

Injunction against Pugliese Ciaccio Hospital - 14 June 2018

Register of measures

no. 384 of 14 June 2018

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dott.ssa Augusta Iannini, vice president, of dott.ssa Giovanna Bianchi Clerici and of prof.ssa Licia Califano, members and of dott. Giuseppe Busia, general secretary;

NOTING that the Guardia di Finanza, special privacy unit, in execution of the request for information no. 31538/114083 of 3 October 2017 formulated pursuant to art. 157 of the legislative decree lgs. June 30, 2003 no. 196, containing the Code regarding the protection of personal data (hereinafter the "Code") has carried out, formalizing it with the reports of operations carried out dated 23 and 24 January 2018, a control activity against the Pugliese Ciaccio P Hospital. .Vat: 01991520790, with headquarters in Catanzaro, via Cortese n. 25, in the person of the pro-tempore legal representative. This control activity, also against the release of the reservations formulated and ultimately dissolved with the receipt of the note on 6 February 2018, made it possible to ascertain that:

1. in the Radiology and Orthopedics Departments, the presence of forms containing information on the processing of personal data in violation of art. 13 of the Code, nor the form for the release of consent to the processing of sensitive data pursuant to articles 23 and 26 of the Code; at the Department of Cardiology, against a sample check carried out by the inspectors on three medical records of patients hospitalized at the Department in question, the presence of forms containing information on the processing of personal data in violation of the art. 13 of the Code, nor the form for the release of consent to the processing of sensitive data pursuant to articles 23 and 26 on two of the three folders examined; the presence of the form containing the information to be provided pursuant to art. 13 of the Code, neither posted nor administered in any other way;
2. the Pugliese Ciaccio Hospital has not proceeded, also taking into account the documentary production received from the Guardia di Finanza on 6 February 2018 to dissolve the reservations formulated, to designate the persons in charge of processing pursuant to art. 30 of the Code and to give them the prescribed instructions, thus disregarding the provisions of Annex B to the Code;

HAVING REGARD TO the report drawn up by the Special Privacy Unit of the Guardia di Finanza on 14 February 2018, with

which the Pugliese Ciaccio Hospital was charged, respectively, with two administrative violations, which can be briefly defined pursuant to art. 16 of the law of 24 November 1981, n. 689, provided for by art. 161 and by the art. 162, paragraph 2-bis of the Code, in relation to art. 13 and art. 23, as well as the administrative violation, which cannot be briefly defined pursuant to art. 16 of the law of 24 November 1981, n. 689, provided for by art. 162, paragraph 2-bis of the Code, in relation to the measures indicated in art. 33;

CONSIDERING the written defense dated 26 March 2018 sent pursuant to art. 18 of the law n. 689/1981, with which the Pugliese Ciaccio Hospital, with regard to the disputed violation of art. 13 of the Code, while acknowledging the fact that "The operators, who subsequently went to the ticket office, did not find the posted information (...)", observed how "It is not, however, clear (...) how many and which ticket counters are been viewed/verified by the GdF", also highlighting how "Some checks were then carried out at the URP and the Privacy Office: structures absolutely accessible to the public and in possession of the c.d. disclosure". Furthermore, he noted that, without prejudice to what is represented, "(...) there is no imposition on the part of the Legislator to provide the information in written form". Regarding what was contested for the violation of art. 23 of the Code, highlighted how "(...) of 850,000 requests for assistance from citizens (...) and differently articulated, the activity of the GdF involved 6 (six) cases in cardiology and orthopedics, numerically explained in the report (of operations performed), and various folders all duly accompanied by consent. On this point it must be added that, within the 6 (six) medical records, consent was not found for 5 of them to which, however, the various records examined in geriatrics must be added, all duly complete and accompanied by information and consent ". He also noted that, in the light of what the Authority represented in its newsletter no. 165 of 31 March – 8 April 2013 and the provisions of art. 92 of the Code, there is no "(...) mention (...) on the duty to insert the consent form for data processing in the medical record", deducing it as "(...) the activity of the GdF is not free from procedural defects having limited itself to viewing the medical record only, without ascertaining the possibility of finding the information documentation elsewhere, present in each department, such as forms prepared by the company, with special pre-printed forms which can also be found in the general store and for which found printing costs found (...)". With specific reference to what was contested in relation to the violation of art. 33 of the Code, found its groundlessness in the light of the fact that "(...) it appointed the persons in charge of the processing of personal data, of which some letters are attached (to the defense briefs under discussion) (cf. attachment 5) ". On this point, he then added that "The failure to detect the letters of appointment, always in the same departments, is due to loss by the interested parties and

failure to collect them by the new hires (...)" . Furthermore, he justified the groundlessness of the violation of the provisions of art. 34, paragraph 1 lett. a), b), and c) of the Code illustrating the architecture of the Company's IT network and the system infrastructures;

HAVING REGARD TO the minutes of the hearing of the parties drawn up on 4 May 2018, pursuant to art. 18 of the law n. 689/1981, in which the Pugliese Ciaccio Hospital, substantially reaffirming what was argued in the defense brief, has, among other things, produced in the deeds some designations in charge of data processing dating back to the year 2007;

CONSIDERING that the arguments put forward require filing the dispute relating to the failure to designate the persons in charge of the treatment, while they do not allow for the exclusion of the liability of the Pugliese Ciaccio Hospital in relation to the remaining disputes.

With regard to what was argued about the violation of art. 13 of the Code, it should be noted that the Apulian hospital, in addition to not having provided further evaluation elements with respect to those considered in the act of ascertaining the disputed offence, does not take into account the evidence formalized in the report of operations carried out on 24 January 2018 against which, pursuant to art. 13 of the law n. 689/1981, from the verification of what was declared about the methods with which the information pursuant to art. 13 of the Code to the interested parties, the soldiers of the Guardia di Finanza found that "(...) the presence of the form containing the information provided pursuant to art. 13 of the Code, neither posted nor administered in any other way". This circumstance therefore clearly highlights how it was not physically possible for the Healthcare Agency to provide the user with the information in question; the hypothesis that the same was made orally, then, in addition to not having been formulated by the aforementioned Company, would in any case be unlikely, given the length and analytical nature of the same (consisting of about three pages of text). Moreover, on this point, it should be noted that, what was observed regarding the fact that "Some checks were then carried out at the URP and the Privacy Office (...)", does not exempt one from liability, given that the information to the interested parties, to be made in compliance with the provisions of art. 13 of the Code, must be easily accessible, without requiring searches in separate Company offices which, among other things, are not in any way indicated as structures in charge of fulfilling the function of providing information pursuant to art. 13 of the Code in question.

With regard to what was argued about the violation of art. 23 of the Code, it being understood that the relevance of the quantity of data subjects whose consent has not been obtained does not constitute a constitutive element of the disputed offense, but

can be considered in order to quantify the amount of the sanction that can be imposed, it is noted that the references to the newsletter n. 165 of 31 March – 8 April 2013 and art. 92 of the Code is irrelevant in light of the fact that the regulation of consent has nothing to do with the aforementioned newsletter and with art. 92 of the Code which contains "clinical records". On the other hand, it should be noted that, having ascertained that the Apulian hospital has not compiled the health dossier, it has not provided any elements regarding the collection of consent in the cases specified both in the report of operations carried out on 24 January 2018 and in the subsequent note of 6 February 2018, thereby punctually ascertaining, pursuant to art. 13 of the law n. 689/1981, the finding in question.

With regard to what was argued about the violation of art. 33 of the Code, on the other hand, the Apulian Hospital, against the explicit request of the investigating body, in the report of the operations carried out on 24 January 2018 formulated a reservation regarding the production in the deeds of the designation acts in charge of the treatment towards of specifically identified individuals. The note dated February 6, 2018 with which the reservation of January 24, 2018 was dissolved, contains, in the annex, the deeds with which "(...) it appointed the persons in charge of processing personal data, of which are attached (to the briefs defensive) some letters (see attachment 5)"; moreover, it is clear from the documents attached to the note of 2 May 2015 that the hospital had correctly invited all the aforementioned persons in charge of treatment to collect the letters of appointment, also soliciting them through specific notices inserted in the salary slips. It is therefore believed that the duty of appointment has been correctly fulfilled and that the non-collection by some employees of the letters in question cannot be in any way attributable to the Company itself;

NOTING, therefore, that the Pugliese Ciaccio Hospital has processed personal data (Article 4, paragraph 1, letter a) and b) of the Code) at the Radiology and Orthopedics Departments where the presence of forms has not been found reporting the information on the processing of personal data in violation of art. 13 of the Code, nor the form for the release of consent to the processing of sensitive data pursuant to articles 23 and 26 of the Code; at the Cardiology Department where, following a random check carried out by the inspectors on three medical records of patients admitted to the Department in question, the presence of forms containing information on the processing of personal data in violation was not found of the art. 13 of the Code, nor the form for the release of consent to the processing of sensitive data pursuant to articles 23 and 26 on two of the three folders examined; at the company ticket office where the presence of the form containing the information to be provided to interested parties pursuant to art. 13 of the Code, neither posted nor administered in any other way;

CONSIDERING the art. 1, paragraph 2, of the aforementioned law, pursuant to which the laws that provide for administrative sanctions are applied only in the cases and for the times considered in them;

CONSIDERING the art. 161 of the Code, which punishes the violation of the provisions of art. 13 of the same Code, with the administrative sanction of the payment of a sum from six thousand euros to thirty-six thousand euros;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes the violation of the provisions indicated in art. 23 of the Code with the administrative sanction of the payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, it is necessary to take into account, pursuant to art. 11 of the law of 24 November 1981 n. 689, of the work carried out by the agent to eliminate or mitigate the consequences of the violation, of the seriousness of the violation, of the personality and economic conditions of the offender and that, therefore, the amount of the pecuniary sanction with reference to the violation referred to in art. 161 must be quantified as 6,000.00 (six thousand) euros; the amount of the pecuniary sanction with reference to the violation pursuant to art. 162, paragraph 2-bis, in relation to art. 23 of the Code, must be quantified in the amount of Euro 10,000.00 (ten thousand), for a total quantification of Euro 16,000.00 (sixteen thousand);

HAVING REGARD to the documentation in the deeds;

HAVING REGARD to the law of 24 November 1981 n. 689, and subsequent modifications and additions;

HAVING REGARD TO the observations of the Office, formulated by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Dr. Augusta Iannini;

HAS

the archiving of the sanctioning procedure referred to in the report of 14 February 2018 limited to the contestation of the administrative violation envisaged by art. 162, paragraph 2-bis, of the Code, in relation to art. 33, in the terms referred to in the justification;

ORDER

to the Apulian Ciaccio Hospital P.Iva: 01991520790, with headquarters in Catanzaro, via Cortese n. 25, in the person of the pro-tempore legal representative, to pay the sum of 16,000.00 (sixteen thousand) euros as a pecuniary administrative sanction

for the violations envisaged by articles 161 in relation to the art. 13 of the Code and 162, paragraph 2-bis in relation to art. 23 of the Code, as indicated in the motivation;

ENJOYS

to the same subject to pay the sum of Euro 16,000.00 (sixteen thousand), according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of the adoption of the consequent executive acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree lg. no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 14 June 2018

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia