

[doc. web no. 9892670]

Provision of February 23, 2023

Register of measures

no. 103 of 23 February 2023

## THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter, the "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data, laying down provisions for the adaptation of national legislation to Regulation (EU) 2016/679 (Legislative Decree no. 196 of 30 June 2003, hereinafter the "Code");

CONSIDERING the complaint pursuant to art. 77 of the Regulation presented to the Guarantor on 10 June 2020 by Mr. XX who, through his lawyer, avv. XX, complained of a violation of the regulations on the protection of personal data in relation to the publication that took place on January 31, 2020, on the website [www.corrieredellacalabria.it](http://www.corrieredellacalabria.it) managed by News&Com S.c.a.r.l., (still available at the following link: [https://. ..](https://...) ), of a close-up image of his face, together with similar photographs of 20 other people investigated with him in a judicial proceeding;

CONSIDERING that the complainant has, in particular, represented that:

- on 9 April 2019, the State Police executed a precautionary custody order issued by the Judge for preliminary investigations of XX as part of the operation conventionally known as "XX";
- by virtue of this provision he was subjected to a precautionary measure in prison on charges of participation in a mafia-type association, attempted extortion, participation in an association dedicated to drug trafficking and sale of drugs aggravated by mafia methods;
- on 9 April 2019, the Prosecutor of the Republic of XX, the Central Anti-Crime Director of the State Police and the Director of the Central Operational Service provided the details of the aforementioned operation during a press conference;
- the precautionary measure was subsequently canceled by the Court of Review of XX on 6 May 2019 due to lack of circumstantial gravity and consequently the same was released;

NOTING that Mr. XX appears to have been sentenced on April 11, 2022, in the first instance to 13 years 11 months' imprisonment;

GIVEN the request for information formulated by the Office to News&Com S.c.a.r.l. on 2 July 2020 and then again on 15 January 2021 pursuant to art. 157 of the Code;

CONSIDERING that the data controller has not provided a response to the Authority within the deadline indicated in the request for information of 2 July 2020, nor to that of 15 January 2021 formulated pursuant to art. 157 of the Code;

HAVING REGARD to the note of this Authority dated 22 April 2022, with which, pursuant to art. 166, paragraph 5, of the Code, the data controller was notified of the start of the procedure for the possible adoption of the provisions pursuant to art. 58, par. 2 of the Regulation and the alleged violations of the law were also notified to the same owner, identified, in the specific case, in the violation of articles 2-quater, paragraph 4, 137 and 139 of the Code and articles 6 and 8 of the Deontological Rules; as well as in the failure to respond to the request for information pursuant to art. 157 of the Code;

WHEREAS News&Com S.c.a.r.l. has not received any defense brief within the 30 days indicated in the aforementioned note of dispute;

CONSIDERING that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor";

NOTING that the journalist can disclose personal data, even without the consent of the interested party, provided that it is within the limits set by the right to report and, in particular, in compliance with the requirement of the "essential nature of the information regarding facts of public interest" (art. 137, paragraph 3, of the Code and art. 6 of the ethical rules);

Whereas:

- the requirement of the "essential nature of the information" is also referred to with reference to reports relating to criminal proceedings (art. 12 of the cited deontological rules) and that, in the light of this requirement, this Authority has repeatedly specified that the publication of the identification data of the persons against whom the proceeding is instituted is not precluded by the legislation in force and must be seen as part of the guarantees aimed at ensuring transparency and control by citizens on the activity of justice (ex pluribus provv. n. 77 of 25 February 2021, web doc. web doc. n. 9568061);

- therefore the newspapers, when they limit themselves to reporting a piece of news of public interest (which is certainly that relating to the arrest of some subjects involved in important criminal trials of a mafia type), also providing some identification data of the alleged perpetrators, move in the boundaries permitted by the above provisions;
- the publication of a sequence of photographs (and among these that of the complainant), in the margins of the articles, portraying the faces of the subjects involved in the aforementioned police operation in a frontal position, can be considered to fall within the exercise of the aforementioned right to report, provided that the particular precautions imposed to protect the dignity of the person portrayed by art. 8 of the deontological rules, which constitutes a source of supplementary legislation (under which «except for relevant reasons of public interest or proven justice and police purposes, the journalist does not film or produce images and photos of people in a state of detention without the consent of the 'interested party'») (so the Court of Cassation, Section III Civil, 6 June 2014, n. 12834);

NOTING that:

- the publication of the image described above appears to be supported by reasons of public interest in consideration of the seriousness of the accusations, which later proved to be founded in the first instance judgement;
- in the present case, the publication of the photograph can also be considered to meet the need for a more precise identification of the subject under investigation, all the more so in the light of the annulment of the originally ordered precautionary measure and his consequent release;

CONSIDERING therefore that it is necessary to declare the complaint unfounded;

CONSIDERED, however, with regard to the need to comply with the obligation to promptly provide the Authority with the information required for the performance of its duties pursuant to art. 157 of the Code, to adopt, with regard to the ascertained violation of articles 157 and 166, paragraph 2, of the Code by the Company News&Com S.c.a.r.l., an injunction pursuant to art. 166, paragraph 7, of the Code and 18 of the law n. 689/1981 for the application of the pecuniary administrative sanction provided for by art. 83, par. 5 of the Regulation;

NOTING that, for the determination of the amount of the pecuniary sanction, it is necessary to take into account the elements indicated in art. 83, par. 2 of the Regulation and which, in this case, must be taken into consideration,

- what aggravating circumstances:

- a) the seriousness of the violation (article 83, paragraph 2, of the Regulation), taking into account the recurrence of the

omissive conduct implemented by News&Com S.c.a.r.l. which has not provided any response to the notes sent by the Office both in the form of an invitation to comply with the requests of the interested party and in the form of a request for information pursuant to art. 157 of the Code;

b) failure to cooperate with the Authority in order to remedy the violation (Article 83, paragraph 1, letter f) of the Regulation) despite News&Com S.c.a.r.l. have been recipients, in several phases of the proceeding, of communications whose reply could have allowed a complete definition of the matter;

- as extenuating circumstances, it is considered necessary to take into account the absence of previous proceedings initiating with regard to the processing of personal data carried out through the website [www.corrieredellacalabria.it](http://www.corrieredellacalabria.it);

- the information purposes covered by the company in question, as well as the presence of limited human and managerial resources, must be considered as additional factors to be taken into consideration to parameterise the sanction (Article 83, paragraph 2, letter k) of the Regulation);

CONSIDERING that, on the basis of all the elements indicated above and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1 of the Regulation and taking into account the general context marked by the economic repercussions deriving from the pandemic, the administrative sanction of the payment of a sum of 3,000.00 (three thousand) euros must be applied to the same;

HAVING DEEMED that the conditions exist for proceeding with the annotation in the internal register of the Authority pursuant to art. 57, par. 1, lit. u), of the Regulation, in relation to the measures adopted in the specific case against News&Com S.c.a.r.l. in compliance with the art. 58, par. 2, of the same Regulation;

HAVING REGARD to the documentation in the deeds;

GIVEN the observations made pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER lawyer Guido Scorza;

ALL THIS CONSIDERING THE GUARANTOR

pursuant to art. 57, par. 1, lit. f) of the Regulations, for the reasons mentioned in the introduction, declares the complaint unfounded with regard to the request to remove the image object of the complaint;

ORDER

pursuant to articles 58, paragraph 2, lett. i) and 83 of the Regulation, to News&Com S.c.a.r.l., owner of the website

www.corrieredellacalabria.it, based in Lamezia Terme (CZ), Via del mare, 65 (postal code 88046), to pay the sum of 3,000.00 euros ( three thousand) as a pecuniary administrative sanction for the violations indicated in the motivation, representing 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 News&Com S.c.a.r.l., in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of 3,000.00 (three 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. 17 of the Guarantor's regulation n. 1/2019, the annotation in the internal register of the Authority pursuant to art. 57, par. 1, lit. u), of the Regulation, of the measures adopted against News&Com S.c.a.r.l. in compliance with the art. 58, par. 2, of the same Regulation.

Pursuant to art. 78 of the Regulation, as well as the articles 152 of the Code and 10 of Legislative Decree lg. 1 September 2011, no. 150, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal filed, alternatively, with the court of the place where the data controller resides or has its registered office or with the court of the place of residence of the interested party within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 23 February 2023

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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