

Injunction order against "Villa Masi Residence for the elderly" - January 13, 2022

Record of measures

n. 5 of 13 January 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by Prof. Pasquale Stanzione, president, Prof. Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, members, and the cons. Fabio Mattei general secretary;

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 inspection deed drawn up by the Carabinieri Command for the Protection of Labor - Carabinieri Labor Inspectorate Unit of Ferrara, which revealed the presence of a video surveillance system at the "Villa Masi Residence for the elderly", not in compliance 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 Carabinieri Command for the Protection of Labor - Carabinieri Nucleo Labor Inspectorate of Ferrara and the initiation of the procedure.

With a note dated 11.10.2019, the Carabinieri Command for Labor Protection - Nucleo Carabinieri Labor Inspectorate of Ferrara, sent the report of an assessment carried out at the "Villa Masi Residence for the elderly", located in Ferrara, San Bartolomeo in Bosco (FE), Via Masi 136/138.

During the investigation, the aforementioned Command verified the presence of a video surveillance system, consisting of 2

functioning cameras, positioned inside the structure. However, the minutes showed the absence of the required information signs, pursuant to art. 13 of the Regulation.

On the basis of the investigations carried out, the Office notified the Cooperative Company "Villa Masi Residence for the elderly", the act of initiating the procedure for the adoption of the measures referred to in Articles 58, par. 2, and 83 of the Regulations, in accordance with the provisions of 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).

On 20.10.2020, at the request of a party, the hearing of Ms Concetta Padula, legal representative of the cooperative company "Villa Masi Residence for the elderly", was held at the offices of the Guarantor, who declared that, after the control of the Carabinieri, the cameras were permanently removed by the company.

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.

Upon examination of the documentation produced, it emerged that, at the time of the check, the video surveillance system, installed at the "Villa Masi Residence for the elderly", was functioning and that the signs bearing the information had 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 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 cooperated with the Authority during the procedure.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction in the amount of € 1,000.00 (one thousand) for the violation of art. 13 of the Regulation.

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 Regulations, the unlawfulness of the processing carried out by the then Association, today a limited liability cooperative company "Villa Masi Residence for the elderly", with legal and operational headquarters in San Bartolomeo in Bosco (FE), via Masi 136 / 138, through the use of the video surveillance system installed at its headquarters, in the terms set out in the motivation, for the violation of art. 13 of the Regulations;

ORDER

To the limited liability cooperative company "Villa Masi Residence for the elderly" (P.I. 02061590382), in the person of the legal representative, Ms Concetta Padula, to pay the sum of € 1,000.00 (one thousand) as a pecuniary administrative sanction for the violation indicated in the motivation;

INJUNCES

then to the same Company 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 the 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 d. lgs. n. 150 of 1 September 2011 envisaged for the filing 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 the 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, January 13, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei