

Injunction order against the Municipality of Varano Borghi - 11 November 2021

Record of measures

n. 399 of 11 November 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, 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 / EC, "General Data Protection Regulation" (hereinafter "RGPD");

GIVEN the d. lgs. June 30, 2003, n. 196 containing the "Code regarding the protection of personal data (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");

GIVEN 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 operation of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web n. 1098801;

Speaker prof. Pasquale Stanzione;

WHEREAS

1. Introduction

This Authority has received several complaints - after some time, but connected and progressively integrated - by Mr. XX (hereinafter "complainant"), with which a violation of the legislation on the protection of personal data by the Municipality of Varano Borghi was contested, in relation to the processing carried out in the context of the case of the withdrawal of the

aforementioned Municipality from employment relationship (in this case relative XX) with the complainant.

Considering the numerous communications from the complainant and the copious documentation attached, concerning distinct problems to which numerous requests to the Municipality made by the complainant correspond in the same period of time - often addressed simultaneously to other institutional subjects with overlapping complaints for multiple profiles of competence (Anac, Court of Auditors, Public Prosecutor's Office, Prefecture, etc.) - the joint treatment of the various representative problems and the meeting of the proceedings were arranged, in light of the provisions of art. 10, paragraph 4, of the Guarantor Regulation n. 1/2019, according to which "the preliminary investigation can be carried out simultaneously in relation to multiple complaints concerning the same object or concerning the same data controller or processor, or data processing related to each other".

In particular, the complainant complained:

- 1) the carrying out during the session of the municipal council, held on XX, at the disposal of the Mayor of audiovisual footage through a local police officer through the use of an ordinance body cam, without prior information and also in contrast with the combined provisions of Articles 114 and 171 of the d. lgs 196 of 2003 and of the articles 4 and 38 of the Workers' Statute;
- 2) failure to respond to requests for documentary access to obtain a copy of the aforementioned audio-visual recording of the board meeting, as well as failure to respond to the notes on the exercise of rights regarding the protection of personal data (access, limitation of processing and opposition to the cancellation of their personal data contained both on the magnetic media recorded on the XXth and in other documents);
- 3) the dissemination of personal data contained in resolutions no. XX of the XX; n. XX of the XX and n. XX of XX, published in the online Praetorian Register, as well as in the Transparent Administration section of the institutional website.

In this context, the Municipality of Varano Borghi provided a response to the Office's request for information with note prot. n. XX of the XX, representing among other things that:

- in relation to the request for access to the file containing the audio-video recording of the 20th council meeting performed by the local police officer, the request could not be accepted because a series of documents including the audio-video file "were acquired pursuant to art. 256 c.p.p. by the Prosecutor's Office of Varese through the Guardia di Finanza Compagnia di Varese, as part of the criminal proceedings [indicated in the documents] ". Furthermore, the registration is not disclosed or disseminated and is "kept [in the manner indicated in the documents] and available only to the judicial authority";

- the resolution of the City Council n. XX of the XX and the resolution of the City Council n. XX of the XX were published in the online register for fifteen days and do not report personal data attributable to the complainant, while the City Council Resolution no. XX of XX, with related attachments, were published in the online register from XX to XX and "were eliminated by the Transparent Administration Section on XX";

- access to the documents of the complainant of the XXth, acquired in the protocol of the Entity under no. 554, relating to Annex A) of the Municipal Council resolution no. XX of the XX was found, but the "documentation made available [would] never [have] been withdrawn by today's complainant". Furthermore, the "request subsequently expressed by the complainant to obtain partial transcripts, summaries, summaries and excerpts of the aforementioned documents - previously requested by the same - is impossible to implement, as it is discretionary and involves activities unrelated to the activity of the municipal offices. [Therefore] the request formulated appears to be completely abnormal, as well as obviously ultrone to the tasks assigned [to the Guarantor] ";

- with regard to the use of the body cam, "the equipment supplied to the Local Police was used in compliance with the principles regarding the protection of personal data and compliance with the legislation on the control of work activity [and] the audiovisual recordings are regulated in the "Local Police" privacy policy ».

2. The legislation on the protection of personal data

Pursuant to the relevant regulations, "personal data" is "any information concerning an identified or identifiable natural person (" interested ") and "the natural person who can be identified, directly or indirectly, with particular reference to a identifier such as the name, an identification number, location data, an online identifier or one or more characteristic elements of its physical, physiological, genetic, psychic, economic, cultural or social identity "(art. 4, par. 1 , No. 1, of the GDPR).

In particular, the employer may process the personal data, also relating to particular categories of data (see Article 9, paragraph 1, of the RGPD) of workers if the processing is necessary, in general, for the management of the relationship. of work and to fulfill specific obligations or tasks deriving from the sector regulations (articles 6, paragraph 1, letter c; 9, paragraph 2, letter b, and 4; 88 of the RGPD). The processing is also lawful when it is "necessary for the performance of a task of public interest or connected to the exercise of public authority vested in the data controller" (Article 6, paragraph 1, letter e, of the GDPR; art.2-ter of the Code).

It is also recalled that - pursuant to the regulations in force at the time of the conduct - the "communication" and

"dissemination" of personal data (such as online publication), by public entities (such as the Municipality), are permitted only if provided for "by a law or, in the cases provided for by law, by regulation" (Article 2-ter, paragraphs 1-4, of the Code). In this regard, the state legislation of the sector also provides that "All the resolutions of the municipality and the province are published by publication on the praetorian notice, at the headquarters of the body, for fifteen consecutive days, except for specific provisions of the law" (art. 124, paragraph 1, legislative decree n. 267 of 18/8/2000).

As regards, however, the use of the so-called body cam, the owner, before carrying out the treatment, also in implementation of the principle of "accountability" (articles 5, par. 2, and 24, of the RGPD), is required to assess whether the treatments he intends to carry out may present a high risk for the rights and freedoms of natural persons - due to the technologies used and considering the nature, object, context and purposes pursued - which requires a prior assessment of the impact on the protection of personal data and, if the conditions are met, a possible prior consultation of the Guarantor (articles 35 and 36, of the RGPD; See also WP 248, of 4/10/2017, "Guidelines on impact assessment on data protection and determination of the possibility that the processing "may present a high risk" for the purposes of Regulation (EU) 2016/679 ", of the Group art. 29, now Committee referred to in art. 68 of the RGPD).

In any case, even in the presence of a legal basis, the data controller is required to comply with the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "minimization", based on which personal data must be - respectively - "processed in a lawful, correct and transparent manner towards the interested party" by adopting "appropriate measures to provide the interested party with all the information referred to in articles 13 and 14 [...]", as well as "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed "(articles 5, paragraph 1, letters a and c; 12 of the GDPR).

3. Preliminary assessments of the Office on the processing of personal data carried out.

Following the checks carried out on the basis of the elements acquired and the facts that emerged as a result of the investigation, as well as subsequent assessments, the Office, with note prot. n. XX of the XX, considering that some profiles complained of in the complaints are not acceptable - such as those relating to the failure to respond to requests for access to documents and the exercise of rights regarding the protection of personal data, as well as the publication of resolutions no. XX and n. XX, previously described in points nn. 2 and 3 of par. 1 - however, it has ascertained that the Municipality of Varano Borghi has carried out processing of personal data that does not comply with the relevant regulations on the protection of

personal data contained in the RGPD, with particular reference to the dissemination of personal data contained in determination no. XX of the XX and the use of the body cam. Therefore, with the same note the violations carried out (pursuant to art.166, paragraph 5, of the Code) were notified to the aforementioned Municipality, communicating the start of the procedure for the adoption of the measures referred to in Article 58, par. 2, of the RGPD and inviting the aforementioned administration to send to the Guarantor defensive writings or documents and, if necessary, to ask to be heard by this Authority, within the term of 30 days (Article 166, paragraphs 6 and 7, of the Code; as well as art.18, paragraph 1, of law no. 689 of 11/24/1981).

4. Defensive memories.

The Municipality of Varano Borghi, with note prot. n. XX of the XX, sent to the Guarantor his defense writings in relation to the violations notified.

In this regard, please note that, unless the fact constitutes a more serious crime, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false documents or documents, is liable pursuant to art. 168 of the Code, entitled "False statements to the Guarantor and interruption of the performance of the tasks or the exercise of the powers of the Guarantor".

On the dissemination of personal data online contained in determination no. XX of the XX, published on the institutional website (at first in the "Albo Pretorio" section and then in the Transparent Administration Section at least until the date of the XX software update), the Entity highlighted - among other things - that:

"The publication of the resolution / determinations is a popular participation institution which, together with the need to set up a legal mechanism of presumption of knowledge towards third parties, is also aimed at making it possible to submit observations, or objections by anyone has an interest in allowing the issuing body to take action on them and which could also lead to a modification of the resolution itself before its entry into force regulated by d. lgs. n. 267/2000 ";

- «In the Municipal Council resolution no. XX of XX the personal data (name and surname) of the complainant appear, who would have been indirectly identified in any case, as the deed took measures relating to resolution no. XX of the XX in which the City Council, in the faculty of its powers, decided to withdraw [from the employment relationship established with the complainant] ";

- "There was no possibility of minimizing the data in the contested document as the subject dealt with in the City Council and

the related minutes, even if they did not explicitly indicate the name of the [complainant], would have identified him indirectly [...]" ;

- "The publication of documents in the online register is governed by a procedure [software] that automatically adjusts the residence time of the documents in 15 days from the date of publication for the resolutions of the city council. The publication of documents in transparent administration is governed by a procedure [software] that automatically regulates the residence time of the documents in 5 years from the date of publication for the list of acts of political bodies ";

- "[...] the publication of the data and facts contained therein does not involve the processing of particular or defamatory personal data but only the enunciation of the events relating to the withdrawal [...]";

- "The City Council resolution no. XX of the XX was removed from the session list of measures published by the transparent administration";

- "An update of the transparent administration management software was made to improve the management and traceability of those who publish the documents";

- "With the software house that provides the online register, a review of the published documents has been started to verify that the 15 days are respected. The verification gave a positive result as the management of the oblivion of the published documents is compliant with the law ";

- "An awareness raising activity was carried out by the Municipal Secretary, Head of Transparency and Anti-Corruption on the publication of data on the institution's institutional website";

- "The Entity will adopt a provision that will define the rules for publishing documents on the institutional website that complies with the guidelines of the Guarantor published in the Official Gazette no. 134 of 12 June 2014 ".

On the use of body cams, the institution also added - among other things - that:

- "In the City Council, during which filming was done, a topic would have been discussed that had aroused interest in the citizenry for which the Mayor was asked to attend the Local Police in order to protect public order";

- "Citizenship participation is also inferred from the documents sent to the Guarantor Authority. The video footage of the City Council meeting was authorized by the Mayor in order to prevent security threats to public order, as required by Legislative Decree no. 18 May 2018, n. 51 ";

- "As noted in the Minutes of the City Council, before the session of the City Council formally opened, the Local Police Officer

had informed the members of the Council that the same would be the subject of shooting";

- "The events with which the City Council concluded and the recordings contained have, in the writer's opinion, justified the presence of the Local Police officer";

- "Please note that the body-cam, which the Police Agent is equipped with, has precisely the purpose of preventing crimes in situations in which the Agent believes it is necessary to activate it";

- "For the preparation of the information on the processing, the choice of the entity was to rely on a software tools and to draw up an information on the processing of the relative data provided for by Article 13 of the RUE 679-2016 for all treatments of the office / service ";

- "With regard to the purposes of the processing on the use of video surveillance systems, the incorrect identification of the legal basis and the means of processing certainly does not define an exact picture of the data processing but has not prejudiced the correct use and processing of the data themselves ";

- "The recording of the images of the city council, as evidenced by the minutes of the council resolution, essentially concerned the members of the council itself, and not the citizens present in large numbers during the assembly. [...] The presence of the local police officer and the purpose of the shooting was motivated by the Mayor's desire to prevent possible crime situations and to protect public order. If the purpose were determined by the need to take back the city council, other tools and other subjects would have been used ";

- "Before the start of the city council, the agent indicated that he had activated the recording of the body-cam [...] and none of those present objected to the refusal to be filmed. Given the purpose of the processing, the wording of the points requested by Article 13 of the data processing regulation was not very feasible. Given the climate of the city council, the agent failed to indicate where the members of the city council could find the information on data processing as it provides for the use of body-cams for reasons of crime prevention and protection of public order public security officers are used to informing the interested party of the activation of the registration device ";

- "The Entity has updated the information on the processing of data in the field of video surveillance [and has] prepared a regulation on video surveillance".

5. Evaluations of the Guarantor

The subject matter of the proceedings, with respect to the complex of profiles complained of in the complaints submitted to the

attention of the Guarantor by the complainant (many of which are not deemed acceptable), concerns:

a) the dissemination of data and personal information of the complainant contained in determination no. XX of the XX, published on the institutional website (initially in the "Albo Pretorio" section and then in the Transparent Administration Section at least until the software update date of the XX);

b) the carrying out of audiovisual footage during a session of the city council through the use of the body cam by a local police officer.

a) On the dissemination of personal data online

As part of the investigation opened by this Authority, in relation to the first question, the Municipality of Varano Borghi confirmed, in its defense briefs, the online dissemination of the personal data described, justifying its conduct on the basis that the data personal data were not minimizable and that "The publication of the resolution / determinations is a popular participation institution which, together with the need to set up a legal mechanism of presumption of knowledge towards third parties, is also aimed at making it possible to submit observations, or oppositions by anyone who has an interest to allow the issuing body to take action on them and which could also lead to a modification of the resolution itself before its entry into force regulated by d. lgs. n. 267/2000 ".

In this regard, it is believed, however, not to be able to fully accept the justifications given by the Municipality, as the case in point submitted to the attention of the Guarantor, and inherent to the issue of the dissemination of personal data contained in deeds and documents published on the 'online praetorian register, as also highlighted by the Municipality in its defense briefs, the state legislation of the sector is applied, which provides that "All the resolutions of the municipality and the province are published by publication on the praetorian register, at the headquarters of the , for fifteen consecutive days, except for specific legal provisions "(art. 124, paragraph 1, legislative decree no. 267/2000).

On this point, moreover, it is not possible to apply the 5-year term to the documents published on the online praetorian register, foreseen for the publication of the documents on the institutional website in the "Transparent administration" section, pursuant to art. 8, paragraph 3, of the d. lgs. n. 33/2013. This is because, as expressly stated also by the National Anti-Corruption Authority (ANAC) - which represents the Authority in charge of supervising the online publication obligations for transparency purposes contained in Legislative Decree lgs. n. 33/2013 (see art. 45) - "The keeping in the praetorian register, also following the replacement of the paper form with the provision of online insertion, does not fall directly within the scope of application of

the rules on administrative transparency pursuant to Legislative Decree 33/2013. Consequently, ANAC is not responsible for supervising the publication of documents and information published in the online praetorian register "and the" duration of the publication of documents in the online praetorian register does not coincide, since it is shorter, with the duration of publication of the data on institutional sites within the "Transparent administration" section that art. 8, co. 3, of the legislative decree n. 33/2013 fixed at five years "(see ANAC," FAQ on transparency (on the application of Legislative Decree no. 33/2013 as amended by Legislative Decree 97/2016) ", no. 1.5 and 1.8, in

<http://www.anticorruzione.it/portal/public/classic/MenuServizio/FAQ/Trasparenza>).

Similarly, this Authority also provided specific indications in this regard with the Guidelines on transparency, highlighting that ", considering the profile of the different applicable legal regime, the provisions governing the disclosure obligations of the administrative action for the purpose of transparency [to which the regime provided for by d. lgs. n. 33/2013 (term of 5 years for maintaining the document on the web, indexing obligation, possibility of reuse, etc.)] from those regulating forms of advertising for different purposes "(see" Introduction "). In this context, «they must be considered extraneous to the object of [...] legislative decree [n. 33/2013] all the publication obligations provided for by other provisions for purposes other than those of transparency, such as the obligations of publication for the purposes of legal advertising, supplementary advertising of effectiveness, declarative advertising or news (already illustrated by way of example in the "Introduction" and taken into consideration in the second part of these Guidelines "(general provision no. 243 of 15/5/2014, containing 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 entities and other obliged entities ", published in the Official Gazette no. 134 of 12/6/2014 and in www.gpdp.it, web doc. no. 3134436). clearly the provisions on the keeping of the praetorian register in local authorities, which provide for the obligation to post on the praetorian register for the purpose of legal publicity of all the resolutions of the municipality and the province for fifteen consecutive days (art. 124, paragraphs 1 and 2, of the d. lgs. n. 267/2000), to which the five-year advertising regime provided for by art. 8 of d. lgs. n. 33/2013.

In any case, it has been recalled on several occasions that even the presence of a specific advertising regime cannot entail any automatism with respect to the online dissemination of personal data and information, nor an exception to the principles regarding the protection of personal data of origin. European Union, provided for by the RGPD, such as - among others - that of "minimization", according to which personal data - also contained in deeds or documents whose online dissemination is

provided for by a specific legal basis - must not only be "adequate "And" pertinent ", but also" limited to what is necessary with respect to the purposes for which they are processed "(art. 5, par. 1, lett. C). This is also confirmed by the personal data protection system contained in the RGPD, in light of which it is also envisaged that the data controller must put in place "adequate technical and organizational measures to ensure that they are processed, by default, only the personal data necessary for each specific purpose of the processing "(" data protection by default ") and must be" able to demonstrate "- in light of the principle of" accountability "- to have done so (art. 5, par. 2; 24 and 25, par. 2, GDPR). Given, then, the particular characteristics of the working context and the greater risks for the rights and freedoms of the data subjects, the Guarantor has, over time, highlighted these profiles in the cases of online publication of deeds and documents which, as in the present case, report also information relating to specific events connected to the employment relationship (such as disciplinary proceedings, resignations, evaluation procedures; see, among many others, provision no. 34 of 27/1/2021, in www.gpdp.it, web doc. n. 9549165; provision no. 69 of 25/2/2021, therein, web doc. n. 9565258; provision no. 256 of 24/6/2021, therein, web doc no. 9689607).

The Municipality, therefore, should have carried out the aforementioned assessments, first of all checking the request for the exercise of rights and for the obscuring of personal data, formulated by the complainant (see note that is acquired by the administration at prot. No. XX del XX), thus avoiding the need for the interested party to make a complaint to the Guarantor with the opening of a specific investigation that led to this proceeding.

b) On the use of the body cam

The Municipality of Varano Borghi admitted to having made during the session of the municipal council of the XXth audiovisual recordings by a local police officer, through the use of an ordinance body cam, justifying the treatment - brought back to the scope of application of the d. lgs. n. 51/2018 - on the basis of the circumstance that "In the City Council, during which filming was done, a topic would have been discussed that had aroused interest in the citizens, for which in order to protect public order it was requested by the Mayor the presence of the Local Police "and that" The events with which the City Council concluded and the recordings contained [...] justified the presence of the Local Police officer ".

However, some confusion emerges from the defensive briefs regarding both the purposes of the processing carried out and the need to provide the information and the related complete content of the elements provided for by art. 13 of the GDPR. This is also supported by the statements made, where it is stated that "With regard to the purposes of the processing on the use of

video surveillance systems, the incorrect identification of the legal basis and the means of processing certainly does not define an exact picture of the processing of data but did not affect the correct use and processing of the data ". The rules on the protection of personal data provide - contrary to what is represented - that the owner, before carrying out the treatment, also in implementation of the principle of accountability "(articles 5, par. 2, and 24, of the RGPD), ascertains the existence of the conditions of lawfulness of the processing (Article 6 of the RGPD) by fulfilling the consequent obligations, and is able to demonstrate that it has done so.

In this context, the defensive briefs show that the purposes, generically indicated in the "need to protect public order", have been brought back to the scope of application of Legislative Decree lgs. n. 51/2018. However, this decree "applies to the fully or partially automated processing [...] and to the non-automated processing of personal data [...] contained in an archive or intended for it, carried out by the competent authorities for the purposes of prevention, investigation, assessment and prosecution of crimes, or the execution of criminal sanctions, including the safeguarding against and the prevention of threats to public security "(art. 1, paragraph 2).

However, from what has been declared, and from the documentation on file, insufficient evidence emerges to support this classification, taking into account the circumstances mentioned, which are limited exclusively to indicating that the discussion concerned a "topic that had aroused interest in citizenship" - and moreover that the object and scope of the shooting "essentially concerned the members of the council itself, and not the citizens present in large numbers during the assembly [...]". Nor for this purpose, the data controller - always in light of the accountability principle - was able to substantiate what was stated in relation to the traceability of the treatments carried out through the use of the body cam to the scope of application of Legislative Decree lgs. n. 51/2018, taking into account that the related activities are also carried out by the local police under the operational dependence of the judicial authority or the public security authority (see, among others, articles 3 and 5, of law no. 65 of 7/3/1986; n. 14 of legislative decree 20/02/2017), while, in the present case, it was simply stated that at the meeting of the disputed City Council "the presence of the Police was requested by the Mayor Local". What has been described appears sufficient to believe that the processing of personal data carried out falls within the scope of application of the RGPD and the rules contained therein, including the obligations provided for by art. 13.

With reference to the obligation to provide information to interested parties, it was reported that "The agent before the start of the city council indicated that he had activated the registration of the body-cam [...] and none of those present opposed the

refusal to be resumed "and that" Given the purpose of the processing, the wording of the points requested by Article 13 of the data processing regulation was not very feasible ", so" The agent, given the climate of the city council, omitted to indicate where the members of the municipal council could find the information on data processing [...] ».

In this regard, it should be noted, first of all, that the information already sent to the Office, attached to the note prot. n. XX of the XX - indicated by the Municipality as information regarding the use of the equipment supplied by the local police, including the body cams - appears to be generic and incomplete. In particular, the aforementioned document contains numerous inconsistencies (for example it is reported that interested parties would be "interested local police"; the purposes would concern, among other things, "supplier management" and "pre-contractual and contractual obligations"; data retention would be "Limited to a few hours or, at most, to twenty-four hours after the survey; the legal basis would also be the" legitimate interest of the owner ", which instead concerns a prerequisite of lawfulness that cannot be used by public entities) and it is not clear for which treatments - among those carried out by the local police - the same refer. Furthermore, the treatments carried out through the use of specific tools provided by the local police, such as body cams, are not mentioned.

Therefore, this information - where it corresponds, as stated, with that sent to this Office for the purposes of the investigation - is in any case insufficient and does not comply with the provisions of art. 13 of the GDPR.

Furthermore, there is no evidence in documents that this information was provided to the interested parties, as it was not specified through which method or channel this information would be provided or made available. In any case, the exception for which "given the climate of the municipal council [the agent] failed to indicate where the members of the municipal council could find the information on data processing" cannot be accepted, as not provided by the GDPR.

Finally, the circumstance highlighted several times by the Municipality that the municipal police officer himself informed those present at the session of the filming and activation of the camera (and that "none of those present opposed the refusal to be filmed") does not appear sufficient to fulfill the provisions of art. 13 of the RGPD, not reporting the information required by the aforementioned provision to ensure correct and transparent processing.

6. Outcome of the investigation relating to the complaint presented

For all of the above, the circumstances highlighted in the defense writings examined as a whole, certainly worthy of consideration for the purpose of evaluating the conduct, are not sufficient to allow the filing of this proceeding, since none of the hypotheses provided for by art. 11 of the Guarantor Regulation n. 1/2019.

This also taking into account that, in order to determine the applicable law, in terms of time, the principle of legality referred to in art. 1, paragraph 2, of the l. n. 689 of 11/24/1981 which, in sanctioning as "The laws that provide for administrative sanctions are applied only in the cases and times considered in them", affirms the recurrence of the principle of the *tempus regit actum*. This determines the obligation to take into consideration the provisions in force at the time of the committed violation, which, with reference to the online disclosure of the complainant's personal data, considering the permanent nature of the alleged offense, must be identified at the time of termination of the conduct. illegal, which occurred on the 20th day on which the software, as stated, was updated.

In this context, the preliminary assessments of the Office are confirmed with the note prot. n. XX of the XX and it is noted that the Municipality of Varano Borghi:

1. published on the institutional website (initially in the "Albo Pretorio" section and then in the "Transparent Administration" section), resolution no. XX of the XX, disseminating the personal data of the complainant contained therein, as stated, at least up to the XX (software update date). This processing of personal data does not comply with the relevant regulations regarding the protection of personal data in force at the time of the detected conduct, as the disclosure of the complainant's personal data results:

the. does not comply with the principle of "minimization" of data, in violation of art. 5, par. 1, lett. c), of the GDPR;

ii. devoid of suitable regulatory conditions for the period exceeding the fifteen days provided for by art. 124, paragraph 1, of the d. lgs. n. 267/2000 for publication in the praetorian register, in violation of art. 2-ter, paragraphs 1 and 3, of the Code (in the text in force at the time of the detected conduct); as well as the basic principles of processing contained in articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), of the GDPR;

2. did not provide the interested parties present at the municipal council meeting of the 20th century with suitable information on the processing of personal data carried out, through the audio-video footage of the aforementioned council meeting, by a local police officer through the use of body cam by order, in violation of articles 5, par. 1, lett. to); 12 and 13 of the GDPR.

Considering, however, that the conduct has exhausted its effects, as the data controller declared that he had removed the personal data object of the Office's dispute from the institutional website and updated the information on video surveillance , without prejudice to what will be said on the application of the pecuniary administrative sanction, the conditions for the adoption of further corrective measures pursuant to art. 58, par. 2, of the GDPR.

7. Adoption of the injunction order for the application of the pecuniary administrative sanction (Articles 58, paragraph 2, letter i; 83 of the GDPR)

The Municipality of Varano Borghi appears to have violated Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b); 12 and 13, of the GDPR; as well as art. 2-ter, paragraphs 1 and 3, of the Code (in the text in force at the time of the detected conduct).

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

In the present case, the violation of the aforementioned provisions - also considering the reference contained in art. 166, paragraph 2, of the Code - is subject to the application of the same administrative fine provided for by art. 83, par. 5, of the GDPR, which therefore applies to the case in question.

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the RGPD, as well as art. 166 of the Code, has the corrective power to "inflict 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 every single case ". 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).

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 GDPR.

In this sense, the reported conduct in violation of the regulations on the protection of personal data is of a culpable nature and involved the online dissemination of the complainant's personal data for about three months, not belonging to particular categories or to criminal convictions. o crimes (articles 9 and 10 of the RGPD) as well as the use of video surveillance systems (body cam) in the absence of suitable information on the processing of personal data. The Municipality of Varano Borghi is a small body (about 2,500 inhabitants), with an administrative structure - according to what has been declared - of only 9 employees (of which 2 part-time and 2 operating in the area). Furthermore, following the request of the Office, the administration intervened promptly, collaborating with the Authority during the investigation of this proceeding in order to

remedy the violation, mitigating its possible negative effects. Furthermore, in the reply to the Guarantor, various technical and organizational measures implemented pursuant to art. 25-32 of the RGD and, in any case, there are no relevant previous violations of the RGD committed by the entity. It is also believed that it is necessary to take into account the not so serene climate in which the disputed events and the subject of this proceeding took place, as well as the high number of communications exchanged (with all the attached documentation), concerning several problems, between the complainant and administration; which correspond to numerous requests made to the Municipality in the same period of time, often addressed simultaneously to other institutional subjects with overlapping complaints for multiple profiles of competence (Anac, Court of Auditors, Public Prosecutor's Office, Prefecture, etc.). This circumstance has sometimes made it difficult to reconstruct the disputed events and the profiles of competence, as well as the complaints themselves addressed to the Municipality.

Due to the aforementioned elements, assessed as a whole, it is deemed necessary to determine pursuant to art. 83, para. 2 and 3, of the RGD, the amount of the pecuniary sanction, provided for by art. 83, par. 5, of the RGD, to the extent of € 1,000.00 (one thousand) for the violation of Articles 5, par. 1, lett. a) and c); 6, par. 1, lett. c) and e), par. 2 and par. 3, lett. b), 12 and 13 of the RGD, as well as art. 2-ter, paragraphs 1 and 3, of the Code (in the text in force at the time of the detected conduct), as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same RGD.

In relation to the specific circumstances of this case, relating to the dissemination of personal data online in the absence of a suitable regulatory basis and the need to provide information on the processing of personal data (Article 2-ter, paragraphs 1 and 3, of the Code in the text in force at the time of the detected conduct; art.13, of the RGD), it is also believed that the ancillary sanction of the publication of this provision on the Internet site of the Guarantor, provided for by art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019.

Finally, it is believed that the conditions set out in art. 17 of the Guarantor Regulation n. 1/2019.

WHEREAS, THE GUARANTOR

detected the unlawfulness of the processing carried out by the Municipality of Varano Borghi in the terms indicated in the motivation pursuant to Articles 58, par. 2, lett. i), and 83 of the GDPR

ORDER

to the Municipality of Varano Borghi, in the person of the pro-tempore legal representative, with registered office in Via San

Francesco, 1 - 21020 Varano Borghi (VA) - C.F. 00263100125 to pay the sum of € 1,000.00 (one thousand) as a pecuniary administrative sanction for the violations mentioned in the motivation;

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to the same Municipality to pay the sum of € 1,000.00 (one 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.

Please note that the offender has the right to settle the dispute by paying - again in the manner indicated in the annex - of an amount equal to half of the sanction imposed, within the term referred to in art. 10, paragraph 3, of d. lgs. n. 150 of 1/9/2011 provided for the submission of the appeal as indicated below (Article 166, paragraph 8, of the Code).

HAS

- the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code and by art. 16, paragraph 1, of the Guarantor Regulation n. 1/2019;

- the annotation in the internal register of the Authority of violations and measures adopted pursuant to art. 58, par. 2, of the RGPD with this provision, as required by art. 17 of the Guarantor Regulation n. 1/2019.

Pursuant to art. 78 of the RGPD, of the arts. 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, November 11, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Stanzione

THE SECRETARY GENERAL

Mattei