

[doc. web n. 9701975]

Injunction order against the Ministry of the Interior - 10 June 2021

Record of measures

n. 289 of 10 June 2021

## THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

GIVEN the Regulation (EU) n. 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 circulation of such data (General Data Protection Regulation, hereinafter, "Regulation") ;

GIVEN the 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");

GIVEN the Legislative Decree 18 May 2018, n. 51, which entered into force on 8 June 2018, implementing Directive (EU) 2016/680 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 by the authorities competent for the purposes of prevention, investigation, detection and prosecution of crimes or execution of criminal sanctions, as well as for the free circulation of such data and which repeals Council Framework Decision 2008/977 / JHA;

GIVEN the Decree of the President of the Republic of 15 January 2018, n. 15 containing the "Regulation pursuant to article 57 of legislative decree no. 196, 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 ";

GIVEN art. 49 of Legislative Decree no. 51/2018 according to which "Article 57 of the Code is repealed after one year from the date of entry into force of this decree. The decrees adopted in implementation of articles 53 and 57 of the Code continue to apply until the adoption of a different discipline pursuant to articles 5, paragraph 2, and 9, paragraph 5 "(paragraphs 2 and 3 of article 49 cit.) ;

GIVEN the Regulation of the Guarantor n. 1/2019 concerning internal procedures with external relevance, aimed at carrying

out the tasks and exercising the powers delegated to the Guarantor for the protection of personal data, approved by resolution no. 98 of 4/4/2019, published in the Official Gazette n. 106 of 8/5/2019 and in [www.gpdp.it](http://www.gpdp.it), doc. web n. 9107633 (hereinafter "Regulation of the Guarantor no. 1/2019");

Having seen the documentation in the deeds;

Given the observations made by the secretary general pursuant to art. 15 of the Guarantor Regulation n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, Doc. web n. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

#### 1. The story.

In relation to the well-known event that happened to XX, relating to the atrocious violence suffered by a man, who later died, on the occasion of the communication to the press of the arrest operations against 8 young people, the XX was published on the Facebook pages of the XX Police Headquarters. and the State Police, as well as on the official Twitter account of the State Police, two videos - marked with the coat of arms of the State Police - originally filmed by the attackers.

In both videos the faces of the attackers or the victim are not visible, but you can understand what is happening and you can hear their voices, in one of the two scanned, in particular the desperate one of the victim asking for help, whose identifiability is out of question in the context of the elements available in relation to the various sources that have informed on the matter.

One of these videos was published, in particular, on the official Twitter account of the State Police accompanied by the following text: "XX" and on the Facebook page of the XX Police Headquarters accompanied by the following text: "XX".

The other video, relating to the same story, was published on the Facebook page of the State Police and accompanied by the following text: "XX".

These videos were subsequently disclosed by various national online newspapers and are still available on the internet (in particular, both films can still be viewed on [www.youtube.com](http://www.youtube.com) under "XX" and one of the two videos on [www.youtube.com](http://www.youtube.com) under "XX").

#### 2. The preliminary activity.

Following the disclosure of these videos, the Guarantor initiated an investigation against the Ministry of the Interior ("Ministry"), to which it sent a request for information, also addressed to the Commissariat concerned and to the Police Headquarters of

XX, in order the methods and purposes of the dissemination of the videos in question, the acts with which the decision to disseminate such videos was (possibly) taken, as well as the technical-organizational measures adopted in order to ensure compliance with the rules on protection of personal data, with particular reference to the provisions of the aforementioned art. 14 of the Presidential Decree 15/2018 (protocol note no.14600 of 3 May 2019).

The Ministry provided feedback, with a note dated May 13, 2019, representing, with regard to the description of the factual circumstances and the methods of dissemination of the aforementioned images, that: "the videos in question refer, as is well known, to a serious matter that has had wide media coverage, for the repeated acts of aggression, committed with cruelty and violence against a person who lived in a state of social discomfort and loneliness, by young boys who filmed their wicked actions and, through the use of social networks, they had been disseminating and sharing them for some time also with other people in the territorial context of XX. by staff of that Police Headquarters and of the Commissariat of P.S. di XX, following which a detention of suspect of crime was carried out in the c on the face of eight subjects (including six minors), considered for various reasons seriously suspected in conjunction with crimes of threat, persecutory acts, torture, damage, violation of domicile and aggravated kidnapping "(note prot. n. 555-DOC / C / SPEC / SPORD / 2486/19 of May 13, 2019).

As for the methods of dissemination of the videos, the Ministry stated that the institutional communication at national level of the matter in question was handled by the External and Ceremonial Relations Office of the Secretariat of the Department of Public Security. In detail, he found that "at 7.01 on 30 April u.s., a press launch was disclosed and the video that would then be published, at 7.22, on the twitter account of the State Police; the same video was published at 9.11 , on the institutional Facebook page; during the same day, three other videos were also disclosed to the press agencies, one of which was published at 11.10, again on the twitter account of the State Police. This video material was disseminated by all main networks and national media. The XX Police Headquarters then released one of the videos on its Facebook page, at 15.56 on the same day of 30 April "(see note of 13 May cit.). The Ministry also highlighted that "the dissemination of these videos was previously authorized by the prosecuting judicial authorities, which, after careful evaluation, considered the needs related to the prevention and deterrence of similar criminal episodes to prevail" (see note of 13 May cit.).

With regard to the reasons and purposes of the communication and dissemination of the videos in question, the Ministry, in the aforementioned response, specified that "following in-depth reflection, the interest in disseminating full knowledge of the seriousness of the facts through institutional channels was evaluated as a priority, in order to raise awareness of how such

social drifts can lead to atrocious gestures. In particular, the decision to make public the images and audio of the crimes committed was the consideration of their usefulness for to avoid the repetition of similar crimes. In fact, one of the aspects that most worries the police forces is not the single criminal episode, however serious it may be as in the case in question, but the fact that - as happened in XX, where videos of the attacks have already been circulating for some time - it develops in a context where the entire civil society proves to be unaware of the real life of certain behaviors, ignoring them, underestimating them or even justifying them in some way. The dissemination of the video therefore had the purpose of showing how "keeping silent about certain behaviors" can make co-responsible (...). It was therefore considered appropriate to act in the manner indicated so that such silences are not justifiable, as well as to avoid the repetition of other similar situations in the future in which "everyone knows", but no one intervenes to ask for help to protect and protect the most fragile people "(cf. . note of 13 May cit.). In conclusion, it was shown that "the disclosure by this Administration of the videos on the attacks, which saw the necessary and necessary authorization from the competent judicial authority, had the following two purposes: • on the one hand, to create - through the crudeness of the images and without any further comment - disapproval; • on the other hand, moreover, with a view to general prevention, which is one of the main missions of the activity carried out by the Police Forces, to arouse indignation, attention and the right reaction aimed at breaking any future hypothetical situation of silence, so that create the conditions to favor a correct, punctual and timely transmission of information to all the bodies and entities appointed to intervene (in particular, law enforcement agencies, health services, social services, etc.) "(see note of 13 May 2019 cit.).

With regard to the organizational measures adopted for the purposes of adapting to the new provisions on the processing of personal data, it was noted that - in addition to the interventions already outlined in the note of 3 May 2019 (prot.note n. 555-DOC / C / SPEC / SPORD / 2180/19), referable to another proceeding concerning the Ministry, which ended with provision no. 236 of 26 November 2020, in [www.gpdp.it](http://www.gpdp.it), doc. web n. 9522206 - "the procedures have been launched to establish, in the departmental context, a data protection officer, who deals in particular with all the treatments carried out for police purposes" (see note of 13 May 2019 cit.). The aforementioned note of May 3, 2019 recalled: the 2005 guidelines of the Department of Public Security for the compilation of the Security Policy Document (hereinafter "DPS") and the DPS of the Rome Police Headquarters of January 28, 2006; the circular of 26 June / 6 July 2018 of the Chief of Police, Director General of Public Security, illustrating the new national regulatory framework on the protection of personal data, with particular reference to the Regulations and Legislative Decree n. 51/2018; the circular of 21-24 December 2018 of the Chief of Police concerning the

professional updating of the staff of the State Police for the year 2019, which shows that for the current year no. 1 day of in-depth analysis addressed to all staff on the topic of general interest called: "anti-corruption and new regulations on the protection of personal data"; the circular of 5 April 2019 from the Director of the Office for the General Administration of the Ministry relating to the Presidential Decree n. 15/2018, with specific reference to the fulfillment of art. 30, paragraph 3, of the Presidential Decree cit. (see note of 3 May cit.).

It should be noted that, during the investigation relating to the aforementioned affair referred to by the Ministry in the note of 13 May 2019, the Office was informed of the establishment, by decree of the Chief of Police of 23 July 2019, of the "Mission structure for the identification and implementation of technical-organizational measures regarding the processing of personal data".

Following the aforementioned response of 13 May 2019, the Office found and verified that the videos in question were still viewable on the institutional Facebook pages of the State Police and the XX Police Headquarters, as well as on the institutional Twitter profile of the State Police, as results from the related report of operations carried out (note prot. no. 16614 of May 17, 2019).

The Office subsequently sent a request for information, concerning the processing in question, also to the data protection officer of the Ministry (note prot. provided by the Ministry (note prot.n.17484 of 24 May 2019).

With the pec communication of 20 May 2019, the reply from the Police Headquarters of XX was also received, which represented that "the disclosure on social networks of the videos relating to the attack suffered by the XX of XX by the 8 arrested subjects was previously authorized from AA.GG. proceeding, who considered, after careful evaluation, the prevailing needs related to the prevention and deterrence of similar criminal episodes "(prot. note no. 18953 of 7 May 2019). The Guarantor therefore asked the aforementioned Police Headquarters, "as part of the investigation underway at this Authority and in consideration of the purpose of crime prevention, typical of security police activities", to transmit the documents relating to the related authorization (note prot. n. 17489 of 24 May 2019). With subsequent confirmation, the Police Headquarters reported that: "the authorization for the disclosure to the press of the videos relating to the events that occurred to XX and the ongoing criminal proceedings following the death of a man on April 23, 2019, was issued to the Manager of the Flying Squad "verbally" by Mr. Attorney of the Republic of XX, after viewing and adopting any useful device to make the people portrayed in them unrecognizable, i.e. through the application of filters on faces and audio parts. Having acquired the authorization from the

A.G., the Director communicated it to the Press Office of the Police Headquarters for subsequent forwarding to the External and Ceremonial Relations Office of the Department of the P.S., which provided the material which was then disclosed by applying the filters required by the A.G. Moreover, it should be noted that the contents in question - even before being acquired in the criminal proceedings - had been shared on various chats, whose participants (more than the same suspects) had the opportunity and time to provoke their disclosure "in clear". Similarly, it emerged that other videos of the same nature and relating to the same facts (however not yet acquired in the proceedings) have already been shared and disseminated publicly. The dissemination of the videos (with the adoption of appropriate measures) has prompted some subjects not filmed, yet present in the episodes narrated, to report further circumstances and to provide useful elements for the reconstruction of the facts and for the identification of other offenders with respect to the which have decided to distance themselves. This last figure corresponds to the prevention and deterrence needs that motivated the disclosure of video content "(note prot. No. 22184 of May 29, 2019).

With note prot. n. 555-DOC / C / SPEC / SPORD / 2842/19 of 30 May 2019, the Ministry announced that on 21 May 2019, "accepting the suggestion provided by this Authority", to remove - from the Twitter and Facebook page of the State Police - the videos relating to the attacks that took place last April in XX against the man and that the XX Police Headquarters, on the same day, removed the video published on its Facebook page.

On 26 June 2019, during the press conference following further precautionary measures relating to the legal matter in question and to another episode that occurred to the detriment of another man (see <https://www.facebook.com/.../> , as well as [www.youtube.com](http://www.youtube.com) - "XX"), a further video appeared, marked by the coat of arms of the State Police and subsequently disclosed on various websites, also related to the matter in question, referring to two particularly heinous events, which in the video are called: "XX" and "XX", again to the detriment of the same victim.

In particular, as ascertained by the Office on 8 July 2019, the aforementioned video was disclosed on [www.youtube.com](http://www.youtube.com) and entitled "XX" (<https://www.youtube.com/> ...), but to date appears removed "for violating YouTube's terms of service", as well as on [https:// ...](https://...), which was also subsequently removed.

Nevertheless, the aforementioned video remains available on the internet at the link: <https://www.dire.it/> ..., as well as at the link <https://www.agi.it/> ....

With note prot. n. 25492 of 23 July 2019, the Office, on the basis of the elements acquired during the investigation and the

assessments made on these elements, notified the Ministry, as data controller, pursuant to Articles 42, paragraph 4, of the legislative decree n. 51/2018, 166, paragraph 5, of the Code and 12 of the Reg. Of the Guarantor n. 1/2019, the initiation of the procedure for the adoption of the measures referred to in Articles 37, paragraph 3, and 42 of the legislative decree n. 51/2018, inviting the aforementioned owner to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (art.166, paragraphs 6 and 7, of the Code; art.18, paragraph 1, of law no. 689 of 24/11/1981; Article 13, paragraph 3, Reg. of the Guarantor n. 1/2019).

In particular, the Office found that the Ministry, by means of the aforementioned disclosure, has put in place a processing of the personal data of the interested party, in violation of Articles 3 and 5 of the Legislative Decree. n. 51/2018, as it exceeds the purposes of the same processing and is not necessary for the performance of one of the tasks referred to in art. 1, paragraph 2, of the legislative decree n. 51/2018. It was also stated that the violation of art. 3 of the Legislative Decree. n. 51/2018 makes applicable the administrative sanction provided for by art. 42 of Legislative Decree. n. 51/2018, in light of the elements referred to in art. 83, paragraph 2, of the Regulation.

The Ministry sent its defense briefs, with note prot. n. 555-DOC / C / SPEC / SPORD / 4541/19 of 6 September 2019, by means of which he reiterated, in addition to what was previously reported on the matter in question, that the "dissemination" of the films in question is attributable to police purposes related to the institutional tasks carried out by the State Police, with particular reference to the tasks of "crime prevention". In particular, by means of the aforementioned memoranda, it was highlighted that "the" general prevention "function that characterizes the criminal sanction requires that it be the subject of adequate" information "with regard to the community and the" vehicle "of this" information ", In the first instance, it can only be the responsibility of the judicial police and criminal justice bodies (in compliance with the obligations of secrecy that preside over the process). (...) The videos ... were disseminated in accordance with the institutional tasks of the State Police, with a view to general prevention, essentially in a "positive" key, in order to raise awareness among the associates of the extreme gravity of the acts of aggression, perpetrated with cruelty and violence against a subject in a condition of extreme vulnerability. Persecutory conduct repeated over time, committed by groups of young people mainly in public places, widely filmed and, therefore, shared and propagated through social media within the XX community. All this also making clear the existence of a social environment where what was happening was ignored, sometimes underestimated, sometimes even justified. The decision - also shared by the Public Prosecutor of XX - to make public the videos of the violence, with the aforementioned

"filters" on the faces and on the audio parts, arose from the assessment that the "full and direct" knowledge of the facts would have caused a immediate movement of repulsion in the community, in particular in places where so much cruelty had matured, triggering a strong feeling of "disapproval", essential to prevent the repetition of similar events and also to foster a climate of trust and collaboration with institutions (forces of police, health services, social services, cc.). As illustrated above, the positive effects immediately manifested themselves with the firm dissociation from what happened by many people in the community of XX and, above all, with the decision of these to collaborate with the judicial police, providing useful information to complete the investigation activities and identify the other perpetrators of the offenses "(note of 6 September 2019 cit.).

From the point of view of the Guarantor's complaint regarding the violation of art. 5 of Legislative Decree no. 51/2018 (lawfulness of processing), the Ministry therefore represented that "the publication of the videos, in the manner described above, responds to the institutional functions of a police force, since it significantly contributes to giving effect to the general preventive function of the sanction criminal, both under the "dissuasive" profile and, above all, under the "positive" one, of "cultural orientation" of the behavior of the associates. The processing of the personal data in question, therefore, is assessed to have been carried out in execution of an institutional task entrusted by the law to the Police Authority and, therefore, in compliance with the "principle of lawfulness" pursuant to art. 5 of Legislative Decree no. 51 of 2018 "(note of 6 September 2019 cit.).

From the point of view of the Guarantor's complaint regarding the violation of art. 3 of Legislative Decree no. 51/2018 (not exceeding the purposes of the processing), the Ministry stated that "indeed, it is precisely the need to give effect to the general" positive "preventive function of the sentence that makes it necessary to publish videos showing the" full and direct "knowledge of events of criminal relevance (even in their crude concrete development), consistent with the intent to shake consciences and activate feelings of strong" disapproval "in the community, which alone can effectively counteract the commission of brutal criminal conduct in the future . Finally, as regards the audio content of the videos - which, albeit "filtered", gave the precise perception of the torment suffered by the victim - it is believed that the sacrifice of the victim's personal rights, compressed by the preeminent public interest in the prevention and repression of crimes, also in order to shake consciences with the heartbreaking request for help, so that evil does not enjoy the indifferent behavior of others. " (note of 6 September 2019 cit.).

For the aforementioned reasons, the Ministry asked the Guarantor to assess the Administration's conduct in compliance with



the principles governing the processing of personal data and, consequently, to file the sanctioning procedure.

With subsequent note prot. 555 / DOC / C / SPEC / SPORD / 4900/119 of 27 September 2019, the Ministry sent the Office a note from the Public Prosecutor's Office at the Court of XX, through the Police Headquarters of XX, in which the the aforementioned Prosecutor "confirms that he has verbally authorized the disclosure of the videos relating to the known facts of XX to the detriment of Mr. (...), subject to the adoption of the technical measures (obscuring or in any case affixing filters on the faces and alteration of the audio parts), necessary in order not to make the photographed subjects recognizable, in accordance with the provisions of the law on the subject ".

### 3. Outcome of the preliminary investigation.

#### 3.1. Nature and purpose of the processing in question.

Having examined the videos in question, also in the context in which they were disclosed, and having taken note of what is represented by the Ministry, it is ascertained that the disclosure of the same is attributable to police purposes, correlated with the institutional tasks carried out by the State Police, with particular reference to "crime prevention" (see notes of 13 May 2019 and 6 September 2019 cit.). In particular, these videos were disseminated by the Ministry, in order to "arouse indignation, attention and the right reaction aimed at breaking any future hypothetical situation of silence, so that the conditions are created to favor a correct, timely and timely transmission of information to all the bodies and entities appointed to intervene "(see note of 13 May 2019 cit.).

The treatment in question is therefore attributable to the institutional tasks of the State Police, which inter alia provides for the "prevention of crimes", and took place in the exercise of security police activities through the External Relations Office and Protocol of the Secretariat of the Department of Public Security (see Articles 3 and 24 of Law No. 121/1981), as highlighted by the Office already with a note dated May 24, 2019 addressed to the Police Headquarters of XX. Consequently, the processing in question is not attributable to the judicial police functions, among which there is no crime prevention; functions that are carried out under the supervision and direction of the judicial authority (see Article 17 of Law No. 121/1981), in compliance with the provisions of the Code of Criminal Procedure (see Article 55 of the Criminal Code).

Having considered this, for the purposes of assessing the lawfulness of the processing in question, the fact that the Public Prosecutor's Office of XX has verbally authorized the Ministry to disclose the videos in question to the press is not relevant (see notes of 13 and 29 May cit. . and of 6 and 27 September cit.), this authorization being able to detect only in order to

exclude that the disclosure of such images could take place in violation of the law or negatively affect the criminal proceedings in progress (see articles 114 and 329 of the criminal code) . Moreover, the fact that following this disclosure many people in the community of XX have decided to collaborate with the judicial police, providing useful information to complete the investigation activity and identify the other perpetrators of the crimes (note of 29 May 2019 and of 6 September 2019 cit.) does not affect the nature and purpose of the disclosure in question which, as repeated several times by the Ministry, was mainly motivated by the need for prevention and deterrence.

In view of this, even if the processing in question had been carried out for investigation purposes, the related authorization of the Public Prosecutor did not in any case exempt the Ministry from an accurate assessment of its compliance with the principles on the protection of personal data.

In particular, the rules on the protection of personal data, which regulate the processing of personal data by the competent authorities "for the purposes of prevention, investigation, detection and prosecution of crimes or execution of criminal sanctions" (Article 1, paragraph 2, Legislative Decree no. 51/2018), states that personal data are: processed lawfully and correctly; collected for specific, express and legitimate purposes and processed in a manner compatible with these purposes; adequate, relevant and not excessive in relation to the purposes for which they are processed (Article 3, paragraph 1, letters a), b) and c) of Legislative Decree no. 51/2018).

The processing is lawful "if it is necessary for the execution of a task of a competent authority for the purposes referred to in the aforementioned article 1, paragraph 2, and is based on European Union law or on legal provisions or, in cases provided for by law, regulations that identify personal data and the purposes of the processing "(Article 5, paragraph 1, Legislative Decree no. 51/2018).

As part of these treatments, the dissemination of personal data is permitted when it is necessary for police purposes, without prejudice to the obligation of secrecy referred to in Article 329 of the Code of Criminal Procedure and without prejudice to the prohibitions provided for by other provisions. of law or regulation; it is in any case carried out in compliance with the dignity of the person (Article 14, paragraph 1, of Presidential Decree no. 15/2018).

More specifically, the dissemination concerning personal images is allowed when the person concerned has given his consent or is necessary for the protection of life or physical safety or is justified by the need for justice or police; it is in any case carried out in a manner that does not prejudice the dignity of the person (Article 14, paragraph 2, of Presidential Decree no. 15/2018).

The Guarantor is informed of the general directives adopted at national level on the dissemination of personal data or images, pursuant to art. 14, paragraph 3, of the Presidential Decree n. 15/2018.

Finally, with regard to the obligations of the owner, responsible for compliance with the principles set out in art. 3, co. 1, legislative decree n. 51/2018 (art. 3, par. 4, cit.) Pursuant to art. 15 of the legislative decree n. 51/2018, the same, taking into account the nature, scope, context and purposes of the processing, as well as the risks to the rights and freedoms of individuals, "implements adequate technical and organizational measures to ensure that the processing is carried out in compliance with the provisions of this decree "; measures that "are reviewed and updated when necessary and, where proportionate to the processing activity, include the implementation of adequate data protection policies by the data controller."

### 3.2. The processing of data of the interested party.

It is also established that the videos in question concern some episodes of violence to the detriment of the man, who later died, and that the man's heartbreaking complaints and requests for help are also heard in them.

In particular, as we have seen, in the first video in question, published on the Facebook profile of the State Police, marked by the coat of arms of the State Police, the voice of the victim is clearly heard, as he tries to defend himself and asks for help and does not appear to be No filter was applied to the audio parts of the same (see the report of operations carried out on 17 May cit. and the first part of the video still available on [www.youtube.it](http://www.youtube.it) under "XX"), despite what is represented by the Ministry and requested by the Public Prosecutor.

In the second video, published on the official Twitter account of the State Police, as well as on the Facebook profile of the XX Police Headquarters, even if the voices of the attackers and the victim are not pronounced, from what you can see (people wielding clubs ) and hearing the heartbreaking screams of the victim, associated with loud noises, the cruelty of what is happening is clearly perceived.

In the context of the various information reported on the legal matter and on the victim, in particular that the interested party had psychological disorders, the videos in question document, therefore, even if in some cases with some precautions that partially filter the video images and audio parts, the atrocious torture suffered by the victim.

Although the underlying purpose of the treatment in question, that of crime prevention (as declared by the Ministry), must be considered legitimate, the treatment in question must be evaluated as a whole, on the basis of the concrete circumstances and

in the light of the principles that regulate the matter. of protection of personal data, in particular that of "lawfulness" and "non-excess". More generally, the dissemination of personal data of a person involved in a legal matter constitutes a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), if it does not take place in compliance with the conditions set out in art. 8 of the ECHR for which "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There can be no interference by a public authority in the exercise of this right unless such interference is provided for by law and constitutes a measure which, in a democratic society, is necessary for national security, public security, the economic well-being of the country, to the defense of order and the prevention of crimes, the protection of health or morals, or the protection of the rights and freedoms of others ", having to examine whether such interference is provided for by law, pursues a legitimate purpose and is proportionate to the aim pursued v. EDU Toma Court v. Romania, no. 42716/02, 24 February 2009, § 92; Khoujine and others v. Russia, no. 13470/02, 23 October 2008, § 117; Gurgeneidze c. Georgia, no. 71678/01, 17 October 2006, § 57; Sciacca c. Italy, no. 50774/99, 11 January 2005, § 28/29). In this case, in evaluating the processing in question, it cannot fail to take into account the particular nature of the data in question and the manner in which the processing took place.

The data contained in the videos in question concern, in particular, a subject on which various information had circulated, through the press and the competent authorities. In particular, in addition to the identification data of the same (name, surname, image of the face in the foreground, where he lived, that he was an XX etc.), also the news that he was suffering from mental disorders had been disclosed. Furthermore, the fact was made public that the torture suffered by the man (some of which were documented in the videos in question and in the subsequent video disclosed on June 26, 2019) had caused a state of psycho-physical degradation of the same, which led to death. The videos in question, therefore, relate to particular categories of data, the processing of which can take place only if strictly necessary and supported by adequate guarantees for the rights and freedoms of the data subject and specifically provided for by European Union law or by law. (see Article 7 of Legislative Decree no. 51/2018); circumstances that do not occur in the case in question.

In this regard, the disclosure in question appears to have occurred in violation of art. 14 of the Presidential Decree n. 15/2018, according to which "The disclosure of personal data is permitted when it is necessary for the police purposes referred to in Article 3, without prejudice to the obligation of secrecy referred to in Article 329 of the Code of Criminal Procedure and without prejudice to the prohibitions envisaged by other legal or regulatory provisions; however, it is carried out with respect for the

dignity of the person. 2. The dissemination of personal images is permitted when the person concerned has given his consent or is necessary for the protection of life or physical safety or is justified by the need for justice or police; it is in any case carried out in such a way as not to prejudice the dignity of the person. 3. The Guarantor is informed of the general directives adopted at national level on the dissemination of personal data or images. ".

This is because the disclosure in question was not only not "necessary" for the purpose of preventing crimes, but it took place to the detriment of the dignity of the interested party, whose protection must be guaranteed even after death (see Provv. Guarantor July 15, 2006, in [www.gpdp.it](http://www.gpdp.it), web doc. N. 1310796; Provv. Guarantor 19 December 2002, at [www.gpdp.it](http://www.gpdp.it), web doc. N. 1067167; Press release 8 March 1999, at [www.gpdp.it](http://www.gpdp.it) web doc. no. 48472).

In this sense, even if the face of the interested party does not appear in the videos in question, the processing in question still consisted in the disclosure of images and frames referring to the same and to the sad story that saw him as protagonist and, therefore, must be taken into account. of the particular potential damaging to the dignity of the person connected to the typical emphasis of the visual instrument and its greater suitability for a decontextualized dissemination and not subject to control by the interested party (see Cass. civ., section III, 6 June 2014 , n.12834, whose principle of law was confirmed with Cass. civ., section III, May 13, 2020 n.8878, which invites you to act, in the exercise of journalistic activity, as well as in compliance with the essentiality of information, also in the protection of the dignity of the people involved).

No control by legitimate persons pursuant to art. 2-terdecies of the Code on the actual dissemination of videos, in fact, would in fact be possible, taking into account the thousands of views of the videos in question that may have given rise to subsequent sharing in any context and for the most diverse purposes.

The disclosure of the videos in question directly on the Ministry's social channels made them immediately accessible to anyone (well beyond, therefore, the local reality in which the events took place, where during the investigation there was a lack of collaboration on the part of citizens) and gave rise to a very fast propagation of the same on various websites and on the YouTube web platform (think, again, that the video uploaded to the Twitter account of the State Police, as of May 17, 2019, already counted 49,300 views) . These videos were accompanied, moreover, by various violent and hateful comments, as emerged in the operations carried out on May 17, 2019, which also appears to be in contrast with the purposes alleged by the Ministry of "giving effect to the general preventive function of the criminal sanction , both under the "dissuasive" profile and, above all, under the "positive" one, of "cultural orientation" of the behavior of the associates ". Among the comments in this

sense there is "The same treatment to their parents or grandparents and make them look an eye for an eye tooth for a tooth so much if they do not go to jails ste beasts succeed and return to do what they did".

Furthermore, on June 26, 2019, on the occasion of a press conference relating to the ongoing judicial matter, another video was disclosed that documents two other episodes of violence suffered by the same victim. In particular, the fact that the texts of some messages of the attackers were superimposed on some video images, which describe in detail the violence suffered by the victim, as well as his reactions and statements following the attacks themselves, made it possible to know further details. and details of the violence suffered. While taking some precautions (such as, for example, the modification of the voices and the filter on the video parts), the circumstance that they are real images and messages made the torture to which the man.

Considering this, the disclosure of the XX of the videos in question by the Ministry appears to have occurred in violation of Articles 3 and 5 of the Legislative Decree. n. 51/2018, as processing not "necessary for the execution of a task of a competent authority for the purposes referred to in Article 1, paragraph 2" of Legislative Decree n. 51/2018 (see Article 5 of Legislative Decree cit.).

#### 4. Conclusions.

In light of the aforementioned assessments and taking into account the statements made by the data controller during the investigation (with respect to which, unless the fact constitutes a more serious crime, anyone, in a proceeding before the Guarantor, falsely declares or certifies information o circumstances or produces false deeds or documents responsible for them pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the execution of the tasks or exercise of the powers of the Guarantor"), the elements provided by the data controller in the aforementioned defensive briefs do not allow the findings notified by the Office to be overcome with the act of initiating the procedure, however, none of the cases provided for by art. 11 of the Guarantor Regulation n. 1/2019.

In other words, the videos in question were disseminated by the Ministry in violation of the regulations on the protection of personal data and in a way that was seriously damaging to the dignity of the person concerned due to the atrocity of the documented acts and the state of absolute subjection of the victim. In the presence of much less consistency the cases in which the jurisprudence has recognized the illegitimacy of the dissemination of the data and, in particular, those considered by the aforementioned ECtHR jurisprudence.

For these reasons, the processing of personal data carried out by the Ministry of the Interior through the disclosure in question is illegal, in violation of Articles 3, co. 1, lett. a) and c) and 5 of Legislative Decree no. 51/2018 and 14 of the Presidential Decree n. 15/2018.

Violation of the provision referred to in Article 3, paragraph 1, letter a) is punished, pursuant to art. 42, paragraph 1, of the legislative decree n. 51/2018, with the administrative sanction of the payment of a sum from 50,000 euros 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), h), i), k), of the Regulation.

On the basis of these criteria, the particular nature of the data in question must be taken into account (in relation to the health conditions of the interested party and the circumstance that the videos document the atrocious violence suffered by the same, subsequently deceased, whose voice is clearly heard in one of the two videos) and the extent of the prejudice for the interested party deriving from their making available to an indeterminate audience of subjects (also in consideration of the fact that they are still available online). It must also be taken into account that, although the Ministry was activated - in the course of proceedings before the Guarantor - for the removal of the videos in question and despite having given every willingness to deepen the investigation, shortly afterwards we witnessed an further disclosure of another video relating to the matter in question, made public at the press conference on June 26, 2019 (with respect to which the Ministry did not provide any information in the defense briefs).

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction provided for by art. 42, paragraph 1, of the legislative decree n. 51/2018, to the extent of € 75,000 (seventy-five thousand) for the violation of art. 3, paragraph 1, lett. a) of Legislative Decree no. 51/2018 as a pecuniary administrative sanction deemed, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

It is also believed 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 the unlawfulness of the data processing of the interested party for violation of art. 3, co. 1, lett. a) of Legislative Decree no. 51/2018, as well as art. 3, co. 1, lett. c), 5 of Legislative Decree no. 51/2018 and 14 of the Presidential Decree n. 15/2018, in the terms set out in the motivation and, consequently,

## ORDER

to the Ministry of the Interior, the data controller, to pay the sum of € 75,000.00 (seventy-five thousand) as a fine for the violation of art. 3, paragraph 1, lett. a) of Legislative Decree no. 51/2018, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within thirty days, an amount equal to half of the sanction imposed;

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to the aforementioned owner, in case of failure to define the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of € 75,000.00 (seventy-five 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;

## HAS

pursuant to art. 166, paragraph 7, of the Code, the full 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 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to art. 39, paragraph 3 of the legislative decree n. 51/2018 and 10 of the d. lgs. 1 September 2011, n. 150, an opposition may be proposed against this provision, alternatively, to the court of the place where the data controller resides or has its headquarters, or to the court of the place of residence of the interested party, within thirty days from the date of communication of the provision itself.

Rome, June 10, 2021

## PRESIDENT

Stanzione

## THE RAPPORTEUR

Ghiglia

## THE SECRETARY GENERAL

Mattei