[doc. web no. 9844780]

Injunction order - November 24, 2022

Register of measures

no. 387 of 24 November 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national legal 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");

CONSIDERING the Legislative Decree 10 August 2018, no. 101 containing "Provisions for the adaptation of national legislation to the provisions of 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 repealing Directive 95/46/EC";

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.gpdp.it, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

HAVING REGARD to 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;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. The complaint and the preliminary investigation

In a note dated XX, Messrs XX and XX complained about the dissemination, on the XX website under the heading "Publications", of a Specialization thesis, produced as an attachment to the complaint, drawn up by Dr. Emilia Colosimo "with the direct supervision and indirect from Dr. XX (...), in which the family history of "themselves" is represented in such a way as to allow their exact identification, as actually happened (...)". In fact "on the occasion of a dinner at the house of acquaintances held in the middle of the month of XX" Mr. XX "learned from one of the guests present that Dr. Emilia Colosimo had published a "story about you and XX"". The aforementioned thesis clearly stated "the full indication of our names (XX and XX), of those of our two children (XX and XX), of their and our age, together with that of our respective professions (XX and XX ), of the places where these professions were carried out, of the history of our respective families of origin, with the "free" indication of further and specific elements capable of further distinguishing us".

Following the request for information from this Office (note of the XX, prot. n. XX), with which Dr. XX and Dr. Colosimo were asked to provide any element of information useful for the assessment of the case, the Dr. Colosimo provided feedback by mail of the XX, declaring that:

- “first of all, following the warning of the XX and the contextual request to exercise the rights pursuant to art. 17 of EU Reg. 679/2016 (GDPR) the writer has canceled the experimental thesis in question within the legal term (...) (request of XX cancellation of XX and communication to interested parties on XX). In this regard, the undersigned has fulfilled the request received as Data Controller attributable to the publication of the thesis on the XX website, applying the elimination of data attributable to the interested parties as a security measure”;
- "the relationship established between Dr. Colosimo and the parties took place in the context of the specialization from which the thesis in question then arose: the parties then went to the XX Institute and used the services of the undersigned with a session carried out through the so-called direct supervision of Dr. XX, who could intervene during the meeting as Tutor and educational referent of the XX center";
- "the thesis in question was published on the writer's website in the month of XX - as proof of the specialization title - however in compliance with the appropriate measures to prevent the traceability of the data of the interested parties. In fact, the surname of the parties is not present in the thesis, nor any references to the city of residence and/or to places and/or other "; in

fact, "a fictional 'their story' occurred during the therapeutic sessions" was reported;

- "Istituto Random has played the role of Data Controller of data subjects from the outset, as Mr. XX and Ms. XX contacted the aforementioned centre, within which the undersigned carried out her professional activity under the direct aegis of Dr. XX — as his own Tutor";

- "with reference to the publication of the thesis on the writer's website, (...), the elimination of data attributable to the interested parties, such as surname, residence, etc., had the function of avoiding the attribution of the facts described to the complainants and therefore of "anonymization". This means that the publication in question had a purely scientific value, the dissemination of a study carried out in the context of post-university training. Therefore there should have been no recognition of the interested parties, once such a measure was applied; however, once the communication of the complainants themselves regarding their identification was received, the undersigned immediately took steps to remove the thesis from the website and from any search engine, demonstrating a total lack of fraud and an effective willingness to collaborate";

- "although with all evidence there has been an identification, it is underlined that in the report of the claimant's lawyer it was not clarified how it took place and in particular whether it was the directly concerned who found themselves in the thesis under discussion";

- "this is not devoid of importance, since the undersigned at the time of publication on the website in the twentieth century made faith in the guarantee of anonymity and confidentiality, precisely by virtue of the fact that there were no uniquely identifying personal data, if not by the interested parties themselves, although referable to all persons with the same first names. Not only were no identification data entered, but the thesis was drafted in the 20th century and refers to facts dating back to the 20th century: this means that the identification took place 17 years after their occurrence and that for third parties to trace the persons directly concerned it cannot be considered probable, not even potentially. In fact, on the site there was no reference to surnames, age, or places, but stories of the patients' common life and the inclusion of a story written by them, with facts therefore completely unsuitable for effective identification of the same";

- "the publication on the website fulfilled the guarantee of anonymity, through the elimination of surnames and places of residence and by virtue of the long period of time elapsed (17 years) and on this point the writer herself can be classified as Data Controller ";

- "the security measures for the disclosure of the thesis as described above have been substantially respected, as only generic

references can be found in the text and the insertion of a so-called "fantasy story" played by the interested parties".

With a note dated XX, Dr. XX provided feedback by attaching a defense brief, already sent to the Order of Psychologists, in which he declared that "the reports cannot be published without adequate protection and even more without the authorization of the President of the training institute. Students in training have a degree in Psychology and are required to comply with the Code of Conduct for Psychologists. Dr. Emilia Colosimo posted, without informing any of the teachers who supervised the psychotherapeutic path described in the report presented during the exam. Furthermore, without informing the writer, without asking for any authorization and without my consent, he included my name as well as the name of the clients". Together with the aforementioned document, a copy of the note of the XX was attached, with which the Deontological Commission of the Order of Psychologists of Lazio, ordered the archiving of the report received against him, pursuant to art. 5, paragraph 2, lett. e) of the Disciplinary Regulations.

2. Evaluations by the Department on the treatment carried out and notification of the violation pursuant to art. 166, paragraph 5 of the Code

In relation to the facts described in the complaint, the Office, with a note dated XX (prot. n. XX), notified Dr. Emilia Colosimo, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, inviting you to produce defense writings or documents to the Guarantor or to ask to be heard by the Authority (art. 166, paragraphs 6 and 7, of the Code; as well as art. 18, paragraph 1, of law n. 689 of the 11/24/1981).

In particular, the Office, in the aforesaid deed, considered that Dr. Emilia Colosimo, by publishing on the web a specialization thesis containing personal and health data of the claimants, had carried out a treatment of personal and health data in violation of the basic principles of the treatment referred to in articles 5, 6, 9 and 32 of the Regulation as well as of the art. 2-septies, paragraph 8, of the Code.

With a note dated XX, the doctor sent her own defense briefs, in which, in particular, she highlighted that:

- "in the reconstruction of the facts relating to the circumstance of the dinner of the XX, in the light of what was reported by the guest "tale of you and XX" it seems possible to deduce that the latter was already aware of the story, precisely as an acquaintance and friend of the Mr. XX";
- "proactively, the writer immediately took steps to delete the thesis from the site, to guarantee the rights of the interested parties, as well as in collaboration with this respected Authority";

- “the story referred to in the thesis was a story chosen by the interested parties, without any indication of pathologies, suggestions. therapeutics and/or analysis results. There were two interested parties, namely the claimants and, without references from history, possibly also their two children”;

- “there was no intent, but rather a fault for having considered valid the security measure regarding the mere elimination of the surname of the interested parties; as proof, it should be noted that as soon as the request was received, the cancellation and removal of the data and the entire thesis from the site in question took place immediately;

- “during the planning stage of the site, the surnames of the complainants were deleted. The thesis containing a story did not appear to be attributable to them, also in consideration of the long period of time incurred by the editorial staff (XX). It was decided to publish it since it falls within the scope of demonstration of qualifications and for scientific dissemination";

- "without prejudice to having never received previous sanctions and reports of violations, the undersigned immediately made herself available in order to bring to light the truth without hiding anything from this respectable Authority and also allowing interested parties to be able to exercise their rights;

- "the data in question would fall within the scope of art. 9; however it should be noted that in the thesis there is no reference to states of health, clinical diagnoses and/or treatments and evaluations, but the history of the complainants in the context of the sessions, with disclosure authorized when drafting the thesis";

- "on the basis of the erroneous assessment of the security measure, the line of the ethical rules referred to by you was not actually followed";

- the writer is close to giving up her activity as a psychotherapist; last year's turnover for this activity, also for sanctioning purposes, was approximately € XX; enrolled since the XX as a psychologist, after years of employment, without ever having suffered sanctions or problems for the protection of personal data".

3. Outcome of the preliminary investigation

Having acknowledged what is represented by Dr. Emilia Colosimo in the documentation in the deeds and in the defense briefs, it is noted that:

1. personal data means "any information relating to an identified or identifiable natural person ("interested"); 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 one or more characteristic elements of his physical identity,

physiological, genetic, psychic, economic, cultural or social" (art. 4, paragraph 1, point n. 1 of the Regulation) and, by anonymous data we mean "(...) information that does not refer to a natural person identified or identifiable or to personal data made anonymous enough to prevent or no longer allow the identification of the interested party" (see Recital n. 26 of the Regulation and WP29 Opinion 05/2014 on Anonymization techniques, adopted on 10 April 2014)";

2. "data relating to health" are considered: personal data relating to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his or her state of health (art. 4, par. 1, no. 15, of the Regulation);

3. personal data must be "processed in a lawful, correct and transparent manner in relation to the data subject ("lawfulness, correctness and transparency"), must be "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed ("minimization of data")" and "processed in such a way as to ensure adequate security (...) including protection, by means of appropriate technical and organizational measures, against unauthorized or unlawful processing or against accidental loss, destruction or damage («integrity and confidentiality»)" (Article 5, paragraph 1, letter a), c) and f) of the Regulation);

4. the data controller must implement adequate technical and organizational measures to guarantee a level of security appropriate to the risk, "taking into account the state of the art and implementation costs, as well as the nature, object, context and the purposes of the processing, as well as the risk of varying probability and severity for the rights and freedoms of natural persons"; "in assessing the appropriate level of security, particular account is taken of the risks presented by the processing which derive in particular from the destruction, loss, modification, unauthorized disclosure or access, accidentally or illegally, to personal data transmitted, stored or otherwise processed" (Article 32, paragraphs 1 and 2 of the Regulation);

5. the processing of personal data is lawful only if and to the extent that one of the conditions provided for by art. 6 of the Regulation (see also art. 2-ter, paragraph 3, of the Code). With specific reference to information on health, it should be noted that the regulations on the protection of personal data expressly prohibit the dissemination of the aforementioned data (Article 2-septies, paragraph 8 and Article 166, paragraph 2, of the Code) and that, in the health sector, this information can only be communicated to the data subject; moreover, they can be communicated to third parties only on the basis of a suitable legal prerequisite or on the indication of the interested party subject to written authorization by the latter (Article 9 of the Regulation and Article 84 of the Code, in conjunction with Article 22, paragraph 11, Legislative Decree No. 101 of 10 August 2018);

6. the deontological code of Italian psychologists, prepared and updated by the National Council of the Order and submitted for approval by referendum to the members (art. 28, paragraph 6, letter c) of the law of 18 February 1989, n. 56), provides that "the right of individuals to privacy, non-recognizability and anonymity must be protected"; “The psychologist is strictly bound by professional secrecy. Therefore, it does not reveal news, facts or information learned as a result of its professional relationship, nor does it inform about the professional services performed or planned”; "in the case of collaboration with other subjects equally bound by professional secrecy, the psychologist can only share the information strictly necessary in relation to the type of collaboration"; "the psychologist draws up scientific communications, even if addressed to an audience of professionals bound by professional secrecy, in order to safeguard in any case the anonymity of the recipient of the service" (articles 4, 9, 11, 15 and 16).

4. Conclusions

In the light of the assessments set out above, taking into account the statements made by the data controller during the preliminary investigation and considering that, unless the fact constitutes a more serious offence, anyone who, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents, it is liable pursuant to art. 168 of the Code ("False statements to the Guarantor and interruption of the execution of the duties or the exercise of the powers of the Guarantor"), it is noted that the elements provided by the data controller in the defense briefs referred to above are not suitable for accepting the requests of archiving, not allowing to overcome the findings notified by the Office with the aforementioned act of initiation of the procedure.

In particular, in relation to the declarations of Dr. Colosimo in support of the proposed nature of the information being disseminated that cannot be qualified as data relating to health, it should be noted that, in the light of the aforementioned provisions, the circumstance that Messrs. XX and XX had received psychotherapy services constitutes a health fact; this, also considering that, pursuant to art. 01 of the law of 18 February 1989, n. 56 (introduced by art. 9, paragraph 4, law of 11 January 2018, n. 3), "the profession of psychologist (..) is included among the health professions referred to in the legislative decree of the provisional Head of State of 13 September 1946 , n. 233, ratified by law 17 April 1956, n. 561" (see provision of 19 May 2022, web doc. n. 9774696, containing "Opinion on the draft decree of the Minister of Health, in agreement with the Minister of Economy and Finance, concerning the contribution to support the related expenses to psychotherapy sessions, pursuant to art. 1-quater, paragraph 3, of Legislative Decree 228/2021 "and, ex multis, in relation to the identification of new subjects

obliged to transmit data relating to expenses to the TS System incurred by natural persons for the pre-compiled declaration, provision No. 332 of 28 July 2016, web doc No. 5407413, containing the "Opinion on the draft decree of the MEF which defines the terms and methods for electronic transmission to the 'Revenue Agency of data relating to health expenses other than those provided for by Legislative Decree no. 175/2014 and veterinary expenses; see also Provision no. 358 of 29 September 2021, web doc. no. 9720448).

Furthermore, in relation to the declared non-attributability to the claimants of the information contained in the "history", it should be noted that anonymisation cannot be considered achieved through the mere removal of the personal details of the interested party or their replacement with a pseudonymous code. In fact, anonymised data is such only if it does not in any way allow the direct or indirect identification of a person, taking into account all the means (financial, information, technological resources, skills, time) available to whom (owner or other subject) try to use these tools to identify a data subject. The risk of re-identification of the interested party must be carefully assessed taking into account "all the means, [...], which the data controller or a third party can reasonably use to identify that natural person directly or indirectly. To ascertain the reasonable probability of using the means to identify the natural person, consideration should be given to all objective factors, including costs and the time required for identification, taking into account both the technologies available at the time of the processing and technological developments" (see Recital n. 26 of the Regulation and WP29 Opinion 05/2014 on Anonymization techniques).

Therefore, in the light of the definitions given above, the elimination of the reference to the surname of the interested parties does not constitute a suitable procedure for guaranteeing the process of anonymisation of the personal data of the interested parties (see, on this point, the Code of Conduct of the Veneto Region for the 'use of health data for educational and scientific publication purposes, which identifies specific guarantees and measures to protect patients, approved by the Guarantor with Provision of 14 January 2021, n. 7, web doc. 9535354).

From all of the above it follows that Dr. Colosimo has disseminated, through the publication on the XX site, under the heading "Publications", a Specialization thesis in which various aspects and details of the personal history of each of the two complainants were reported (and , inevitably, also of other subjects, such as children and family members) and of the private matter that concerned them, described in some paragraphs of the aforementioned publication: "the sending"; "family history"; "the problem"; "the therapeutic process"; "the fairytale"; "theoretical contributions"; "follow up", all elements with respect to

which the legitimate expectation of confidentiality and confidentiality on the part of the complainants was even higher, also in consideration of the professional and fiduciary relationship established between the various subjects involved.

At the state of the deeds and documentation acquired, in relation to the aforementioned dissemination, none of the conditions, among those indicated in articles 6 and 9 of the Regulation, which could have made the aforementioned processing of personal data lawful, as described above, nor do adequate measures have been adopted aimed at not allowing in any way the direct or indirect identification of the complainants, whose personal information were contained in the thesis of specialization.

For these reasons, the illegality of the personal data processing carried out by Dr. Emilia Colosimo is noted, in the terms set out in the justification, for the violation of the articles 5, 6, 9 and 32 of the Regulation as well as of the art. 2-septies, paragraph 8, of the Code,

In this context, considering that the doctor has eliminated the aforementioned publication from the website, interrupting the conduct harmful to the regulations on the protection of personal data, the conditions for the adoption of the 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 accessory sanctions (articles 58, paragraph 2, letter i) and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The violation of the articles 5, 6, 9 and 32 of the Regulation caused by the conduct of Dr. Emilia Colosimo is subject to the application of the administrative fine pursuant to art. 83, par. 4, lit. a) and 5, lett. a) of the Regulation.

It should be considered that the Guarantor, pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, has the 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, according to the circumstances of each single case" and, in this context, "the College [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in whole 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 account the principles of effectiveness, proportionality and dissuasiveness, indicated in art. 83, par. 1, of the Regulation, in the light of the elements provided for in art. 83, par. 2, of the Regulation in relation to which it is observed that:

the Authority became aware of the event following a complaint by the interested parties (Article 83, paragraph 2, letter h) of the Regulation);

the data processing carried out by Dr. Colosimo concerns personal data of the complainants and other subjects contained in the description of their private history as well as information relating to health connected to the psychotherapy services received by them, for which it is particularly high and well-founded the expectation of confidentiality on the part of the interested parties (Article 83, paragraph 2, letters a) and g) of the Regulation);

the violation lasted approximately 25 months (from XX to XX) (Article 83, paragraph 2, letter a) of the Regulation);

Dr. Colosimo, as soon as she received the warning from the complainants, removed from the website the publication containing the above-mentioned specialization thesis (art. 83, par. 2, letter c) of the Regulation);

Dr. Colosimo has demonstrated a good degree of cooperation with the Authority in order to remedy the violations and mitigate the possible negative effects and appears to have a low turnover (Article 83, paragraph 2, letter f) of the Regulation );

no provision has previously been adopted against Dr. Emilia Colosimo for pertinent violations (Article 83, paragraph 2, letter e) of the Regulation).

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction provided for by art. 83, par. 5, letter. a) of the Regulation, to the extent of 1,000.00 (one thousand) euros for the violation of articles 5, 6, 9 and 32 of the Regulation as well as of the art. 2-septies, paragraph 8, of the Code, as a pecuniary administrative sanction withheld, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

It is also believed that the ancillary sanction of publication on the Guarantor's website 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, also in consideration of the type of personal data subject to unlawful processing.

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

declares the illegality of the processing of personal data carried out by Dr. Emilia Colosimo, for the violation of the articles 5, 6 and 9 and 32 of the Regulation as well as of the art. 2-septies, paragraph 8, of the Code of Regulations.

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, to Dr. Emilia Colosimo, Tax Code XX, to pay the sum of 1,000.00 (one thousand) euros as an administrative fine for the violation 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 30 days, an amount equal to half of the fine imposed.

ENJOYS

to the aforementioned doctor, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of Euro 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 law n. 689/1981.

HAS

pursuant to art. 166, paragraph 7, of the Code, the entire publication of this provision on the website of the Guarantor and believes that the conditions set forth in 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, 24 November 2022

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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