

[doc. web no. 9445324]

Injunction order against Istituto Comprensivo di Uggiano La Chiesa - 2 July 2020

Register of measures

no. 117 of 2 July 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

In today's meeting, attended by Dr. Antonello Soro, president, Prof. Licia Califano and Dr. Giovanna Bianchi Clerici, members and Dr. Giuseppe Busia, general secretary;

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, as well as on the free circulation of such data and repealing Directive 95/46 /CE, "General Data Protection Regulation" (hereinafter the Regulation);

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data (hereinafter the "Code");

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

Given the documentation in the deeds;

Given the observations made by the Secretary General pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the Guarantor's office for the protection of personal data, doc. web no. 1098801;

Supervisor Prof. Licia Califano;

WHEREAS

1. Introduction.

The Authority has received some reports regarding the posting, at the entrance of the State Comprehensive Institute of Uggiano la Chiesa, of certain lists containing "names of minors, dates of birth, residential addresses, telephone numbers and the wording" there is no copy of vaccines ". Some news from the local press appeared on the same issue.

2. The preliminary investigation.

The school has responded to the request for information from this Authority (prot. note no. XX of the XX) with the note of the XX.

Specifically, the Headmaster represented, among other things, that:

- "the lists (...) had been posted for mere clerical error, without any authorization and signature from the Manager;
- to have "proceeded to have them removed" and to have "ascertained that the wording entered in pencil on these lists ("missing copy of vaccines") did not refer in any way to the children indicated therein who are actually in compliance with vaccination obligations";
- "We are also evaluating appropriate disciplinary measures to be initiated against those who have committed the aforementioned violation and to provide for a further training course in accordance with the DPO, in addition to the one already carried out on 08.10.2018 with all staff, in order to underline once again the delicate aspects regarding the processing of personal data".

The Office, on the basis of the checks carried out and the elements acquired, also through the documentation sent by the school and the facts that emerged following the preliminary investigation, as well as the subsequent evaluations, has ascertained that the aforementioned Comprehensive Institute, by posting on the door entrance to the Otranto nursery school the aforementioned lists relating to minors, bearing in clear text, in addition to the identification data of the pupils, also indications relating to the date of birth, address and telephone numbers of the same, carried out a treatment compliant with the relevant regulations on the protection of personal data, consisting in the disclosure of personal data and information relating to minors in the absence of a suitable regulatory prerequisite for the dissemination of the aforementioned data, pursuant to art. 2-ter, paragraphs 1 and 3, of the Code which instead allows the aforementioned possibility by public subjects only when the diffusion is foreseen by a law or, in the cases foreseen by the law, by regulation.

On the other hand, the dissemination of data relating to the health of minors is not proven since, as represented by the Headmaster, the wording inserted in pencil "missing copy of vaccines", did not refer to the children listed in the list who were, however, in compliance with the vaccination obligations.

Thus we proceeded with the notification of the violations carried out, pursuant to art. 166, paragraph 5, of the Code, to the school, communicating the start of the procedure for the adoption of the measures referred to in article 58, paragraph 2, of the Regulation and inviting the aforementioned Institute to send the Guarantor defensive writings or documents and, possibly, to

ask to be heard by the Authority, within 30 days (article 166, paragraphs 6 and 7, of the Code; as well as article 18, paragraph 1, of law no. 689 of 11/24/ 1981).

In particular, the Office considered that the dissemination of the aforementioned lists occurred in violation of the legislation on the protection of personal data and, in particular:

a) in a manner that does not comply with the principles of "lawfulness, correctness and transparency" and "data minimization", in violation of art. 5, par. 1, lit. a) and c), of the Regulation;

b) in the absence of a suitable regulatory prerequisite for the dissemination of the aforementioned personal data, in violation of art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation and of the art. 2-ter, paragraphs 1 and 3, of the Code;

With a note dated XX, the comprehensive school sent its defense briefs, and declared, in particular, that:

a) "with reference to the nature, seriousness and duration of the violation committed by the school, it should be noted that it erroneously posted lists containing personal data (name and surname, dates of birth, residential addresses, telephone number) of the pupils";

b) "(...) the aforementioned lists were promptly removed as soon as I received the news of the posting. Therefore, the duration of the violation was rather limited in time given that the lists were posted inside the School for only 3 or 4 days";

c) "In fact, they were removed the same day the news was learned (i.e. Saturday, the day on which teaching activities are suspended). All the families involved in this event, the teachers as well as all the staff were subsequently summoned in order to inform everyone about the situation that had arisen in the entire educating community".

3. Outcome of the investigation relating to the complaint presented. Applicable legislation.

As a preliminary point, it should be noted that, pursuant to the relevant legislation, "personal data" is "any information relating to an identified or identifiable natural person ("data subject")" (Article 4, paragraph 1, no. 1, of the Regulation). Furthermore, "an identifiable natural person is one who can be identified, directly or indirectly, with particular reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more characteristic elements of his physical, physiological, genetic, psychic, economic, cultural or social identity" (ibidem).

The processing of personal data carried out in the public sphere is lawful only if such 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" (Article 6, paragraph 1, letters c) and e)).

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 treatment, in accordance with paragraph 1, letters c) and e), by determining more precisely 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 the art. 2-ter of the Code, according to which the disclosure of personal data in the public sphere is permitted only when required by 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 the 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 in relation to the interested party" as well as "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (par. 1, letter a) and c).

4. Conclusions.

In the light of the considerations referred to above, taking into account the statements made by the data controller during the preliminary investigation ☐ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code and considering that, with reference to the present case, the defense briefs produced by the Institute did not produce elements such as to determine the closure of the proceeding, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing is noted of personal data carried out by the Istituto Comprensivo di Uggiano La Chiesa, for having disseminated, by posting on the entrance door of the childhood school of Otranto, some lists containing personal data of minors.

This dissemination occurred in violation of the legislation on the protection of personal data and, specifically:

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

b) in the absence of a suitable regulatory prerequisite for the publication of the aforementioned personal data, in violation of art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation and 2-ter, paragraphs 1 and 3, of the Code;

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to art. 58, par. 2, lit. i), 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 Institute has declared that it had taken steps to remove the lists from the school door (see note of the XX), the conditions do not exist 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 (articles 58, paragraph 2, letter i; 83 of the Regulation).

The violation of the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) and art. 2-ter paragraphs 1 and 3, caused by the conduct implemented by the Istituto Comprensivo di Uggiano La Chiesa, is subject to the application of the administrative fine pursuant to art. 83, par. 5, letter. a) of the Regulation.

In this regard, the art. 83, par. 3, of the GDPR, provides that "If, in relation to the same processing or related processing, a data controller or a data processor violates, with willful misconduct or negligence, various provisions of this regulation, the total amount of the pecuniary administrative sanction will not exceeds the amount specified for the most serious violation".

In this case, the violation of the aforementioned provisions is subject to the application of the same pecuniary administrative sanction provided for by art. 83, par. 5 of the Regulation, which therefore applies to the present case.

The Guarantor, pursuant to articles 58, par. 2, lit. the); 83 of the Regulation as well as art. 166 of the Code, has the corrective power to «impose a pecuniary administrative 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 framework, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in full or in part, on the website of the Guarantor pursuant to article 166, paragraph 7, of the Code" (art. 16, paragraph 1, of the Guarantor's Regulation no. 1/2019).

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

In relation to the aforementioned elements, it was considered that the detected conduct, held in violation of the regulations on the protection of personal data, although referring to a small number of subjects and having had a limited time duration (two/three days), has concerned the dissemination of personal data relating to particularly vulnerable subjects such as minors.

On the other hand, the following were considered: the culpable nature of the violation, since the disclosure of the aforementioned personal data was due to a mere error and that the aforementioned information would have been posted on

the internal entrance door of the school; that the Institute took action to remove the personal data of the interested parties as soon as it received the request for information and collaborated with the Authority during the investigation of the present proceeding in order to remedy the violation and mitigate its possible negative effects; that actions have been taken by the Institute to implement new organizational measures. Furthermore, there are no previous violations of the relevant Regulations committed by the aforementioned school.

Based on the aforementioned elements, evaluated as a whole, it is deemed necessary to determine pursuant to art. 83, par. 2, of the Regulation, the amount of the pecuniary sanction, provided for by art. 83, par. 5, letter. a) of the Regulations, in the amount of 2,000.00 (two thousand) euros for the violation of articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the Regulation; art. 2-ter paragraphs 1 and 3 of the Code, as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same Regulation.

In relation to the specific circumstances of the present case, considering that the operation carried out is particularly invasive of the sphere of confidentiality of the interested parties, who are also minors, it is believed that the ancillary sanction of publication on the website of the Guarantor of this provision should be applied, provided for by 'art. 166, paragraph 7, of the Code and art. 16 of the Regulation of the Guarantor n. 1/2019.

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

ALL THIS CONSIDERING THE GUARANTOR

pursuant to articles 57, par. 1, lit. f), of the Regulation and 144 of the Code declares the unlawfulness of the processing of personal data carried out by the Istituto Comprensivo di Uggiano La Chiesa, for the violation of the articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), of the Regulation, and art. 2-ter, paragraphs 1 and 3, of the Code, in the terms set out in the justification.

ORDER

pursuant to articles 58, par. 2, lit. i), and 83 of the Regulation, as well as art. 166 of the Code, to the State Comprehensive Institute of Uggiano La Chiesa, with registered office in Via S. Pertini, 1, 73020 Uggiano La Chiesa (LE) – Tax Code 92012650757, in the person of the pro-tempore legal representative, to pay the sum of 2,000.00 (two thousand) euros as an administrative fine 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 the term of thirty days, an amount equal to half of the fine imposed.

ENJOYS

to the same Institute, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of 2,000.00 (two thousand) euros, according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting 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 and believes that the conditions pursuant to art. 17 of Regulation no. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

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

Rome, July 2nd 2020

PRESIDENT

Soro

THE SPEAKER

Califano

THE SECRETARY GENERAL

Busia