

[doc. web no. 9896845]

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Register of measures

no. 168 of 27 April 2023

## 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 which repeals 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 movement of such data and which repeals Directive 95/46/EC (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.gpdp.it](http://www.gpdp.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 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.

With a complaint presented to the Guarantor, Mr. XX complained about the publication in the online register section of the website of the Regional School Office for Puglia Office VI - Territorial Area for the province of Lecce (hereinafter "School

Office") of the decree prot. no. XX of the XX, which provided for the assignment proposal and the assignment of the seat in favor of the teachers included in the Provincial Supplementary Rankings (hereinafter, "GPS") of the I and II level secondary school. Two tables are attached to the aforementioned decree which show numerous personal data referring to the complainant and to other interested parties (about 300). Among the information published (in particular, that relating to the "band", "reserve", "name", "surname", "date of birth", "place of assignment") there is also the indication (or not) of the condition of precedence, pursuant to the law of 5 February 1992, n. 104.

This circumstance was also verified by the Office (see service reports in the file).

## 2. The preliminary investigation.

With note of the XX, prot. n.XX the School Office sent its observations to this Authority, stating that:

- "the candidates of the GPS have expressly given their consent to the processing of personal data, declared when submitting the applications for insertion as well as in the subsequent phase of the calls for the assignment of substitutes which, given the state of health emergency from Covid- 19, was carried out with an online procedure which provided for the compilation and forwarding of the form containing the preferences of the candidates";
- "the Office limited itself to indicating with a "YES" any precedence pursuant to law 104/92 from which some candidates have benefited and has not in fact disclosed any sensitive personal data directly attributable to the state of health of the applicants/interested [...and that] in the table attached to the provision in question, in fact, the pathology of to which the teachers who have taken advantage of the precedence are affected, nor has it been indicated which type of precedence pursuant to Law 104/92 has been recognised".

Based on the elements acquired, the Office notified the Ministry of Education (now Ministry of Education and Merit) - Regional School Office for Puglia Office VI - Territorial Area for the province of Lecce, as data controller, 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, since the publication on the website of the School Office of the decree prot. no. XX of the XX and its annexes, containing personal data of the complainant and other interested parties, also relating to health, has given rise to a "dissemination" of personal data in violation of articles 5 par. 1, lit. a), 6 par. 1, lit. c) and e) and 9 par. 2, lit. b) and g) and 4 of the Regulation as well as 2-ter and 2-septies, paragraph 8, of the Code. Therefore he invited the aforesaid owner to produce written defenses 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).

The School Office sent its defense briefs, representing, in particular, that:

- "it is hereby announced that [...the] Office on the 20th date took steps to modify, on the institutional website, the decree object of the complaint presented [by the complainant] and the aforementioned provisions, modifying the references to the priorities used by the applicants with exclusion of any reference to Law 104/92";
- "the decree-law of 8 April 2020, n. 22, [...] established in article 2, paragraph 4-ter, that in consideration of the epidemiological emergency from COVID-19, the procedures for establishing the rankings referred to in article 4, paragraphs 6-bis and 6-ter, of the law 3 May 1999, n. 124, as amended by paragraph 4 of this article, and the procedures for assigning the relative substitutes for teaching and educational staff, with the exclusion of any aspect relating to the establishment and composition of the positions to be assigned as substitutes, are governed, in the first application and for the school years [...], also in derogation of article 4, paragraph 5, of the aforementioned law, by order of the Minister of Education";
- "in compliance with the aforementioned legislative provision, Ministerial Ordinance no. XX of the XX regulated the procedures for establishing the provincial and institute rankings referred to in article 4, paragraphs 6-bis and 6-ter, of the law of 3 May 1999, n. 124 and the assignment of the related substitutes for teaching and educational staff";
- "thus the Departmental Decree n. XX of the XX, in art. 3, entitled "Information on the processing of personal data" has announced that, pursuant to article 13 of the Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016), the data collected with the application to participate in the procedure would have been processed, also through the use of automated systems, exclusively for the purposes connected with the completion of the procedure itself and for the subsequent activities relating to the possible subsequent assignment of the fixed-term contract, as well as to pursuant to article 8, paragraph 8 and article 16 paragraph 1 of the OM XX";
- "candidates were also informed that personal data would be collected and processed at the Ministry of Education for the possible subsequent establishment of a fixed-term employment relationship by the local school offices";
- "as regards, in particular, the relevant aspects in the present case, it should be noted that art. 12 of the O.M. XX previously cited ruled that, in order to ensure the regular and orderly start of lessons, the operations for the assignment of annual substitutes or temporary substitutes until the end of the teaching activities are arranged annually, ensuring advance publicity in the register and on the website website of each provincial territorial area of the overall picture of availability and the related

offices to which they refer and the calendar of convocations. It has also been envisaged that during the activities for the assignment of substitutes, the aforesaid data are constantly updated to give an account of the operations carried out and are made public, at the end of the daily assignment operations, with the methods referred to in paragraph 1";

- "the Ministerial Circular prot. no. XX of the XX, containing instructions and operational indications regarding substitutes for teaching, educational and A.T.A. finally, for the 2020/2021 school year, it drew the attention of the peripheral offices to the need to publish the information regarding the operations for assigning substitutes (availability of places and any subsequent changes, calendars and locations of calls, etc.) on the institutional website of each Territorial Office";

- "more generally, it should also be noted that, as is well known, art. 32 of Law 69/2009 provides that "starting from 1 January 2010, the obligations to publish administrative deeds and provisions having the effect of legal publicity are understood to be fulfilled with the publication on their own IT sites by the administrations and obliged public entities";

- "the presence of the wording "precedence L. 104/02" in the decree published by this Office did not appear in itself suitable for revealing - and therefore disseminating - sensitive personal data directly referable to the interested party. The vagueness of the item did not allow, in fact, to link the teacher to a specific facilitation or benefit contemplated and recognized by law 104/92 and, therefore, to immediately trace a state of disability of the same teacher";

- "an effective disclosure of data relating to the candidate's state of health would have taken place only if there had been the specification of the precise article of the law which governs the precedence actually used. From the mere indication of a "yes" in the column relating to the item "precedence L.104/92 (note the plural) it was not, however, possible to trace a specific information of a confidential nature unequivocally and necessarily relating to the candidate since the priority pursuant to Law 104/92, the only one contemplated in the phase of assigning the offices, can concern both art. 21 relating to the right of priority choice of seat for the handicapped with personal disability exceeding two thirds and art. 33, paragraphs 5 and 7 on the right of choice of the worker who assists a relative or similar with a disability";

- "the epidemiological emergency from Covid-19 [...], has inevitably changed the concrete methods of carrying out the operations for assigning substitutes both from the point of view of the organization of work within the Office and from the point of view of teacher summons. In this sense, we cannot remain silent about how the performance of the activities that are in themselves complex and articulated involving the operational units that deal with the recruitment of teaching staff and the staff of educational institutions near the beginning of the school year has been [...] notably heavier";

- "the necessary coordination of the personnel involved in these operations was carried out, inevitably, in the agile and smartworking modality and also the participation of the teaching staff, called to choose their place of employment for a school year, imposed the use of IT tools. The assignment of substitutes was therefore carried out for the first time exclusively by means of online procedures instead of the traditional face-to-face calls, with procedures that were as uniform as possible at regional and national level";

- "in this regard, the large number of participants in the procedure must also be noted (25,000 requests for candidates only for the province of Lecce) and the related need, for the Administration, to reconcile the aforementioned requests for knowledge of the activities with the principle of efficiency of administrative action. If the procedural documents had not been sufficiently clear, in all probability the Office would have been overwhelmed by a very high number of requests for access to the documents by aspiring teachers and it certainly could not have guaranteed a prompt response to all requests without sacrificing the speed of the procedures themselves, with evident danger for the regular start of teaching activities. In this regard, however, it must be specified that the personal data of the candidates are not easily available on the internet and that the provision has not been indexed in search engines".

Furthermore, the School Office, during the hearing, carried out pursuant to art. 166, paragraph 6, of the Code, represented that (see minutes, in deeds):

- "the School Office, in September 2020, operated in the difficult context of the pandemic emergency, in a phase in which all procedures were changed quickly and as a matter of urgency to digitize processes, allow staff to work remotely and ensure the timely and efficient start of teaching activities";

- "the system of precedence in the school environment provides for a single hypothesis of precedence, i.e. the existence of the requisites pursuant to law no. 104/92 (see articles 21 and 33). Therefore, even if the School Office had inserted only the mention "precedence" in the bulletin relating to substitutes, the motivation underlying the precedence would still have been indirectly revealed";

- "these references in the bulletin published online were also necessary in order to allow other teachers to be able to submit requests for access to documents to protect their rights";

- "if the Office did not even indicate the mention "precedence" in the bulletin for the proposal for fixed-term employment (substitutes) it would receive a very high number of requests for access to documents, effectively paralyzing the action of the

administration . This is also considering that in 2020 there were as many as 25,000 candidates to carry out substitute work";

- "when the assignment of substitutes took place in the presence, during the procedure the existence of any precedence was made known to those present in order to allow the choice of the desired location with priority, bypassing the positions in the ranking";

- "now the publication of the bulletins in question takes place on the ministerial platform and also on this platform an asterisk appears with the mention "precedence" in correspondence with the names of the relative teachers. It is, therefore, a practice followed at national level".

In addition to what was declared in the hearing, the School Office, with note of the XX, prot. no. XX, represented that:

- "it is important to highlight the circumstances that have certainly contributed to the occurrence of the events under discussion attributable to the operations, which took place starting from September 2020, for the assignment of fixed-term employment proposals of candidates registered in the provincial rankings for the substitutes (GPS) referred to in OM XX";

- "reference is made, in particular, to the state of health emergency due to the Covid-19 pandemic, which has made this Office, like all the peripheral offices of the national school administration, obliged to carry out the operations" distance", making use of digital tools and media, unlike face-to-face summoning operations, which took place up until the start of the academic year. 2019/20";

- "with reference, therefore, to the objections raised against the work of the Administration by the applicant, it should first of all be noted that the presence of the wording "precedence L. 104/02" in the decree published by this Office did not appear in itself suitable to reveal - and therefore disseminate - sensitive personal data directly referable to the interested party. The vagueness of the item, in fact, did not allow the teacher to be linked to a specific facilitation or benefit contemplated and recognized by law 104/92 and, therefore, to immediately trace a state of disability of the same candidate";

- "in practice, in order to make it known to other candidates, especially if placed in a better position in the ranking, the reason for the circumstance for which a candidate in a lower position may have received a "desired" seat must be indicated as "precedence" that is given in these operations, is reaffirmed only by the "L. 104/92";

- "it should be noted that, even after the structuring of a ministerial platform useful for similar operations for the current 2022/23 school year, the wording "104" appears in the headings of the so-called "bulletins" published; in this case, however, the undersigned Office replaces it with the term "precedence" which, in any case, always and exclusively refers to Law 104/92".

### 3.1 The regulatory framework.

The personal data protection regulation provides that public subjects, even if, as in the present case, they operate in the context of personnel recruitment procedures, can process the personal data of the interested parties, if the treatment is necessary, in general, to fulfill specific obligations or tasks established by the national regulations of the sector (articles 6, paragraph 1, letter c), 9, par. 2, lit. b), and 4, and 88 of the Regulation) or "for the execution of a task of public interest or connected to the exercise of public powers vested in the data controller" (Article 6, paragraph 1, letter e), of the Regulation). European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of this regulation with regard to treatment, in accordance with paragraph 1, letters c) and e), determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing [...]" (Article 6, paragraph 2, of the Regulation). In this regard, it should be noted that processing operations which consist in the "dissemination" of personal data are permitted only when envisaged pursuant to art. 2-ter of the Code.

With regard to the particular categories of personal data, the processing is, as a rule, permitted, as well as to fulfill specific obligations "in the field of labor law [...] to the extent that it is authorized by law [...] in the presence of guarantees appropriate" (Article 9, paragraph 2, letter b), of the Regulation), even where "necessary for reasons of significant public interest on the basis of Union or Member State law, which must be proportionate to the aim pursued, respect the essence of the right to data protection and provide appropriate and specific measures to protect the fundamental rights and interests of the data subject" (Article 9, paragraph 2, letter g), of the Regulation).

In any case, data relating to health, i.e. those "related to the physical or mental health of a natural person, including the provision of health care services, which reveal information relating to his state of health" (Article 4, par. 1, no. 15, of the Regulation; see also recital 35 of the same), due to their particular delicacy, "they cannot be disclosed" (art. 2-septies, paragraph 8, and art. 166, paragraph 2, of the Code).

The data controller is in any case required to comply with the principles of data protection (art. 5 of the Regulation).

### 3.2. The online dissemination of the personal data of the professors assigned to the teaching locations and the precedence conditions.

As can be seen from the deeds and declarations made as well as from the assessment carried out on the basis of the elements acquired during the preliminary investigation, the Ministry of Education (now Ministry of Education and Merit) -

Regional School Office for Puglia, has published, on the institutional website, the decree prot. no. XX of the XX concerning the procedure for assigning substitutes to the teaching staff of the 1st and 2nd grade secondary school enrolled in the provincial teaching rankings (GPS) for the 2020/21 school year, "with assignment of the seat to the candidates listed in the attached lists".

In particular, these lists, also published online, contain numerous personal data of the complainant and of other interested parties (about 300), recipients of the proposed assignment and of the assignment of the specific place of employment in the context of the procedure for assigning substitute teachers. with the indication also of whether or not the condition of "precedence" is applied pursuant to l. 5 February 1992, no. 104 (by indicating the item "YES" in correspondence with a specific column and the name of the interested party).

As a preliminary point, it should be noted that, in order for a specific processing of personal data to be lawfully carried out by a public entity, it must be necessary for the fulfillment of a legal obligation or for the execution of a task of public or connected interest to the exercise of public powers with which the data controller is invested and must find its basis in a specific regulatory provision that has the characteristics prescribed by the personal data protection discipline (art. 6, paragraph 3 of the Regulation and art. 2-ter of the Code).

In this regard, it should be noted, as a preliminary point, that the School Office has not indicated any specific legal basis suitable for legitimizing the disclosure of the personal data of the complainant and of the other interested parties, since neither the consent of the interested parties can be invoked in this regard (cons. 43 of the Regulation and as highlighted by the Guarantor in numerous precedents as well as in the note of the XX, prot. n. XX), nor the provisions referred to in the defense writings.

In fact, these provisions do not provide for the online publication of the personal data of the recipients of the position proposal and the assignment of the specific place of employment as part of the procedure for assigning substitute teachers.

In particular, the art. 2 of the legislative decree 8 April 2020, no. 22, adopted in the context of the epidemiological emergency from Covid-19, does not contain any specific provision authorizing the territorially competent school office to publish personal data of teachers - already registered in the provincial substitute rankings ("GPS") - who are recipients of a decree assigning the specific place of employment, limiting itself, however, to establishing (with regard to the school years from 2020/2021 to 2023/2024) that certain aspects relating to the "conferral of annual and temporary substitutes" are regulated by Ministerial



Ordinance (and not by decree, as an exception to the previous sector provisions, see art. 4, paragraph 5, of the law of 3 May 1999, n. 124).

In this context, the Ministerial Ordinance n. XX of the XX has generally regulated the procedures for establishing the provincial and institute rankings and the methods of submitting the application, the criteria for the evaluation of the qualifications that the competent offices must take into consideration for the purpose of assigning the score for the purpose of preparing of the ranking and the relative publicity regime (articles 7, 8 and 9).

The aforementioned regulatory framework also provided for the "advertising in the register and on the website of each provincial territorial area: a) of the overall picture of availability and the related offices to which they refer; b) of the convocation calendar" (art.12) but not also the online publication of the personal data of the teachers - already included in the aforementioned "GPS" rankings - who, only once the procedures for calling and identifying the available locations have been completed, are then destined for a specific school, as a place of employment (with a decree assigning the place).

It was also envisaged that during the activities for the assignment of substitutes, the information relating to the "availability of places and any subsequent changes", as well as the "calendars" and "venues of calls" to account for the operations carried out , at the end of the daily conferment operations (see art. 12 of the aforementioned Ordinance; as well as Ministerial Circular prot. n. XX of XX), without however this implying the need to disseminate personal data online.

In any case it must be noted that the Guarantor, in numerous decisions, has reiterated that even in the presence of a law that provides for the obligation to publish certain deeds and documents that contain personal data (for example, those to be carried out for purposes of legal advertising), all the limits established by the principles of data protection apply (see part II, paragraph 3.a. of the Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for of advertising and transparency on the web by public subjects and other obliged bodies" of 15 May 2014, web doc. n. 3134436), since it is not possible to hypothesize any automatism with respect to the online dissemination of personal data, as also confirmed by the data protection system personal data, in the light of which it is envisaged that the data controller must ensure that only the personal data necessary for each specific purpose of the treatment are processed and must be "able to demonstrate" - in the light of the principle of "accountability" - compliance of the principles of data protection in the framework of the applicable sector regulations (Articles 5, par. 2; 24 and 25, para. 2, Regulation).

As for the online publication also of the information relating to the reason for precedence attributed to teachers, it should be

remembered that, contrary to what was represented by the School Office during the preliminary investigation, given the definition of data relating to health ("the personal data relating to the physical and mental health of a natural person, including the provision of health care services, which reveal information on his state of health" art. 4, paragraph 1, no. 15 of the Regulation), and as clarified for some time by the Guarantor, the reference to the L. 5 February 1992, no. 104 - which notoriously governs benefits and guarantees for the assistance, social and occupational integration of disabled people or their family members - makes it possible to obtain information on a person's state of health (see in this regard, with specific reference to the working context, including school, provision n. 3 of 11 January 2023, web doc. 9857610, provision of 1 September 2022, n. 290 web doc. 9811361, provision of 28 April 2022, n. 150, web doc. no. 9777200 and provision. of 28 May 2020, no. 92, web doc. no. 9434609; more generally, see "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purposes of publicity and transparency on the web by public subjects and other obliged bodies" of 15 May 2014" web doc. no. 3134436).

Nor does it seem possible to consider sufficient, in order to exclude the responsibility of the holder in the present case, the circumstance whereby during the epidemiology emergency the school offices were called to operate in the presence of new organizational methods of work (carried out mostly in agile method and that "even the participation of teaching staff, called to choose their place of employment for a school year, required the use of IT tools" and "the assignment of substitutes was therefore carried out for the first time exclusively by means of online procedures instead of the traditional face-to-face meetings". In this regard, it should be noted that, although the activities in question were carried out using computerized procedures, this, however, did not make it necessary for the personal data, also relating to health, of the professors assigned to the campus.

Even the deflationary need with respect to any requests for access to administrative documents that could have been presented to the School Office with regard to the assignment of seats, cannot be usefully invoked to legitimize the online dissemination of the aforementioned personal data, also relating to health of the interested parties. Although this information and the specific information relating to the possible use (for oneself or for one's family members) of the benefits of law n. 104/1992, are processed by the administration for the assumption of decisions when assigning the headquarters, there are currently no legal conditions to legitimize their online dissemination, also given the aforementioned mandatory prohibition on disseminating health data ( article 2-septies, paragraph 8 of the Code). Otherwise, in the face of specific requests for access to

administrative documents (which also contain data relating to health), it is up to the administration to assess, case by case, the existence of a direct, concrete and current interest in the individual applicant as well as the possibility to allow access "within the limits in which it is strictly indispensable within the limits established by art. 60 of the legislative decree 30 June 2003, n. 196" (art. 24, paragraph 7 of Law 241/1990), i.e. assessing whether the "juridically relevant situation that one intends to protect" with the request for access is of "rank at least equal to the rights of the interested party or consists in a right of personality or another fundamental right or freedom" (Article 60 of the Code). In any case, the legitimate reply provided to the applicant in relation to an application for access to administrative documents does not in any case constitute a disclosure of personal data.

The school office declared that, during the investigation, it had removed the reference to law no. 104/1992, while maintaining however the reference to the presence of a precedence condition in correspondence with a specific name (cf. the decree of the XX, prot. n. XX which provided for the "republishing of provisions of the operations of assignment of fixed-term assignments" by inserting only the wording "precedence" instead of "precedence under Law 104/92" in the attached lists).

In this regard, in reiterating more radically that there is no suitable legal basis that legitimizes the online publication of personal data of teachers assigned to specific offices, it is also noted that this measure cannot, in any case, be considered compliant with the legislation on the protection of data also due to the fact that, as highlighted by the same School Office, the condition of precedence exists only in the case of use of the benefits pursuant to Law 104/1992.

In the light of the foregoing considerations and of the documentation in the records, it is believed that the publication on the institutional website of the School Office of the personal data relating to the professors assigned to the site, as well as the indication of the reason for precedence attributed to some of them, (including the complainant) are carried out in violation of articles 5 par. 1, lit. a), 6 par. 1, lit. c) and e) and 9 par. 2, lit. b) and g) and 4 of the Regulation as well as 2-ter and 2-septies, paragraph 8, of the Code.

## 5. Conclusions.

In the light of the assessments referred to above, taking into account the statements made by the data controller during the preliminary investigation □ the truthfulness of which may be called upon to answer pursuant to art. 168 of the Code □ it should be noted that the elements provided by the data controller in the defense briefs do not allow for overcoming the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the filing of the present proceeding, not

resorting Moreover, any of the cases provided for by art. 11 of the Regulation of the Guarantor n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed, and the illegality of the processing of personal data carried out by the Ministry of Education and Merit - Regional School Office for Puglia is noted, in violation of articles 5, 6, 9 of the Regulation and of the articles 2-ter and 2-septies, paragraph 8, of the Code.

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to articles 58, par. 2, lit. i), and 83, par. 3, of the same Regulation and of the art. 166, paragraph 2, of the Code.

#### 6. Corrective measures (Article 58, paragraph 2, letter f) of the Regulation).

As ascertained during the preliminary investigation, it appears that the personal data of the interested parties (in particular information relating to the "band", "reserve", "name", "surname", "date of birth", "place of assignment") as well as the indication of the precedence condition, continue to be available on the institutional website of the School Office.

The art. 58, par. 2, lit. f), of the Regulation provides that the Guarantor has the corrective powers to "impose a temporary or definitive limitation to the treatment, including the prohibition of treatment".

In this context, due to the illegality of the processing carried out, it is considered necessary to have, pursuant to art. 58, par. 2, lit. f), the limitation of the processing in progress by prohibiting the data controller from any further dissemination of the aforementioned personal data of the complainant and of the other interested parties.

Pursuant to art. 157 of the Code, the Ministry of Education and Merit-Regional Scholastic Office for Puglia will also have to communicate to this Authority the initiatives undertaken in order to implement the above orders pursuant to the aforementioned art. 58, par. 2, lit. f) within thirty days of notification of this provision.

#### 7. 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; article 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 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).

In this regard, taking into account the art. 83, par. 3, of the Regulation, in the present case - also considering the reference contained in art. 166, paragraph 2, of the Code – the violation of the aforementioned provisions is subject to the application of the same 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 due account the elements provided for by art. 83, par. 2, of the Regulation.

In relation to the aforementioned elements, the particular delicacy of personal data unlawfully disseminated, even if not indexed in generalist search engines, was considered; that the data being disseminated also relates to health and refers to a large number of interested parties (about 300) in contrast with the indications that, for some time now, the Guarantor has provided public and private employers with the Guidelines and with numerous decisions on individual cases referred to above. On the other hand, it was considered that the data controller collaborated during the investigation and that the previous violations committed do not constitute specific precedents "relating to the same object" (Article 83, paragraph 2, letter i) of the Regulation) with respect to the conduct in question, which refers to treatments for heterogeneous purposes. It was also taken into consideration that the violation occurred following the introduction of a new procedure for assigning assignments to teaching locations which, due to the epidemiological emergency, could not take place in presence as in previous years, as well as of the difficulties that the School Offices had to face in a particularly delicate phase (July-September 2020) due to the particular needs deriving from the state of emergency.

Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction, in the amount of 15,000 (fifteen thousand) euros for the violation of articles 5, 6, 9 of the Regulation and of the articles 2-ter and 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.

Taking into account the nature of the data being processed, it is also believed that the ancillary sanction of publication on the website of the Guarantor 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

notes, pursuant to art. 57, par. 1, lit. f), declares the illegality of the processing of personal data carried out by the Ministry of Education and Merit - Regional School Office for Puglia Office VI - Territorial Area of Lecce, in the terms described in the justification, consisting in the violation of articles 5, 6, 9 of the Regulation and of the articles 2-ter and 2-septies, paragraph 8, of the Code;

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, to the Ministry of Education and Merit - Regional Scholastic Office for Puglia, Office VI - Territorial Area of Lecce, in the person of the pro-tempore legal representative, with registered office in viale Trastevere, 76 A - Rome, Tax Code 80185250588 to pay the sum of 15,000 (fifteen thousand) euros as an administrative fine for the violations 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 Ministry of Education and Merit - Regional Scholastic Office for Puglia, Office VI - Territorial Area of Lecce:

- without prejudice to the provisions of art. 166, paragraph 8 of the Code, to pay the sum of 15,000 (fifteen thousand) euros 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;
- pursuant to art. 58, par. 2, lit. f), the limitation of ongoing processing, prohibiting the Ministry of Education of Merit-Regional School Office for Puglia from any further online dissemination of personal data referring to teachers assigned to the place of employment;
- pursuant to articles 58, par. 1, lit. a), of the Regulation and 157 of the Code, to communicate to this Authority, providing an adequately documented response, within 30 days of notification of this provision, the initiatives undertaken to ensure compliance of the treatment with the Regulation;

HAS

the publication of this provision on the Guarantor's website pursuant to art. 166, paragraph 7, of the Code (see art. 16 of the Guarantor's Regulation no. 1/2019);

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 (see art. 17 of Regulation no. 1/2019).

Pursuant to articles 78 of the Regulation, 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, 27 April 2023

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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