

Injunction against the Democratic Party, Metropolitan Coordination of Florence - 31 October 2019

Register of measures

no. 204 of 31 October 2019

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, in the presence of Dr. Antonello Soro, president, of dott.ssa Augusta Iannini, vice president, of dott.ssa Giovanna Bianchi Clerici and of prof.ssa Licia Califano, members and of dott. Giuseppe Busia, general secretary;

CONSIDERING the art. 1, paragraph 2, of the law of 24 November 1981, n. 689, pursuant to which the laws that provide for administrative sanctions are applied only in the cases and for the times considered in them;

NOTING that, following some articles in the press which informed of an IT attack on the website of the Democratic Party of Florence (www.partitodemocratico.fi.it) with consequent violation of the personal data of citizens registered with the aforesaid party, the Office initiated a preliminary investigation, as a result of which it was found that:

- the data subject to the violation involved a plurality of names of members of the Florence PD, consisting of name, surname, date of birth and address (including e-mail);
- the personal data of the members, collected by the local clubs and uploaded to the database subject to the cyber attack, could be viewed by the clubs themselves (limited to the part referring to their members) and by Dr. XX, head of communication of the Florentine PD and owner of the admin account;
- the management and maintenance of the website was entrusted exclusively to Dr. XX, using the infrastructure of the A.P. Software Informatica s.a.s. of which he was the legal representative;
- the A.P. Software Informatica s.a.s. has not been designated as responsible for the processing of personal data, pursuant to art. 29 of the Personal Data Protection Code (Legislative Decree 196/2003, hereinafter the "Code") in the formulation prior to the changes introduced by Legislative Decree no. 101/2018);

CONSIDERING the provision n. 3 of 10 January 2019 (in www.garanteprivacy.it, web doc. n. 9082416), which is referred to in its entirety here, with which the Authority ascertained the illegality of the treatment put in place by the PD - Citizen Coordination of Florence, who communicated the personal data of Party members to a third party (A.P. Software Informatica s.a.s.) in the absence of the consent of the interested parties in violation of art. 26 of the Code, also in the formulation prior to the changes

introduced by Legislative Decree no. 101/2018;

CONSIDERING the report n. 9594/123911 of 19 March 2019, with which it was challenged to the Democratic Party -

Metropolitan Coordination of Florence, with headquarters in Florence, Via XX, Tax Code XX, in the person of the pro-tempore legal representative, the administrative violation envisaged by art. 162, paragraph 2-bis, of the Code, applied in conjunction with art. 164-bis, paragraph 1, in relation to art. 26 of the same Code, informing it of the right to make the payment in a reduced amount;

CONSIDERING that the report prepared by the Office pursuant to art. 17 of the law n. 689/1981 the reduced payment has not been made;

HAVING REGARD TO the written defenses presented by the PD Metropolitan Coordination on 3 May 2019, sent pursuant to art. 18 of the law of 24 November 1981, n. 689, with which it was found that the dispute report contains "a clear discrepancy between the device and the reasoning which, in fact, are different in identifying the person to whom the violation is contested", where in fact the dispute report is drawn up and notified against the PD Metropolitan Coordination (while the investigation and the provision of the Authority are addressed to the PD Coordination citizen). The party therefore highlighted how Citizen Coordination and Metropolitan Coordination are two autonomous and independent branches of the Party at the regional level. Therefore, he requested that the dispute report be annulled;

WHEREAS the arguments put forward are not suitable for excluding the liability of the party in relation to the disputed matter. During the investigations conducted by the Office, aimed at obtaining any useful element of evaluation regarding the violation of personal data that occurred on the website of the Democratic Party of Florence (with particular reference to the identification of the owner and any other person involved in the matter de quo) the only interlocutor of the requests for information was the Citizen Coordination which, in the person of its pro-tempore legal representative as well as treasurer and in the name of the Florence PD, declared that the company A.P. Software Informatica s.a.s., in charge of the management and maintenance of the aforementioned website through the figure of its legal representative, had not been designated as responsible for the processing of personal data of party members. Therefore, with the aforementioned provision of 10 January 2019, the Authority identified the citizen Coordination as the subject who communicated the personal data of Party members to a third party, in the absence of the necessary conditions of legitimacy. Given this, in the subsequent phase of initiating the sanctioning procedure, the Office proceeded with a further verification aimed at identifying the subject, with organisational, decision-making and

financial autonomy, to whom to serve the notice of dispute. From this point of view, the checks conducted by the Office have led to the identification of the subject in the Metropolitan Coordination in possession of the required requisites, to whom the unlawful conduct is to be charged from a sanctioning point of view. In fact, the tax code, placed at the bottom of the website under investigation, in the Tax Registry database is assigned to the Metropolitan Coordination of Florence. Therefore, taking into account the federal structure of the PD at the regional level, according to which the Metropolitan Coordination of the Florence PD, as a federation, includes the Citizen Coordination, the Municipal Unions and the Territorial Circles (articles 7, 8 and 9 of the Statute of the Tuscany PD of 28 June 2008), it is believed that the same is, together with the other territorial articulations, the center of imputation of the conducts object of the present sanctioning procedure;

CONSIDERING that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor";

NOTING, therefore, that the Democratic Party - Metropolitan Coordination of Florence, in its capacity as data controller, has processed personal data (Article 4, paragraph 1, letter a) and b) of the Code) by communicating personal data to a third party in the absence of the consent of the interested parties required by art. 26 of the Code;

CONSIDERING the art. 162, paragraph 2-bis, of the Code which punishes the violation of the provisions indicated in art. 167, including the art. 26 of the Code, with the administrative sanction of payment of a sum from ten thousand euros to one hundred and twenty thousand euros;

CONSIDERING that the conditions for applying art. 164-bis, paragraph 1, of the Code, according to which "if any of the violations pursuant to art. 161, 162, 162-ter, 163 and 164 is less serious, the minimum and maximum limits established in the same articles are applied to an extent equal to two fifths";

CONSIDERING that, for the purposes of determining the amount of the pecuniary sanction, it is necessary to take into account, pursuant to art. 11 of the law of 24 November 1981 n. 689, of the work carried out by the agent to eliminate or mitigate the consequences of the violation, the seriousness of the violation, the personality and economic conditions of the offender;

CONSIDERED having to determine, pursuant to art. 11 of the law n. 689/1981, the amount of the fine for the violation of art.

162, paragraph 2-bis, of the Code in the amount of 4,000.00 (four thousand) euros, applied in conjunction with art. 164-bis, paragraph 1, of the Code;

HAVING REGARD to the documentation in the deeds;

HAVING REGARD to the law of 24 November 1981 n. 689, and subsequent modifications and additions;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER Dr. Augusta Iannini;

ORDER

to the Democratic Party, Metropolitan Coordination of Florence, with headquarters in Florence, Via XX, C.F. XX, in the person of the pro-tempore legal representative, to pay the sum of 4,000.00 (four thousand) euros as a pecuniary administrative sanction for the violation envisaged by art. 162, paragraph 2-bis, of the Code indicated in the reasoning;

ENJOYS

to the same subject to pay the sum of 4,000.00 (four thousand) euros according to the methods indicated in the attachment, within 30 days of notification of this provision, under penalty of adopting the consequent executive acts pursuant to art. 27 of the law of 24 November 1981, n. 689.

Pursuant to articles 152 of the Code and 10 of Legislative Decree no. 150/2011, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal lodged with the ordinary court of the place where the data controller has his residence, within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 31 October 2019

PRESIDENT

Soro

THE SPEAKER

Iannini

THE SECRETARY GENERAL

Busia