

[doc. web n. 9582791]

Injunction order against Federico II University of Naples - 11 March 2021

Record of measures

n. 90 of 11 March 2021

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stazione, president, 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 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;

Professor Ginevra Cerrina Feroni will be the speaker;

WHEREAS

1. The complaint.

With a complaint presented to this Authority on XX by an employee of the National Institute of Nuclear Physics (hereinafter, "INFN"), it was complained that the Physics Department "E. Pancini" of the University of Naples Federico II (hereinafter, the"

Athenaeum "or the" University "), at the headquarters of which the Naples Section of the INFN is housed, would have" proceeded to install and put in 35 cameras function, connected to an image recording system via a telematic network ", which" carry out a continuous filming of all the internal passage areas of the building (corridors, common areas) ". The complainant stated that "in the offices and laboratories of the Physics Department, work activities are carried out [also] by employees [...] [of the] CNR SPIN Institute [...] [as well as] of private companies contracted for the service cleaning and security service "and that, therefore, from the" current arrangement of the cameras in the corridors of the building [...], [...] the possibility of remote control of workers' activity [...] may arise; failure to comply with the principle of necessity as the building is already manned by a security service and many cameras are installed in areas not exposed to concrete risks; failure to comply with the principle of proportionality since the capillary coverage of the building with cameras was carried out for the purpose of "safety of people and property" [...] without having carried out an assessment of alternative instruments ".

Furthermore, according to what the complainant reported, "in more than one case, the shooting range of the cameras relates to areas used for the parking of workers and students for the purchase of food and drinks through the use of vending machines [...], to areas used for the collection of printed matter [...] and near the toilets, in breach of the principle of necessity ".

The complainant also complained that "both the installation and commissioning of the video surveillance system were carried out in the absence of an agreement with the trade union representatives of the body that carried out the installation, of the hosted bodies and of the contracted companies ", As there is no" documentary evidence which, in consideration of the absence of a trade union agreement, demonstrates the presentation of the application to the Labor Inspectorate by the body that carried out the installation ". Furthermore, the workers "[would] not have been given any indication [...] regarding the managers and persons in charge of the processing", also in consideration of the fact that "at present [...] this treatment [would] be carried out, both during during the day and at night, by the employees of the security company through the consultation of the 35 video streams on 3 screens located in a room located near the entrance to the building ".

2. The preliminary activity.

With a note dated XX (prot. No. XX), the University, responding to a request for information formulated by the Office, declared that:

"The data controller is the University";

following the complaint, the University proceeded "to activate the competent Offices for the union convening aimed at the

specific agreement referred to in Law no. 300/70 [...] as it does not exist ";

"The 'images' are viewed in real time by the company entrusted with the concierge service [...]", with which an agreement has been entered into on the processing of personal data;

"The video surveillance system of the Physics Department consisting of n. 37 cameras came into operation on 01.03.2016 and at present, n. 34 cameras ";

"In 2015, following numerous thefts, which occurred during opening hours, as well as to protect assets and for security reasons relating to the prevention of crimes, a video surveillance system was installed in the premises of the Department building of Physics, in which there is a technical-scientific instrumental heritage of the highest technological-scientific and economic value ";

"The principles of relevance and non-excess were respected in the installation of the system. The system as a whole consists of n. 37 cameras and n. 1 image recorder. The cameras are allocated only in the corridors of the Department, never in the rooms or in areas intended for work (eg laboratories), covering where access by malicious people is deemed most likely. The view of the individual cameras is currently limited to an angle of approximately 60 degrees. The cameras are never directed on the screens of terminals or personal computers. [...] The cameras (no. 37) cover a total of about 1,500 m [q] of surface, about only 5% of the size of the Department (over 30,000 m [q] of surface) ";

"The Department's video surveillance system is equipped with a single recorder located in the local" computer center ", locked and accessible to the Director of the Physics Department, as well as to the Director of the Naples section of the INFN [...] in how much their equipment is located in the room. The IP address of the recorder is not a "public" address and is therefore not accessible from outside the Department. The room is also equipped with an adequate fire-fighting system ";

"The retention period of the images is 7 days. Recordings older than the last 7 days are automatically deleted ";

"In conjunction with the activation of the video surveillance system, the appropriate information signs were placed before the range of action of the camera and in its immediate vicinity. The specific signs, numerous and clearly visible, indicate the name of the Department and the purpose pursued. The signage is currently being updated with reference to the most recent legislation. [...] The complete information in accordance with the provisions of Articles 12 and 13 of EU Regulation 2016/679 on the protection of personal data is published on the University website on the privacy page [...] ".

With a note of the XX (prot.no.XX), the University sent to the Authority a certified copy of the agreement signed on November

8, 2019 with the trade unions, concerning the video surveillance system used at the premises of the Department of Physics "Ettore Pacini", located in the university complex of Monte Sant'Angelo.

Following a further request for information, which was acknowledged with note prot. n. XX of the XX, the University specified that the extended information on the processing of personal data through the video surveillance system "was published [...] on the University website, on 01/08/2019".

The Office, with a note of the XX (prot. No. XX), on the basis of the elements acquired, the verifications carried out and the facts that emerged as a result of the investigation, notified the University, 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, concerning the alleged violations of articles 5, par. 1, lett. a), 6, 13 and 88 of the Regulations, as well as art. 114 of the Code, in relation to art. 4, paragraph 1, of the l. May 20, 1970, n. 300.

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

- the violation lasted "from 1 March 2016 to 8 November 2019";
- "the interested parties are the frequenters of the" Ettore Pancini "Department of Physics: about 140 professors and researchers, about 100 research fellows, fellows and doctoral students, 24 technical and administrative staff and the research, technical and administrative staff of the research bodies hosted in convention, 80 units of the INFN (National Institute of Nuclear Physics), 20 of the CNR Istituto SPIN, 4 of the CNR ISASI Institute [...], the personnel of the Company for the cleaning service and the security service ";
- "The cameras were installed for security reasons [...] in particular as a deterrent to the numerous thefts, which occurred during opening hours, both in the offices and in the classrooms of the Department, to protect the technical-scientific assets present in the premises of the Physics Department. The Director of the Department pointed out that following the installation of the cameras the thefts have ceased ";
- "upon activation of the video surveillance system, appropriate information signs were placed at the same time, before the range of action of the camera and in its immediate vicinity. The signage was then promptly modified following the specific indications provided [by the] Authority [...]. For the period 1.03.2016 until 24.07.2019 no interested party has made observations relating to the installation of video surveillance. As soon as the report was received, the Data Controller promptly activated for the regularization of the system ";

- "We proceeded to prepare the complete information on the processing of personal data [...], made available on the University website [...] on 01.08.2019 and then amended according to the indication provided [by the] Authority [...]";
- "The Owner, as soon as he ascertained the existence of a video surveillance system at the Physics Department in the absence of certain legal requirements, activated, before receiving the communication from the Guarantor, in order to regularize the matter by, in particular: the recognition of the existing situation at the Department; the acquisition of technical and information elements to support the investigation (information, screenshots, floor plans); updating of existing signs and publication of complete information on the University website; the conclusion of the trade union agreement with a favorable outcome";
- "the Data Controller became aware of the alleged violation on 24.07.2019 following the notification by e-mail, by an employee of INFN [...], a research institution hosted by the Physics Department of this University and located in the University Complex of Monte Sant'Angelo. The INFN employee in fact communicated the existence of a video surveillance system within the Department, complaining of irregularities. The Data Controller promptly notified the above to the Guarantor Authority within the prescribed terms and precisely by certified email on XX9".

3. Outcome of the preliminary investigation.

3.1 The applicable regulatory framework

The rules on the processing of personal data provide that public entities can, as a rule, process personal data 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 "(art. 6, par. 1, lett. c) and e) of the Regulation and art. 2-ter of the Code).

With specific reference to the use of video surveillance systems by public entities, already in the "Provision on video surveillance" (provision of 8 April 2010, published in Official Gazette no. 99 of 29 April 2010, web doc. No. 1712680) the Guarantor had clarified that these subjects, "as data controllers [...], may process personal data in compliance with the principle of purpose, pursuing specific, explicit and legitimate purposes [...] for the performance of their institutional functions" (par. 5) (see par. 3.2 of the "Guidelines 3/2019 on the processing of personal data through video devices" of the European Data Protection Committee of 29 January 2020).

Furthermore, given that the video surveillance system that is the subject of the complaint is also suitable for filming University

staff who pass through or stop in the areas concerned, it is noted that the processing of personal data of workers can be carried out by the employer, if it is necessary, in general, for the management of the employment relationship and to fulfill specific obligations or tasks provided for by laws, community legislation, regulations or collective agreements (articles 6, paragraph 1, letter c), and 88 of the Regulation).

The employer must also comply with national regulations, which "include appropriate and specific measures to safeguard the human dignity [...] of the data subjects, in particular as regards the transparency of processing [...] and workplace monitoring systems "(Articles 6, par. 2 and 88, par. 2 of the Regulations). In this context, due to the reference contained in the Code to the national provisions of the sector that protect the dignity of people in the workplace, with particular reference to possible controls by the employer (Article 114 "Guarantees regarding control distance "), compliance with art. 4 of the l. May 20, 1970, n. 300 constitutes a condition of lawfulness of the processing (see par. 4.1 of the aforementioned "Provision on video surveillance" of 8 April 2010, web doc. N. 1712680; see, lastly, the recent FAQ of the Guarantor n. 9 on video surveillance, web doc. 9496574). Art. 4, paragraph 1, of the l. May 20, 1970, n. 300 establishes, in fact, that "the audiovisual systems and other instruments from which the possibility of remote control of workers' activity derives can be used exclusively for organizational and production needs, for work safety and for the protection of assets company and can be installed after a collective agreement stipulated by the unitary union representation or by the company union representatives [...]. In the absence of an agreement, the systems and tools referred to in the first period can be installed with the authorization of the territorial headquarters of the National Labor Inspectorate or, alternatively, [...] the headquarters of the National Labor Inspectorate ".

The data controller is then, in any case, required to comply with the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "minimization", on the basis of which personal data must be "Processed in a lawful, correct and transparent manner towards the data subject" and must be "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter a) and c) of the Regulation).

In compliance with the principle of "lawfulness, correctness and transparency", the data controller must take appropriate measures to provide the data subject with all the information referred to in Articles. 13 and 14 of the Regulations in a concise, transparent, intelligible and easily accessible form, with simple and clear language (art. 12 of the Regulations).

3.2 Information for interested parties

When video surveillance systems are used, the data controller, in addition to making the first level information by affixing warning signs near the area subject to video surveillance, must also provide the interested parties with "second level information", which must "Contain all the mandatory elements pursuant to Article 13 of the [Regulation]" and "be easily accessible for the interested party, for example through a complete information page made available in a central hub (information desk, reception, cash desk, etc. .) or posted in an easily accessible place "(" Guidelines 3/2019 on the processing of personal data through video devices "of the European Data Protection Committee, adopted on 29 January 2020, in particular par. 7; but yes see already the "Provision on video surveillance" of the Guarantor of 8 April 2010, web doc. no. 1712680, in particular par. 3.1; see, lastly , the recent FAQ of the Guarantor n. 4 on video surveillance, doc. web 9496574).

From the assessment carried out on the basis of the elements acquired and the facts that emerged as a result of the investigation, it emerged instead that the complete information on the processing of personal data was made available to interested parties, on the University website, only on 1 August 2019 and was updated, also in light of the indications formulated by the Authority during the investigation, only on XX (see what was declared in the University note prot. No. XX of the XX).

It was also found that some of the information signs affixed by the University in the places affected by the video surveillance did not mention some of the elements required by art. 13 of the Regulation. In particular, the data controller was not mentioned (as emerges from photographs n.15 and n.16, attached to the complaint) and, in one case, the purpose of the processing pursued by the data controller (photograph n.15) (cf. "Guidelines 3/2019 on the processing of personal data through video devices" of the European Data Protection Committee, adopted on January 29, 2020, par. 114, which states that "generally, first level information (warning sign) should communicate the most important data, for example the purposes of the processing, the identity of the data controller and the existence of the rights of the data subject, together with information on the most significant impacts of the processing ").

For these reasons, until the University has updated the text of the information, the processing of the personal data of the data subjects through the video surveillance system was carried out in violation of Articles 5, par. 1, lett. a), and 13 of the Regulations.

3.3 The rules on remote controls

The investigation also made it possible to ascertain that, as confirmed by the University, the same used, from 1 March 2016 and until 8 November 2019, a video surveillance system, installed in the corridors of the building that houses the Department

of Physics "E. Pancini ", for the purpose of protecting their assets and for safety reasons, in the absence of a prior agreement with the trade union representatives or authorization from the National Labor Inspectorate.

In this regard, it should be noted that the needs of security and protection of heritage, even invoked by the University, cannot in themselves, on the basis of the regulatory framework outlined above, legitimize the processing of personal data by means of tools from which it can derive. also the possibility of remote control of workers, such as that used by the University, in the absence of the guarantees provided for by art. 4, paragraph 1, l. n. 300/1970. On this point, also the jurisprudence of the European Court of Human Rights, in the case of Antovic and Mirković v. Montenegro (Application n. 70838/13 of 28.11.2017), established that respect for "private life" must also be extended to public workplaces (in this case, university classrooms), highlighting that on-site video surveillance of public work can only be justified in compliance with the guarantees provided by the applicable national law, failing which it constitutes an unlawful interference in the employee's private life, pursuant to Article 8, par. 2, of the European Convention on Human Rights.

Therefore, compliance with the aforementioned art. 4, paragraph 1, also due to the reference to it contained in art. 114 of the Code, constitutes a condition of lawfulness of the processing of personal data (see, lastly, with regard to the use of video surveillance in the workplace, provision March 5, 2020. n. 53, web doc. N. 9433080, prov. September 19, 2019, n. 167, web doc. N. 9147290, in particular point 4.2; see, at European level, the indications contained in the "Guidelines 3/2019 on the processing of personal data through video devices" of the European Committee for data protection of 29 January 2020, spec. par. 11, as well as the previous indications of the Article 29 Working Group in the "Opinion 2/2017 on the processing of data in the workplace", WP 249; in case law, see Cass . criminal, section 3, 17 December 2019, no. 50919; Cass. civ., section 1, 19 September 2016, no. 18302).

Due to the foregoing considerations, the processing of workers' personal data, carried out through the University's video surveillance system, appears to have occurred in violation of art. 5, par. 1, lett. a), 6 and 88 of the Regulations, as well as art. 114 of the Code, in relation to art. 4, paragraph 1, of the l. May 20, 1970, n. 300.

4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the data controller during the investigation □ the truthfulness of which one may be called to respond pursuant to art. 168 of the Code, although worthy of consideration, 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, however, none of the cases provided for by the art. 11 of the Guarantor Regulation n. 1/2019.

It is also represented that for the determination of the applicable law, from a temporal point of view, the principle of legality referred to in art. 1, paragraph 2, of the l. n. 689/1981 which states that "the laws that provide for administrative sanctions are applied only in the cases and times considered in them". This determines the obligation to take into account 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 upon termination of the unlawful conduct. In fact, from the preliminary investigation documents, although the installation of the video surveillance system took place in 2016, the agreement with the trade unions was concluded on 8 November 2019, while the complete information to the interested parties was made available on the University website only on 1 August 2019 and was subsequently updated on 9 July 2020, when the Regulations and the Code, as amended by Legislative Decree 10 August 2018, n. 101, were in effect.

Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the University is noted, for having processed the personal data of workers in the absence of suitable regulatory conditions and for not having made the necessary necessary information on the processing of personal data through the video surveillance system, in violation of articles articles 5, par. 1, lett. a), 6, 13 and 88 of the Regulations, as well as art. 114 of the Code, in relation to art. 4, paragraph 1, of the l. May 20, 1970, n. 300.

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, given that the University has concluded a specific agreement with the trade union representatives and has fulfilled the information obligations towards the interested parties, the conditions for the " adoption of further 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. l 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.

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 long period of time during which the treatments in question were put in place in the absence of the aforementioned conditions of lawfulness were considered, as well as the circumstance that compliance with the guarantees provided for by the aforementioned sector regulations, such as condition of lawfulness of the consequent treatments, has been constantly affirmed by the Guarantor in numerous measures (see "Video surveillance - The Decalogue of the rules for not violating privacy" of 29 November 2000, web doc. no. 31019; see also the general provision on video surveillance of 29 April 2004, web doc. no. 1003482 and the subsequent general provision of 2010, referred to above, point 4.1; lastly, see FAQ of the Guarantor no. 9 on video surveillance, doc. web 9496574; see provision 9 May 2018, no. 277, web doc. 8998303; provision 18 April 2013, no. 200 web doc. 2483269; provision 18 April 2013, no. 199, doc. web 2476068), as well as by the jurisprudence of legitimacy, referred to above. Furthermore, it was considered that the data subjects were subjected to video surveillance in real time, through visualization by the employees of the company entrusted with the concierge service, or with a "more intrusive [a] method than the conservation and automatic deletion of the registrations after a limited period of time" ("Guidelines 3/2019 on the processing of personal data through video devices" of the European Data Protection Committee, adopted on January 29, 2020, par. 29).

On the other hand, it was favorably acknowledged that the University took steps to conclude the concertation procedure with the trade unions, even before the formal start of the investigation by the Guarantor, taking into account the adoption of technical and organizational measures aimed at guaranteeing that the processing takes place in compliance with current legislation (see articles 24 and 25 of the Regulation), as well as actively cooperating with the Authority during the investigation. Furthermore, there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 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 € 10,000.00 (ten thousand) for the violation of Articles 5, par. 1, lett. a), 6, 13 and 88 of the Regulations, as well as art. 114 of the Code, in relation to art. 4, paragraph 1, of the l. May 20, 1970, n. 300, as a pecuniary administrative sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the extended period of time during which the aforementioned data were 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), of the Regulations, declares unlawful the conduct held by the University of Naples Federico II, described in the terms set out in the motivation, consisting in the violation of Articles 5, par. 1, lett. a) and c), and 6 of the Regulations, as well as, with specific reference to the personal data of workers, also of art. 88 of the Regulations and art. 114 of the Code, in relation to art. 4 of the l. May 20, 1970, n. 300, in the terms set out in the motivation;

ORDER

at the University of Naples Federico II, in the person of the pro-tempore legal representative, with registered office in Corso Umberto I - 80138 Naples (NA), Tax Code 00876220633, pursuant to art. 58, par. 2, lett. i), and 83, par. 5, of the Regulation and 166, paragraph 2, of the Code, to pay the sum of € 10,000.00 (ten thousand) as a pecuniary administrative sanction for the violations indicated in the motivation;

INJUNCES

the aforementioned University to pay the sum of € 10,000.00 (ten 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 l. n. 689/1981. In this regard, it is recalled that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within 30 days from the date of notification of this provision, pursuant to art. 166, paragraph 8, of the Code (see also Article 10, paragraph 3, of Legislative Decree no. 150 of 1/9/2011);

HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, considering that the conditions set out in art. 17 of the Guarantor Regulation n. 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, March 11, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feroni

THE SECRETARY GENERAL

Mattei