

Injunction order against the venue under the banner of "1000 Luci Round a Bar" - December 16, 2021

Record of measures

n. 442 of December 16, 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 dr. Claudio Filippi, deputy secretary general;

GIVEN the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (hereinafter the "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 (Code regarding the protection of personal data, hereinafter the "Code") as amended by Legislative Decree 10 August 2018, n. 101 on "Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679";

GIVEN the assessment document drawn up by the Lombardy Carabinieri Legion, Compagnia di Desenzano del Garda, which revealed the presence of a video surveillance system at the "1000 Luci Round a Bar" venue, which does not comply with the provisions of art. 13 of the Regulations;

EXAMINED the documentation in deeds;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

SPEAKER Attorney Guido Scorza;

WHEREAS

1. The assessment by the Lombardy Carabinieri Legion and the initiation of the procedure.

With a note sent on 19 May 2019, the Lombardy Carabinieri Legion, Compagnia di Desenzano del Garda, sent this Authority the report of an investigation carried out on 18 May 2019, at the "1000 Luci Round a Bar" venue, located in Desenzano del Garda (BS), via San Benedetto incr. Mini ring road.

During the investigation, the aforementioned Command checked for the presence of a video surveillance system, consisting of 5 cameras, positioned both in the internal and external areas of the premises, active and functioning, that is, suitable for

identifying the interested parties. In the face of the processing of personal data carried out by means of the aforementioned cameras, the absence of the prescribed information signs was ascertained.

The Office, therefore, on the basis of the investigations carried out, referred to in the aforementioned report, notified Mr. XX, owner of the business in question, the act of initiating the sanctioning procedure, pursuant to art. 166, paragraph 5, of the Code in relation to the violation of art. 13 of the Regulation (prot. N. 21133 of 18.06.2019).

Despite having been informed of the possibility of producing defensive writings or documents in relation to the sanctioning procedure against him, Mr. XX has not sent any documentation in this regard.

2. The legal framework of the processing carried out

The use of video surveillance systems may result in the processing of personal data in relation to the positioning of the cameras and the quality of the images recorded. This treatment must be carried out in compliance with the general principles contained in art. 5 of the Regulation and, in particular, of the principle of transparency which presupposes that "interested parties must always be informed that they are about to enter a video surveillance area".

For this purpose, therefore, the data controller must affix suitable information signs according to the indications contained in point 3.1. of the provision on video surveillance - April 8, 2010 [1712680] (in this sense also the Faq on video surveillance, published on the Authority's website).

Similarly, the Guidelines no. 3/2019 of the European Data Protection Committee on the processing of personal data through video devices, point 7) specify that "With regard to video surveillance, the most important information must be indicated [by the owner] on the warning sign itself (first level), while the additional mandatory details can be provided by other means (second level). The guidelines also provide that "This information may be provided in combination with an icon to give, in a clearly visible, intelligible and clearly legible way, an overview of the envisaged processing (Article 12, paragraph 7, of the GDPR) . The format of the information will have to adapt to the various locations ". The information should be positioned in such a way as to allow the data subject to easily recognize the circumstances of the surveillance, before entering the monitored area (approximately at eye level) "to allow the data subject to estimate which area is covered by a camera in so as to avoid surveillance or adapt one's behavior, where necessary ".

3. The outcome of the investigation and the sanctioning procedure.

On the basis of the assessment carried out by the Lombardy Legion of Carabinieri, it emerged that the video surveillance

system, installed at the "1000 Luci Round a Bar" restaurant, is up and running and that the information notices have not been affixed referred to in art. 13 of the Regulation.

Therefore, in the present case, it is proven in documents that the party has carried out a processing of personal data, by means of a video surveillance system, in the absence of the required information. This conduct is in contrast with the provisions of art. 13 of the Regulation, according to which the data controller is required to provide the data subject with all information relating to the essential characteristics of the processing.

4. Order of injunction.

The Guarantor, pursuant to art. 58, par. 2, lett. i) of the Regulations and art. 166 of the Code, has the power to impose a pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation, through the adoption of an injunction order (Article 18. Law of 24 November 1981 n. 689), in relation to the processing of personal data carried out by the company through the video surveillance system, in the absence of the information referred to in art. 13 of the Regulation.

With reference to the elements listed in art. 83, par. 2, of the Regulations for the purposes of applying the pecuniary administrative sanction and its quantification, taking into account that the sanction must be "in each individual case effective, proportionate and dissuasive" (Article 83, par. 1 of the Regulations), that, in the present case, the following circumstances were taken into consideration:

with regard to the nature, severity and duration of the violation, the conduct of the data controller was taken into consideration, as well as the responsibility related to the non-fulfillment of the obligation to disclose the information to the interested parties; the absence of specific precedents against the company relating to violations of the regulations on the protection of personal data;

the circumstance that the company has not cooperated with the Authority during the procedure nor has it shown that it has fulfilled its legal obligation.

On the basis of the aforementioned elements, assessed as a whole, the amount of the pecuniary sanction is determined in the amount of € 1,000.00 (one thousand) for the violation of art. 13 of the Regulation, deeming this amount appropriately effective, proportionate and dissuasive in relation to the case in question.

In this context, also in consideration of the type of violation ascertained, it is believed that, pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, this provision should be published on the

Guarantor's website.

Finally, it is noted that the conditions set out in art. 17 of regulation no. 1/2019 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

declares, pursuant to art. 57, par. 1, lett. f) and 83 of the Regulation, the unlawfulness of the processing carried out by Mr. XX through the use of the video surveillance system installed at the premises under the banner of "1000 Round Lights a Bar", of which the same is the owner, within the terms set out in the motivation, for the violation of art. 13 of the Regulations;

ORDER

to Mr. XX, owner of the "1000 Luci Round a Bar" restaurant, based in Desenzano del Garda (BS), via San Benedetto incr. Mini Tangenziale (P.I. 04000630980), to pay the sum of Euro 1,000.00 (one thousand) as a pecuniary administrative sanction for the violation indicated in the motivation;

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then to the same sig. XX, owner of the "1000 Luci Round a Bar" restaurant, 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 adoption of the consequent executive acts pursuant to art. 27 of the law n. 689/1981. It is represented that pursuant to art. 166, paragraph 8 of the Code, 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 the d. lgs. n. 150 of 1 September 2011 envisaged for the submission of the appeal as indicated below.

HAS

pursuant to art. 166, paragraph 7, of the Code and art. 16, paragraph 1, of the regulation of the Guarantor n. 1/2019, the publication of this provision on the website of the Guarantor and believes that the conditions set out in art. 17 of regulation no. 1/2019.

Pursuant to art. 78 of the Regulation, of art. 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, 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, December 16, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE DEPUTY SECRETARY GENERAL

Philippi