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Injunction against Poliambulatorio Talenti S.r.l. - January 14, 2021

Register of measures

no. 8 of 14 January 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, 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, concerning the protection of natural persons with regard to the processing of personal data, as well as the free movement 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 the Regulation (hereinafter the "Code");

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

Given the documentation in the deeds;

Given the observations made by the general secretary pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000;

Speaker the lawyer Guido Scorza;

WHEREAS

1. The Complaint

On September 19, 2019, Mr. XX exercised, against the Poliambulatorio Talenti S.r.l. with registered office in Rome, via Padre Semeria, 33 Tax Code 1961330584/ P.IVA 01021921000, (hereinafter the "health facility"), the right of access to personal data pursuant to art. 15 of the Regulation, in relation to the processing of both personal data and personal data relating to the two minor daughters.

This request was not followed by any response within the terms indicated by art. 12, par. 3 of the Regulation and, following

this, the interested party, on 23 October 2019, presented a formal complaint to this Authority.

2. The preliminary investigation.

With note prot. no. 39690 of 18 November 2019, the healthcare facility was formally invited by the Office to comply with the complainant's requests within 20 days of receiving this invitation.

On 20 November 2019, this structure provided an answer apologizing to the complainant "(...) for not having processed the (...) request to exercise (the rights referred to in) art. 15 of EU Reg. 2016/679 and (informing him), possibly for the future, (...) (to have) prepared, starting from the (previous) year, an internal procedure which (...) allows to follow up on requests for exercise of the rights of the interested parties by signing a special form present in acceptance, which (...) allows you to register the request and respond promptly", and also attaching the related documentation. The undersigned Authority was informed of this response on the same date.

Subsequently, on 27 November 2019, the complainant wrote to this Authority complaining that, among the documentation sent by the aforementioned structure and, precisely, in that concerning the consent to the processing of data, as well as the consent for the sending of reports via e- e-mail - both relating to the complainant's younger daughter - a name appeared which the complainant referred to as the name of a man, " (...) but from the reverse tax code that can be read in brackets after said name (...) it results (go) instead (...)" that this name referred to a female individual.

By e-mail dated 9 December 2019, the complainant, representing to this Authority that he had asked the Company for explanations regarding this irregularity, declared himself dissatisfied with the response received on 28 November 2019.

With a request for information sent to the healthcare facility with note prot. no. 19148 of 26 May 2020, pursuant to art. 157 of the Code, clarifications were requested regarding the inaccuracies highlighted above and if, in particular, other subjects, without any legitimacy, had become aware of information concerning the complainant's minor daughter, as well as clarifications regarding the measures implemented and used to guarantee the accuracy and confidentiality of personal data, especially health data.

With a note dated June 4, 2020, the healthcare facility, in response to the request for information, stated that the inaccuracy of the subscriber's personal data reported on the documents relating to the minor was due to the incorrect transcription on the aforementioned forms for the consent of the name of another patient having the same surname as the mother of the complainant's minor daughters; it was also represented that, in a communication sent to the complainant, it had been

represented that "the forms, containing the consents and information concerning the minor (...) have not been communicated in any way (to the subject whose name appears on the models) or to another subject as these are forms stored in paper format internally and to which only authorized internal subjects have access" and (...) therefore, apart from the transcription error, there was in no way any leakage of the data from the minor".

Furthermore, the healthcare facility represented that (...) the staff was adequately informed on how to proceed and, above all, consent forms were processed and made available (distinguished by: consent to data processing for the purposes indicated in the information / consent sending reports by e-mail / consent to venipuncture) through which it is clearly possible to enter the data of the minor/interdicted and of the parent/guardian who will have to sign on their behalf", finally illustrating the technical security measures organizational procedures adopted within the outpatient clinic and attaching the documentation certifying the appointment of the data protection officer and the relative communication to the Guarantor.

With note prot. no. 22936 of 22 June 2020, the Office, on the basis of the elements acquired, notified the healthcare facility, 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 the aforesaid owner 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 no. 689 of 11/24/1981).

With the note mentioned above, the Office represented that it had ascertained that the healthcare facility had provided a reply to the request for access to data, made by the interested party, only following the invitation formulated by the Office in the context of the procedure relating to the complaint presented by the latter, pursuant to art. 77 of the Regulation, or after 62 days from the date on which the interested party had exercised his right; this, in violation of the art. 12, par. 3, in relation to art. 15 of the Regulation.

With regard to the notified violation, the healthcare facility sent its defense briefs with a note dated June 25, 2020, representing that "the profiles of critics who involved Poliambulatorio Talenti Srl as Data Controller concerned non-compliance with what provided for by art. 12, paragraph 3, which requires the Data Controller to provide the data subject with information relating to the right exercised within one month; this deadline was not respected due to problems with the hardware system which (...) led to the change of PC (for which) it was not possible to view the email [relating to the access request presented by the interested party] within the established deadlines " and asking to be heard by the Authority.

As regards the inaccuracy "of the personal data concerning the signer of the documents relating to the minor (...), it was a material error due to the decision to manually copy the data of the minor's mother (...) on the consent document generated by the management software. The problem arose from the impossibility of inserting the personal data of the minor concerned and the personal data of the signatory parent in a separate manner in this software. In reporting this data manually on the consent form, the material error was integrated which led to copying the data from the top line of the management system, relating to Mr. XXX (having the same surname as the mother of the complainant's younger daughter). There was no communication of the minor's data (...) to Mr. XXX."

The hearing was held on 11 November 2020 pursuant to art. 166, paragraphs 6 and 7, of the Code and of the art. 18, paragraph 1, of the law n. 689 of 11/24/1981. In this circumstance, the healthcare facility reiterated what had already been represented in the defense briefs, asking to proceed with the dismissal of the proceeding or, alternatively, the application of a sanction as small as possible.

3. The legislation on the protection of personal data

The Regulation, in articles 12 and following, disposing on the subject of "rights of the interested party", provides for the right of the latter to obtain from the data controller the relative information requested pursuant to articles from 15 to 22 of the same Regulation (in the specific case, pursuant to art. 15 and Recital 63), without unjustified delay and, in any case, at the latest within one month of receipt of the request. This, unless one of the cases of limitation of the rights of the interested party occurs, strictly indicated in art. 23 of the Regulation and 2-undecies of the Code, which are not conferring with respect to the matter in question.

4. Outcome of the preliminary investigation

In the light of the assessments referred to above, it should be noted that the statements made by the data controller in the defense writings □ for the truthfulness of which one may be called upon to answer pursuant to art. 168 of the Code □ although worthy of consideration, do not allow the findings notified by the Office to be overcome with the act of initiation of the proceeding and are insufficient to allow the dismissal of the present proceeding, since none of the cases envisaged by the art. 11 of the Regulation of the Guarantor n. 1/2019.

In the case of the complaint, having provided confirmation of the exercise of the right of access to personal data by the healthcare facility - carried out by the complainant on 19 September 2019 - on 20 November 2019, or 62 days after the

presentation of this request for access and, therefore, well beyond the term of one month established by art. 12 of the Regulation, the preliminary assessments of the Office relating to the ascertained violation of art. 12, par. 3, in relation to the art. 15 of the same Regulation.

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5 of the Regulation, as also referred to by art. 166, paragraph 2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects, 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 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 Board [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).

In this regard, the violation of the aforementioned provisions is subject to the application of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

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 the culpable nature of the untimely response provided by the healthcare facility is considered, determined by technical problems with the hardware system, in addition to the fact that this facility has maintained a collaborative conduct with the Authority during the preliminary investigation of this proceeding and that there are no previous relevant violations committed by the structure itself or previous provisions pursuant to art. 58 of the Regulation to be paid by the same.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction, in the amount of 2,000.00 (two thousand) euros for the violation of art. 12, par. 3, in relation to the art. 15 of the Regulation.

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.

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

found the violation of the art. 12, par. 3, in relation to the art. 15 of the Regulations by the Poliambulatorio Talenti S.r.l. in the terms set out in the justification;

ORDER

at the Poliambulatorio Talenti S.r.l. in the person of the pro-tempore legal representative, with registered office in Rome, via Padre Semeria, n. 33 CF 1961330584/ VAT number 01021921000 pursuant to articles 58, par. 2, lit. i), and 83, par. 5, of the Regulation and 166, paragraph 2, of the Code, to pay the sum of 2,000.00 (two thousand) euros as an administrative fine for the violation indicated in the justification; 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 same healthcare facility to pay the sum of 2,000.00 (two thousand) euros, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, 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 no. 689/1981;

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code;

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lit. u), of the Regulation, of the violations and of the measures adopted in accordance with art. 58, par. 2, of the Regulation.

Pursuant to art. 78 of the Regulation, of the articles 152 of the Code and 10 of Legislative Decree 1 September 2011, n. 150, 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, 14 January 2021

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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