[doc. web n. 9576756]

Injunction order against Istituto Comprensivo Villanova D'Asti - January 27, 2021

Record of measures

n. 28 of January 27, 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members, and the Cons. Fabio Mattei, Secretary General;

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 prof. Pasquale Stanzione;

WHEREAS

1. The complaint.

With a complaint of the XX, regularized on the XX, presented pursuant to art. 77 of the Regulations, Mrs. XX complained about the online publication of some rankings of the XX, by two educational institutions - Istituto Comprensivo Statale di Villanova

d'Asti and Primo Circolo Asti - containing personal data, including telephone, residential address, e-mail address and indication of the number of children of all those present in the ranking.

2. The preliminary activity.

From the preliminary investigation, carried out by the Office on XX, it emerged that, using the search engine www.google.com, a link was returned to the website of the Istituto Comprensivo Villanova D'Asti, with the following description: " XX ". By selecting the relevant item, the “XX” was visible and freely downloadable, at the url http: // ..., containing the personal data of about 130 interested parties. On the other hand, no results were returned with regard to the same research carried out against the Istituto Primo Circolo Asti.

On the basis of the elements acquired, the Office notified the Villanova d'Asti Comprehensive Institute (note prot. XX of the XX), 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 Regulations, inviting 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. . 689 of 11/24/1981).

With the note mentioned above, the Office found that the school has published on the institutional website, and indexed on search engines, the ranking, published pursuant to art. 5 of the Decree of the Minister of Public Education 13 June 2007, n. 131 (Regulations for the assignment of substitutes to teaching and educational staff pursuant to Article 4 of Law No. 124 of 3 May 1999), containing the personal data of the complainant and other teachers, not necessary with respect to the purpose of ensuring publicity of the ranking.

The Office also noted that, in the fields labeled "XX", three other alphabetic abbreviations were reported, including the letter "XX", referring to a single interested party. This letter, according to what is reported in Annex 6 (preferences codes) of the Decree of the Ministry of Education, University and Research of 1 April 2014, n. 235 (Update of the rankings upon exhaustion of teaching and educational staff, valid for the three-year school year 2014/15, 2015/16 and 2016/17), as well as in the application forms relating to inclusion in the club and school rankings for the same three-year school year, attached to the Ministerial Decree of 22 May 2014, n. 353 (see also art. 5, paragraph 4 of Presidential Decree No. 487 of 9 May 1994), identifies the category of "disabled and mutilated civilians".

In particular, the Office found that the publication of the aforementioned ranking took place in the absence of a suitable legal

basis, in violation of art. 6, par. 1, lett. c) and e), para. 2 and 3, lett. b) of the Regulations, as well as of Article 2-ter, paragraphs 1 and 3 of the Code and, in violation of the prohibition of disclosure of health data, of art. 2-septies, paragraph 8 of the Code and the principles of "lawfulness, correctness and transparency" as well as "minimization" of processing, of art. 5, par. 1, lett. a) and c) of the Regulation.

The institute sent its defense briefs, with notes from the twentieth and twentieth centuries, representing, in particular, that:

- the subject of the complaint concerned "a temporary ranking of the XXth, which remained published on the icvillanovasti.gov.it site from the XX for a few days (until the final publication) containing personal data including telephone number, e-mail of the teacher and sons";

- “the ranking had already been correctly removed from the site in the twentieth century but the file was still reachable via google. The old site (www.icvillanova.gov.it) had been decommissioned and replaced by https://icvillanovasti.edu.it/, but a link that referred to it remained active ";

- “on XXth steps was taken to remove this file and to make the whole old site inaccessible to carry out further checks. [...] Finally, google has taken steps to request removal from indexing so that no more links to said file appear ";

- "the provisional ranking had been correctly removed from the site in August XX following the publication of the final ranking, and that in order to find that file, [...] the operation had to be carried out by someone already in possession of the telephone number in question or the email of the teacher concerned ";

- on the 20th date [...] was reported to the Guarantor through the "data breach notification form to the Guarantor" [...] and, as per legislation, the teachers who were in the incorrectly published ranking were informed of the problem and its resolution […]. The incident was entered in the "data breach register" of the Comprehensive Villanova Institute.

3. Applicable law.

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 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 performance of a task of public interest or connected to 'exercise of public authority vested in the data controller ”(Article 6, paragraph 1, letters c) and e) of the Regulation).

The 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 processing, in accordance with paragraph 1, letters c) and e), determining more precisely the 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 art. 2-ter of the Code, according to which the dissemination of personal data, such as publication on the Internet, in the public sphere is permitted only when required 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 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 towards the interested party" as well as "Adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (paragraph 1, letters a) and c)).

In any case, the dissemination of data relating to health remains absolutely prohibited (Article 9, paragraphs 1, 2 and 4, of the Regulation, Article 2-septies, paragraph 8, of the Code, or rather of "personal data relating to health physical or mental nature of a natural person, including the provision of health care services, which reveal information relating to his or her state of health "(art. 4, par. 1, no. 15; recital no. 35 of the Regulation).

With particular reference to the publication of the rankings, moreover, the Guarantor in provision no. 243 of May 15, 2014 (web doc. 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 entities and other obliged entities "with reference to the publicity of the results of the competitive exams and the final rankings, he highlighted that" only the pertinent and not excessive data referring to the interested parties must be disclosed. Therefore, data concerning the contact details of the interested parties cannot be published (think of fixed or mobile telephony users, residence or e-mail address, tax code, Isee indicator, number of disabled children, results of psycho-aptitude tests or educational qualifications), nor those concerning the health conditions of the interested parties (see Article 22, paragraph 8, of the Code) iví including references to conditions of physical and / or mental disability, disability or handicap " (see part two par. 3.b.). In a similar way, 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 relationship of work in the public sphere "(in www.gpdp.it, web doc. no. 1417809) highlighting that:" It is not permissible to include other types of irrelevant information in the documents of the rankings to be

published, such as, for example, contact details of fixed or mobile phone or the tax code. ".

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, although worthy of consideration, do not allow to overcome the findings notified by the Office with the act of initiating the procedure and are insufficient to allow the filing of the this proceeding, since none of the cases provided for by art. 11 of the Guarantor Regulation 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 website www. icvillanovasti.gov.it on the 20th. Although the site www.icvillanova.gov.it had been decommissioned and replaced by https://icvillanovasti.edu.it/, a link that referred to it remained active, so the violation of personal data, which led to the online diffusion of the same, lasted until the 20th, the date on which the ranking was removed and de-indexing was requested.

Therefore, the preliminary assessments of the Office are confirmed, and the unlawfulness of the processing of personal data carried out by the Istituto Comprensivo Statale of Villanova d'Asti is noted, for having disseminated, keeping online the Institute ranking relating to teachers (about 130 ), bearing in clear, 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 all the teachers included in the aforementioned rankings, (tax code, residential address, number of landline and mobile phone, email address, number of children, preference codes) causing undue disclosure of personal data (see with regard to the publication of irrelevant data contained in school rankings, Provv. June 6, 2013, n. 275, web doc. n. 2536184, 2536409 and 2535862), in violation of articles 6, paragraph 1, lett. c) and e), of the Regulation and 2-ter, paragraphs 1 and 3, of the Code, as well as the basic principles of processing contained in art. 5, par. 1, lett. a) and c) of the Regulations.

It is also ascertained that, in the same ranking, data relating to health were contained, even if relating to a single interested party. In fact, the indication of the letter "XX" next to the name of an interested party, provides information relating to the state of health of the same, albeit through the consultation of annex 6 to the MIUR decree of 1 April 2014, n. 235, and / or the application forms relating to inclusion in the club and school rankings, attached to the Ministerial Decree 22 May 2014, n. 353, in violation of the general prohibition of disclosure of health data (Article 2-septies of the Code; Article 9 of the Regulation).

These principles have recently been confirmed by the Guarantor (see, in particular, Provv. 30 January 2020, n. 21, web doc. N. 9283014, Provv. 6 February 2020 n. 27 web doc. . 12 March 2020 n. 50 web doc. N. 9365159).

For these reasons it is therefore believed that the publication of the "XX" of the XX, containing the data of about 130 interested parties, took place:

a) in violation of the principles of "lawfulness, correctness and transparency" and "data minimization", pursuant to art. 5, par. 1, lett. a) and c) of the Regulations;

b) in the absence of a regulatory requirement for the publication of certain personal data such as tax code, telephone number, residential address, e-mail address, number of children and preference codes, in violation of art. 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the Regulation and 2-ter, paragraphs 1 and 3, of the Code;

c) in violation of the prohibition of disclosure of data relating to health (Article 9, paragraphs 1, 2, 4, of the Regulation and Article 2-septies, paragraph 8, of the Code).

In this context, considering, in any case, that the conduct has exhausted its effects, given that the school has declared that it has removed the ranking from the old school site and requested de-indexing (see note of XX) , 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 single 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.

It is also necessary to take into account that, even if the documents subject to the complaint were published before the date of

full application of the Regulation, in order to determine the applicable rule, in terms of time, the principle of legality referred to in art must be recalled in particular. . 1, paragraph 2, of the l. n. 689/1981 which establishes as "Laws that provide for administrative sanctions are applied only in the cases and times considered in them". This determines the obligation to take into consideration the provisions in force at the time of the violation committed, which in the case in question - given the permanent nature of the alleged offense - must be identified at the time of cessation of the unlawful conduct, which occurred after the date of 25/5/2018 in which the Regulation became applicable. In fact, from the preliminary investigation it emerged that the illegal online dissemination lasted at least until the date on which the ranking was removed (March 4, 2020).

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, it was considered that the violation of the rules on the protection of personal data had as its object the dissemination of personal data, including data relating to the health of an interested party identified in the ranking through the annotation of the letter " S ", as a preferential title indicating the category of" disabled and mutilated civilians, not necessary with respect to the purposes underlying the publication of the results of the insolvency proceedings, also in light of the indications that, since 2014, the Guarantor has provided to all public subjects in the Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purposes of advertising and transparency on the web by public subjects and other obliged entities, mentioned above. This dissemination of personal data has continued for a considerable amount of time (approximately 3 years).

On the other hand, the following was considered: the culpable nature of the conduct as the publication is due to a mere material error; that the personal data relating to health concerns a single data subject; that the Institute has taken steps to remove the personal data of the interested parties and has therefore collaborated with the Authority during the investigation of this 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 favorably acknowledged that there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

On the basis of the aforementioned elements, evaluated as a whole, it is believed to determine the amount of the pecuniary sanction, in the amount of € 4,000 (four thousand) for the violation of Articles 5, par. 1, lett. a) and c), 6, paragraph 1, lett. c)

and e), art. 9, para. 1, 2, 4 of the Regulation, as well as art. 2-ter, paragraphs 1 and 3 and 2-septies, paragraph 8 of the Code, as an administrative pecuniary sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

In quantifying the sanction, the Guarantor took particular account of the fact that the violations are connected to a treatment started immediately after the definitive application of the Regulation.

Taking into account the extended period of time during which the aforementioned data were made available on the network, it is also believed that the ancillary sanction of 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), of the Regulations, declares unlawful the conduct held by the Istituto Comprensivo Villanova D'Asti, described in the terms set out in the motivation, consisting in the violation of Articles 5, par. 1, lett. a) and c), 6, paragraph 1, lett. c) and e), 2 and 3, lett. b), art. 9, para. 1, 2, 4 of the Regulation, as well as art. 2-ter, paragraphs 1 and 3 and 2-septies of the Code, in the terms set out in the motivation

ORDER

To the Istituto Comprensivo Villanova d'Asti, in the person of the pro-tempore legal representative, with registered office in Via Zabert, 14 - 14019 Villanova d'Asti (AT), Tax Code 92040380054, to pay the sum of € 4,000 (four thousand) 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;

INJUNCES

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 € 4,000 (four 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

recognizing the existence of the conditions referred to 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.

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, January 27, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei