called to answer pursuant to art. 168 of the Code □ it is noted that the elements provided by the data controller in the defense briefs do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of this proceeding, not resorting to moreover, some of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed, and the unlawfulness of the processing of personal data carried out by the Institute is noted, in violation of Articles 5, 6, 9 of the Regulations and 2-ter and 2-sexies of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, n.139, converted, with amendments, by Law 3 December 2021, n. 205) .

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, of the Regulation, pursuant to art. 58, par. 2, lett. i), and 83, par. 3, of the same Regulation and art. 166, paragraph 2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, 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 ancillary sanctions (articles 58, par. 2, lett. I and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary sanction pursuant to Article 83, in addition to the [other] [corrective] measures referred to in this paragraph, or instead of such measures, depending on the circumstances of each individual case "and, in this context,"

the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

In this regard, taking into account 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 administrative fine provided for by art. 83, par. 5, of the Regulation.

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

In relation to the aforementioned elements, the particular delicacy of unlawfully processed personal data, also relating to health, as well as personal, family and work events relating to the complainant and eleven other interested parties, was considered, as well as the failure to comply with the indications that, for some time, the Guarantor, has provided public and private employers with the aforementioned Guidelines and with numerous decisions on individual cases referred to above.

On the other hand, the unlawful conduct was considered to have been determined by a mere clerical error consisting in the publication of a file intended for internal use "in place of the file in which the" sensitive "data had been purged, intended for publication" and that the document was made accessible to other colleagues for a limited period of time (from XX to XX; the Institute took steps, as soon as the problem was reported, to delete the document from the electronic register, also showing extensive collaboration with the Authority During the investigation of this proceeding, it was also favorably acknowledged that there are no relevant previous violations committed by the data controller or previous provisions pursuant to Article 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction, in the amount of € 2,500.00 (two thousand five hundred) for the violation of Articles 5, 6, 9 of the Regulation and 2-ter and 2-sexies of the Code, as a withheld administrative fine, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the nature of the data being processed, it is also believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is noted that the conditions set out in art. 17 of Regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), declares illegal the conduct held by the State High School "Isabella Gonzaga" of Chieti described in the terms set out in the motivation, consisting in the violation of art. 5, 6, 9 of the Regulations and 2-ter and 2-sexies of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, n.139, converted, with amendments, by Law 3 December 2021, n. 205) ;

ORDER

pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations, as well as art. 166 of the Code, at the "Isabella Gonzaga" state high school, in the person of the pro-tempore legal representative, with registered office in via dei Celestini, 4t Chieti - C.F. 80002390690, to pay the sum of € 2,500.00 (two thousand five hundred) as a pecuniary administrative sanction 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 sanction imposed;

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at the "Isabella Gonzaga" state high school - without prejudice to the provisions of art. 166, paragraph 8 of the Code - of the Code, to pay the sum of € 2,500.00 (two thousand five hundred) 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

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code (see Article 16 of the Guarantor Regulation No. 1/2019);

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation (see article 17 of Regulation no. 1/2019).

Pursuant to art. 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, against this provision, it is possible to 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 applicant resides abroad.

Rome, April 28, 2022

THE VICE-PRESIDENT

Cerrina Feroni

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei