

Injunction order against the Province of Reggio Calabria - 25 January 2018

Record of measures

n. 31 of 25 January 2018

#### THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of Dr. Giovanna Bianchi Clerici and of Prof. Licia Califano, members and of Dr. Giuseppe Busia, general secretary;

NOTING that the Guarantor for the protection of personal data (hereinafter the Guarantor), with provision no. 587 of 12 November 2015 against the Province of Reggio Calabria Tax code: 80000100802, based in Reggio Calabria, piazza Italia, ascertained that both the single provincial ranking relating to disabled and protected categories were published on the institutional website of the aforementioned Province for the year 2014 and the provincial ranking of blind telephone switchboard operators updated to 31/12/2014, which, by clearly showing the identification data of the interested parties and being freely accessible and reachable through the main search engines on the web, determined the dissemination of data from which it was possible to infer the state of illness or the existence of pathologies of the subjects concerned (including references to conditions of invalidity, disability or physical and / or mental handicap, therapies in progress), falling within the category of sensitive data in what is suitable for disclosing the state of health of the interested parties, in violation of art. 22, paragraph 8 of the legislative decree June 30, 2003, n. 196 containing the Code regarding the protection of personal data (hereinafter referred to as the Code);

NOTING also that, with the transmission note of the Public and Private Labor Unit of 27 January 2016, the results of which were verified with the minutes of 4 February 2016, it was ascertained that both the permanence, on the website of the Province, of the personal data subject of provision no. 587 of 12 November 2015 despite the prohibition and provisions of the Guarantor, in violation of the provisions of art. 154, paragraph 1, lett. c) and d) of the Code, and the failure of the Province of Reggio Calabria to reply to the measures adopted to comply with the provisions issued by the Guarantor with the aforementioned provision no. 587 of 12 November 2015, in violation of art. 157 of the Code;

NOTING also that it was ascertained that the information requested by the Guarantor was not received within the prescribed period (14 December 2015), pursuant to art. 157, with provision no. 587 of 12 November 2015, in violation of the provisions of

art. 157 of the Code;

GIVEN the minutes n. 3296/101977 of 8 February 2016 with which the administrative violation envisaged by art. 162, paragraph 2-bis, of the Code, in relation to art. 22, paragraph 8, regarding the dissemination of sensitive data of the interested parties, the administrative violation provided for by art. 162, paragraph 2-ter of the Code, in relation to art. 154, paragraph 1, lett. c) and d) of the Code, regarding the non-observance of provision no. 587 of 12 November 2015 adopted by the Guarantor, the administrative violation provided for by art. 164 of the Code, in relation to art. 157 of the same Code, regarding the failure to respond to a request for information from the Guarantor, informing it, for the three alleged violations, of the right to make a reduced payment pursuant to art. 16 of the law n. 689/1981;

EXAMINED the report of the Guarantor's Office prepared pursuant to art. 17 of the law of 24 November 1981, n. 689, from which the reduced payment was not made;

GIVEN the defensive writings dated 8 March 2016 sent pursuant to art. 18 of the law n. 689/1981, with which the Province of Reggio Calabria highlighted how "(...) in the dispute (...) and in the provision referred to therein (provision of the Guarantor no. 587 of 12 November 2015) the date of assessment of the alleged violations. This lack does not allow the verification of the terms foreseen by the art. 14 of the law n. 689/1981 (...)" . Furthermore, he noted that "(...) the rankings were published omitting the sensitive data of the interested parties, as recognized by the same Guarantor, who only disputes the presence of the name and surname of the subjects in the ranking", where he specified how "(...) these rankings are on a territorial basis and, therefore, given the very large number of citizens, there is no possibility of identifying the interested party. The interested party can register in the appropriate list of the territory of residence or in the list of other services in the territory of the State ". It was also observed that, "(...) since the obligation to publish has not been contested, it is not clear how a ranking without names can be published (...). It follows that the publication of the rankings in question took place in compliance the principles of necessity, relevance and non-excess as well as the provisions for the protection of sensitive data, according to the provisions indicated in the Guidelines of this Guarantor no. 243 of May 15, 2014 ". Regarding the violation of art. 157 of the Code regarding the failure to respond to a request for information from the Guarantor, highlighted how "(...) art. 157 of the Code refers to the obligation to provide information and exhibit documents, and not to any failure to comply with the provisions imposed by the Guarantor, already sanctioned in chapter b) of the dispute ";

CONSIDERING that the arguments put forward do not allow to exclude the responsibility of the Province of Reggio Calabria in

relation to the dispute in question.

With regard to the arguments concerning the impossibility of "(...) verification of the terms provided for by art. 14 of law no. 689/1981 (...)", it is noted that:

regarding the disputed pursuant to art. 162, paragraph 2-bis, of the Code, in relation to art. 22, paragraph 8, regarding the dissemination of sensitive data of the interested parties, the Province of Reggio Calabria does not take into account the fact that the provision of the Guarantor n. 587 of 12 November 2015, expressly mentioned in the notice of dispute no. 3296/101977 of 8 February 2016, in providing on page 2 "DETECTED, therefore, the unlawfulness of the processing carried out by the Province of Reggio Calabria in relation to the dissemination of data suitable for revealing the state of health of the interested parties (art. 22 , paragraph 8, of the Code) ", has promptly ascertained, pursuant to art. 13 of the law n. 689/1981, the violation in question, thus allowing any evaluation in order to respect the deadline set out in art. 14 of the law n. 689/1981;

regarding the disputed pursuant to art. 162, paragraph 2-ter of the Code, in relation to art. 154, paragraph 1, lett. c) and d) of the Code, regarding the non-observance of provision no. 587 of 12 November 2015 adopted by the Guarantor, the aforementioned Province notices that the complaint report that concerns us, in providing on page 2: "GIVEN the transmission note of the public and private labor unit of 27 January 2016, in which the failure of the data controller to reply to the measures adopted to comply with the requirements of the Guarantor was highlighted, as well as the permanence on the website of the Province of the personal data subject to the provision, despite the prohibition adopted by the Guarantor ", provided the due confirmation in order upon which, pursuant to art. 13 of the law n. 689/1981, the alleged violation was ascertained, thus allowing for any checks on compliance with the deadline set out in art. 14 of the law n. 689/1981;

regarding the disputed pursuant to art. 164 of the Code, in relation to art. 157 of the Code, regarding the failure to respond to a request for information from the Guarantor, the aforementioned Province, also in this case, does not notice that the complaint report that concerns us, in providing on page 2: "NOTING that the aforementioned provision is was notified to the Province on 24 November 2015 by certified e-mail, whose delivery notice is in the file; DETECTED, therefore, that the twenty-day deadline for the adoption of the prescribed measures and for the consequent reply to the Guarantor expired on December 14, 2015 ", provides all useful information in order to identify the moment (December 14, 2015) in which the violation in question must be considered ascertained pursuant to art. 13 of the law n. 689/1981, thus allowing, any control regarding compliance with the deadline referred to in art. 14 of the law n. 689/1981.

With reference to what was deduced in relation to the violation of art. 157 of the Code, the difference is highlighted, given that, even in this circumstance, the Province does not take into account what is indicated in point 3 of the disposition of the Authority's provision no. 587 of 12 November 2015, in which the Guarantor furthermore orders ", pursuant to art. 157 of the Code, to notify the Guarantor, within twenty days from the date of receipt of this provision, of the measures adopted to comply with the requirements given the order ", explicitly indicates the consequences of failure to respond to the request formulated " Failure to respond to this request is punished with the administrative sanction pursuant to art. 164 of the Code ".

With regard to the further arguments, it should be noted that they do not provide any useful element to qualify a cause of justification in relation to the disputed, given that the observations formulated in the defense brief do not take into account what is represented in the provision of the Guarantor no. 587 of 12 November 2015 which, in providing a clear application interpretation of the sector regulations (including Law 12 March 1999 n.68, containing Regulations for the right to work of the disabled and the Guidelines on the processing of personal data, also in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other obliged entities, cited in the defense brief), clearly expresses the consequences on page 2 of the aforementioned provision of the Guarantor n. 587 of 12 November 2015 in the "CONSIDERING that public entities, in cases where they disclose personal data on their institutional sites for transparency purposes, are required to comply with the prohibition of publication of any information from which it can be inferred, even indirectly, state of health of the interested parties (Article 22, paragraph 8, of the Code; Article 4 of Legislative Decree No. 33/2013), and that this prohibition also exists where the disclosure takes place in compliance with specific sector provisions, as highlighted in the aforementioned Guidelines ";

In conclusion, what has been produced by the Province of Reggio Calabria does not allow to qualify any of the constituent elements of the discipline on excusable error commonly defined as good faith, as per art. 3 of the law n. 689/1981, also based on what is asserted by the jurisprudence (Cass. Civ. Section I of 15 May 2006 n. 11012; Cass. Civ. Section II of 13 March 2006, n. 5426);

NOTING, therefore, that the Province of Reggio Calabria: a) has published on its institutional website both the single provincial ranking relating to disabled and protected categories for the year 2014 and the provincial ranking of blind telephone switchboard operators updated to 31/12 / 2014, resulting in the dissemination of data from which it was possible to infer the state of illness or the existence of pathologies of the subjects concerned, falling within the category of sensitive data as they

are suitable for revealing the state of health of the interested parties, in violation of art. 22, paragraph 8 of the Code; b) did not comply with the prohibition adopted by the Guarantor with provision no. 587 of 12 November 2015 and has not complied with the measures adopted to comply with the provisions issued by the Guarantor with the aforementioned provision, in violation of the provisions of art. 154, paragraph 1, lett. c) and d) of the Code; c) did not provide feedback, within the prescribed period (14 December 2015), regarding the information requested by the Guarantor, pursuant to art. 157, with the aforementioned provision no. 587 of 12 November 2015, in violation of the provisions of art. 157 of the Code;

GIVEN art. 162, paragraph 2-bis, of the Code, which punishes the violation of the provisions indicated in art. 167 of the Code, including that referred to in art. 22, paragraph 8, of the same Code, with the administrative sanction of the payment of a sum from ten thousand euros to one hundred twenty thousand euros;

GIVEN art. 162, paragraph 2-ter, of the Code, which establishes that in the event of non-compliance with the provisions of prescription of necessary measures or prohibitions pursuant to, respectively, art. 154, paragraph 1, lett. c) and d), the sanction of payment of a sum ranging from thirty thousand to one hundred and eighty thousand euro is also applied in the administration;

GIVEN art. 164 of the Code which punishes the violation of the provisions of art. 157 of the same Code with the administrative sanction of the payment of a sum from ten thousand euros up to sixty 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 and that therefore the amount of the three fines: with reference to the violation sanctioned by art. 162-bis relating to the finding referred to in point a) must be quantified in the amount of € 10,000.00 (ten thousand); with reference to the violation sanctioned by art. 162, paragraph 2-ter relating to the finding referred to in point b) must be quantified in the amount of € 40,000.00 (forty thousand); with reference to the violation sanctioned by art. 164 relating to the finding referred to in point c) must be quantified in the amount of € 10,000.00 (ten thousand), for a total amount of € 60,000.00 (sixty thousand);

GIVEN the law of 24 November 1981 n. 689, and subsequent amendments and additions;

GIVEN the documentation in the deeds;

GIVEN the observations of the Office, formulated by the Secretary General pursuant to art. 15 of the regulation of the

Guarantor n. 1/2000;

SPEAKER Prof. Licia Califano Califano;

ORDER

to the Province of Reggio Calabria cod. tax: 80000100802, based in Reggio Calabria, piazza Italia, in the person of the pro-tempore legal representative, to pay the sum of 60,000.00 (sixty thousand) euros as a pecuniary administrative sanction for the three violations referred to in art. of art. 162, paragraph 2-bis; 162, paragraph 2-ter and 164 of the Code indicated in the motivation;

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to the same subject to pay the sum of 60,000.00 (sixty thousand) euros according to the methods indicated in the annex, within 30 days from the notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

Pursuant to art. 152 of the Code and 10 of Legislative Decree n. 150/2011, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed with the ordinary court of the place where the data controller resides, within thirty days from the date of communication of the provision itself. , or sixty days if the applicant resides abroad.

Rome, 25 January 2018

PRESIDENT

Soro

THE RAPPORTEUR

Califano

THE SECRETARY GENERAL

Busia