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Injunction order against the Ministry of the Interior - 29 October 2020

Register of measures

no. 205 of 29 October 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 Dr. Claudio Filippi, deputy secretary general;

HAVING REGARD TO Regulation (EU) no. 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 movement of such data (General Data Protection Regulation, hereinafter, "EU Regulation" );

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196, as amended by Legislative Decree 10 August 2018, n. 101, containing the Code regarding the protection of personal data (hereinafter the "Code");

HAVING REGARD TO Legislative Decree 18 May 2018, n. 51, implementing Directive (EU) 2016/680 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 by the competent authorities for the purposes of prevention, investigation , ascertainment and prosecution of crimes or execution of criminal sanctions, as well as the free circulation of such data and which repeals the framework decision 2008/977/GAI of the Council (hereinafter: "Decree");

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 (hereinafter: "Regulation 1/2019);

HAVING EXAMINED the complaint presented by Mrs. XX relating to an alleged unlawful processing of her personal data by the XX Police Chief;

Examine the information provided by the parties;

Given the documentation in the deeds;

Given the observations of the Office, formulated by the deputy secretary general pursuant to art. 15 of the Guarantor's

regulation n. 1/2000;

Speaker Dr. Agostino Ghiglia;

WHEREAS

XX represented that on 11 January 2019, he had received from the Quaestor of XX a warning pursuant to art. 8 of Legislative Decree L. 23.2.2009, no. 11 (persecutory acts, ex art. 612-bis of the penal code).

However, with a note dated 18 February 2019, the Quaestor communicated to the Ministry of the Interior, Central Anti-Crime Directorate, "Internal Security 225/D" office and, for information, to the Government Commissariat for the Province of XX, that the complainant was been the recipient of a different provision, i.e. an oral warning pursuant to Legislative Decree 14 August 2013, no. 93, adopted "for violent conduct committed against [...]" a third party, identified by name in the measure and qualified as a former boyfriend of the claimant.

The complainant, with a note dated 18 June 2019, sent to the Police Chief of Police, to the Director of the Anti-Crime Division of the Police Headquarters, to the Director of the Public Order and Safety Area of the Police Headquarters and, for information, to the Government Commissioner of the same Province, represented that the aforesaid note indicated her as the recipient of an incorrect provision and requested the rectification of the incorrect data from all recipients of the note and from the physical and digital archives in which it had been inserted.

The request, which remained unanswered, was solicited by the same with a note dated 1 July 2019, with integration of further requests.

The complainant complained that she had not received an adequate response to her requests and therefore asked this Authority to adopt the guarantee measures provided for by the relevant legislation on the protection of personal data.

With a note dated 4 October 2019, prot. 33898/140920, this Authority asked the Police Commissioner of XX, the Data Processing Manager for the Anti-Crime Division XX, the Government Commissioner of the Province of XX and the Director of the Order and Public Safety area of the Government Commissioner of XX, XX, to provide the following information:

1) if it is true that the complainant has never been the recipient of an oral warning made pursuant to Legislative Decree 14 August 2013, no. 93, as instead indicated in the note from the Quaestor indicated above;

2) in the event of a positive response to the above question, whether, following the applicant's request, the correction of the incorrect personal data concerning her was carried out with all the recipients and the databases that received them;

3) who are the subjects to whom such data have been communicated and the archives and databases - paper or computer - in which they are located and the reason for such communications and recordings;

4) the existence of any reasons that prevent the acceptance of the requests of the claimant, based on the combined provisions of art. 14 of Legislative Decree lgs. 18 May 2018, no. 51 and of the art. 26 of the Presidential Decree 15 January 2018, no. 15;

5) the existence of reasons impeding the release of information to the interested party about the complaint, also pursuant to art. 10, paragraph 4, of the law n. 121/1981.

6) any other element deemed useful, not excessive and pertinent for the assessment of the complaint by this Authority.

With a note dated 17 October 2019, the Government Commissariat of the Province of XX provided feedback, representing, as far as is relevant here, that it is the competent body for hierarchical appeals against the warnings adopted pursuant to art. 8 of Legislative Decree L. 23.2.2009, no. 11 and that the related investigation was carried out in accordance with this legislation.

The request for rectification of incorrect personal data presented by the appellant was sent to the Government Commissioner's Office for information only, and was acquired in the file together with the remaining documentation.

With a note dated 16 October 2019, received by this authority with PEC dated 21 October 2019, the Police Headquarters of XX provided a response, confirming that it had adopted a warning measure against the appellant "pursuant to art. 8 of the Legislative Decree 11/2008 [rectius: D.L. 11/2009] converted into law 38/2009", and that this provision was entered in the inter-force database pursuant to law 121/81, in accordance with the law, in the correct form, with the following wording: "XX born on XX a XX - Warning of the Quaestor of XX art. 8 Legislative Decree no. 11/2009".

The Police Headquarters also confirmed that on the occasion of the further communications regarding the provision adopted against the complainant, transmitted to the Ministry of the Interior-Central Anti-Crime Directorate and to the Government Commissariat, the body responsible for dealing with hierarchical appeals against this provision , “for a mere typo this 'paper' communication indicated the art. 3 Legislative Decree 93/2013 (converted into law 119/2013 for domestic violence) in place of art. 8 mentioned above."

The Police Headquarters stated that the Central Directorate of the Criminal Police had communicated to the appellant on 07/08/2019 that "the information resulting to date in your name at the Data Processing Center of the Department of Public Security concerns: Admonition of the Quaestor of XX, art. 8 Legislative Decree no. 11/2009".

Therefore, concluded the Police Headquarters, “it is confirmed that the personal data of Mrs. XX present in the computer

archives of the Police forces are correct and that only the warning of the questore for persecutory acts pursuant to art. 8 d.1. 11/2009 issued by this office."

Ultimately, the Questore decided not to proceed to communicate to the addressees of the paper note the erroneousness of the information contained therein, of which he was aware.

This omission has resulted in the continued existence of the aforementioned inaccurate personal data with the recipients, as evidenced by the note dated 17 July 2019 sent by the Ministry of the Interior-Central Anti-Crime Directorate to the Police Headquarters of XX, relating to the authorization with respect to a request for access to documents presented by XX, in which the same is still indicated as the recipient of an "oral warning provision from the questore pursuant to art. 3 of the Legislative Decree 93/2013 converted into Law 10.15.2013, n. 119.".

Evaluated the investigative acts and deemed unable to proceed with the filing of the complaint pursuant to art. 11 of Regulation 1/2019 of the Guarantor, on 17 July 2020 the Office communicated to the parties the initiation of a procedure for the adoption of the measures pursuant to art. 37 and the administrative sanctions pursuant to art. 42 of the Decree.

With a note dated 11 September 2020, the Police Headquarters of XX sent defensive briefs, also based on an opinion provided by the District Attorney of the State.

In this note, the Police Headquarters once again confirmed that in the note dated 02.18.2019, sent by the XX Quaestor to the Ministry of the Interior "Security 225/D" and, for information, to the Government Commissariat, "for a typo of material nature it was erroneously indicated that the person concerned had been admonished ex al. 3 of the Legislative Decree 93/2013", as well as acknowledging that the complainant, realizing the error, sent to the Police Chief, to the addressees of the note and to other institutional subjects deemed competent, the request for rectification of such data, also sent to the Department of Security - Directorate Criminal Police Headquarters.

The Questura then recalled that on 8 July 2019, the complainant received communication from the Central Directorate of the Criminal Police-Data Processing Center that the information present in the archives of the Public Security Department were correct, as "referring to a reprimand for acts of persecution imposed on him by Mr. Quaestor of XX".

The data being processed, the Police Headquarters agrees, are subject to the discipline dictated by the Decree, of which it refers to the art. 2 (definitions), as well as "art. 3 (... the personal data referred to in article 1, paragraph 2, are: ... d) accurate and, if necessary, updated; all reasonable measures must be taken to promptly cancel or correct inaccurate data with respect

to the purposes for which they are processed ... "), 4, paragraph 3 (" ... When it appears that personal data have been transmitted unlawfully or are inaccurate, the recipient is promptly informed. In this case, the personal data must be rectified or canceled or the processing must be limited in accordance with article 12 .. .) and 12, co. 8 of the same delegated decree ("...If the personal data have been rectified or canceled or the treatment has been limited pursuant to paragraphs 1, 2 and 3, the data controller informs the recipients and these shall, under the own responsibility, to the rectification or cancellation of personal data or to the limitation of the treatment ... '.

The Police Headquarters declared that it had communicated to the addressees of the previous note the inaccuracy of the data contained therein only "on 07.23.2020, more than a year after the aforementioned typo and the notification by the interested party", informing the interested party on 17 August 2020.

According to the Police Headquarters, it would only be responsible for the failure to formally notify the interested party of the conclusion of the administrative procedure for rectifying data, the violation of which would not, however, be sanctioned by Legislative Decree no. 51/2018.

In conclusion, according to the Police Headquarters, also taking into account that the data communicated and recorded at the CED of the Ministry of the Interior concerning the complainant were correct, in the conduct object of this proceeding, "the factual element that harmed or put the legal asset protected by the sanctioning provision is in danger, as well as capable of satisfying the necessary principle of offensiveness at the basis of any offence, including of an administrative nature.".

The complainant, with notes dated 24 July 2020 and 25 August 2020, reiterated its positions, also contesting the very legitimacy of sending the note dated 18 February 2019.

CONSIDERED

Pursuant to art. 2, paragraph 1, letter a), of the Decree, constitutes personal data "any information concerning an identified or identifiable natural person".

Pursuant to art. 2, paragraph 1, letter b), of the Decree, constitutes processing "any operation or set of operations, performed with or without the aid of automated processes and applied to personal data or sets of personal data, such as the collection, registration, the organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of making available, comparison or interconnection, limitation, cancellation or destruction".

Therefore, the paper communication made by the Police Headquarters of XX to the Ministry of the Interior - Central Anti-Crime Directorate and the Government Commissariat, relating to the warning measure adopted against Mrs. XX constitutes processing of personal data.

This communication was made to the Central Anti-Crime Directorate of the State Police, as part of the monitoring of the impact of the regulatory provisions on the trend of the stalking phenomenon, as required by circular letter no. 255/A-2009 – 39333-U (DA III), adopted by the same Management. Pursuant to art. 3, paragraph 3, of the Decree, the processing of personal data for police purposes may include archiving in the public interest, scientific, historical or statistical use, without prejudice to adequate guarantees for the rights and freedoms of the interested parties. The art. 12 of the Presidential Decree 15 January 2018 no. 15, containing the identification of the methods of implementation of the principles of the Code regarding the protection of personal data in relation to the processing of data carried out, for police purposes, by police bodies, offices and commands, provides that the communication of data between bodies, offices and commands of the Police Force is permitted when it is necessary for the performance of institutional tasks, without prejudice to the obligations of secrecy incumbent on the officers and agents of the judicial police in relation to the investigations carried out, as established by the code of criminal procedure.

The communication was also made to the Government Commissioner, as he is responsible for dealing with hierarchical appeals against the reprimand measures.

On the basis of the documentation in the file, it was ascertained that in the aforementioned paper communication it was erroneously indicated that the complainant had been the recipient of a warning measure different from the one actually received.

It was also ascertained that the pro tempore Quaestor of XX, although aware of the erroneous nature of the data communicated at least from 18 June 2019 - the date of the request for rectification notified by the complainant - decided not to communicate the rectification of the incorrect data, considering sufficient that the information concerning the complainant entered in the Data Processing Center of the Department of Public Safety was correct.

However, the fact that the data present in the inter-force database at the CED of the Ministry of the Interior were correct did not exempt the XX Police Headquarters from the obligation to proceed with the rectification of erroneous data transmitted in various ways to other subjects, an obligation whose violation determined the continuing existence of the aforementioned inaccurate personal data with the recipients, as already highlighted in the introduction.

The pro tempore Questore decided not to correct the erroneous data even after this Authority, with the request for information dated 4 October 2019, had asked the reason why the erroneous data had not been corrected.

Only on 23 July 2020, i.e. more than a year after the request for rectification by the interested party and after the communication of the start of this proceeding, did the current Quaestor of XX, who had in the meantime taken over the office, proceed to send the original addressees of the note dated February 18, 2019 a data correction note.

However, the art. 3, paragraph 1, letters a) and d), of the Decree establishes that personal data must be processed lawfully and correctly, accurate and, if necessary, updated and all reasonable measures must be taken to promptly cancel or correct inaccurate data with respect to the purposes for which they are processed.

The art. 4, paragraph 3, of the Decree, prescribes that when personal data have been transmitted unlawfully or are inaccurate, the recipient is promptly informed and the personal data must be rectified or canceled or the treatment must be limited in accordance with article 12.

The art. 12, paragraph 1, of the Regulation establishes the right of the interested party "to obtain from the data controller, without unjustified delay, the rectification of inaccurate personal data concerning him" (added evidence).

The awareness on the part of the XX Police Headquarters of having communicated to a plurality of subjects inaccurate data and the unjustified determination not to proceed with their timely rectification, which took place only subsequently with serious and culpable delay, constitutes an incorrect treatment of the personal data of the interested party and illegitimate for violation of the right to rectification of incorrect personal data without unjustified delay, established by art. 4, paragraph 3, in combination with art. 12, paragraph 1, of the Decree

Contrary to what was claimed by the Police Headquarters, the omissive conduct described above harmed the claimant's legal right consisting in the rights to the accuracy of their personal data and their timely rectification in case of proven inaccuracy.

The degree of offensiveness of the conduct, on the other hand, pertains to the extent of the sanction that may be applicable, according to the criteria of the law.

The art. 42, paragraph 1, of the Regulation establishes that, unless the fact constitutes a crime and with the exclusion of processing carried out in a judicial context, the violation of the provisions referred to in article 3, paragraph 1, letters a), b), d), e) and f), in article 4, paragraphs 2 and 3, is punished with the administrative sanction of payment of a sum from 50,000 to 150,000 euros.

The same article establishes in the third paragraph that in determining the administrative sanction to be applied the criteria referred to in article 83, paragraph 2, letters a), b), c), d), e), f), g shall be taken into account ), h), i), k), of the EU Regulation. On the basis of these criteria, it must be considered on the one hand that the rectification of such data by the Police Headquarters of XX took place not after the initial communication from the Guarantor, but only after the formal opening of the proceeding; on the other hand, however, that the communication of incorrect personal data took place to a limited number of bodies, that there is no evidence of serious damage to the data subject, that there are no previous violations, that the Police Headquarters from the moment which he corrected the data, has ensured full cooperation with this Authority for the assessment of the case;

considering the significant amount of the minimum fine, equal to 50,000 euros, it is believed to contain the amount of the fine imposed within the legal minimum.

ALL THIS CONSIDERING THE GUARANTOR

DETECT

the illegitimacy of the processing of the complainant's data for violation of the art. 3, paragraph 1, letters a) and d), and of the art. 4, paragraph 3, in combination with art. 12, paragraph 1, of the Decree, in the terms set out in the justification and, consequently,

ORDER

to the Ministry of the Interior, data controller, to pay the sum of 50,000 (fifty thousand) euros as an administrative fine for the violations indicated in the justification, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within the term of thirty days, an amount equal to half of the fine imposed;

ENJOYS

to the aforementioned owner, in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of 5o.ooo,oo (fifty thousand) euros, 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 the 'art. 27 of the law n. 689/1981.

ORDER

to the data controller pursuant to art. 37, paragraph 2, letter b), of the Decree, to evaluate the opportunity to promote adequate

training initiatives for personnel, including peripheral personnel, of the State Police, to ensure respect for the rights of the interested parties and the timely correction of inaccurate data , and to report the outcome of this assessment to the Guarantor within 180 days of the date of this provision.

Pursuant to art. 39, paragraph 3 of the Decree and 10 of Legislative Decree lgs. 1 September 2011, no. 150, against this provision, an opposition can be filed, alternatively, with the court of the place where the data controller resides or has its registered office or the court of the place of residence of the interested party, within the term of thirty days from the date of communication of the provision itself.

Rome, 29 October 2020

PRESIDENT

Station

THE SPEAKER

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THE DEPUTY SECRETARY GENERAL

Philippi