

Injunction order against the Italian Swimming Federation - June 16, 2022

Record of measures

n. 236 of June 16, 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, Professor 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 of 30 June 2003, n. 196 (Code regarding the protection of personal data, hereinafter the "Code") as amended by Legislative Decree of 10 August 2018, n. 101 on "Provisions for the adaptation of national legislation to the provisions of Regulation (EU) 2016/679";

GIVEN the complaint presented to the Guarantor pursuant to article 77 of the Regulation on 25 March 2021, with which Ms XX complained of an alleged violation of the Regulation, with specific reference to the failure to respond to the request for access to personal data formulated pursuant to art. 15 of the Regulations against the Italian Swimming Federation;

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 complaint and the preliminary investigation.

With the complaint presented to this Authority on 25 March 2021, Ms XX complained that she had not received a response from the Italian Swimming Federation (hereinafter the "Association" or "Federation"), to an application for access to personal data advanced, on February 7, 2021, pursuant to art. 15 of the Regulation; this request, also received at the e-mail address of the Data Protection Officer of the Association, was aimed at obtaining "access and copy of documents containing [one's] personal data" (see complaint of 25 March 2021, Annex 5). The aforementioned request was also sent, on 10 February 2021,

to the General Secretariat of the Italian Swimming Federation (see complaint of 25 March 2021, Annex 6).

Following the invitation, formulated by the Office on 19 April 2021, to provide observations regarding the facts of the complaint, the Association, with a note dated 30 April 2021, first of all declared that the complainant "made a mere request of access to the documents, which has nothing to do with the competence for the protection of personal data, having neither requested nor inferred any violation of the processing by the Federation "(see note of 30 April 2021, page 1). He also specified that the aforementioned "request for access to administrative documents was, however, incorrectly formulated as it was incomplete, not having represented for the purposes of the correct procedure pursuant to Law 241/90 the references relating to the interest for which protection is requested and the specific purposes required by the legislation "(see note of 30 April 2021, page 2).

With a communication dated November 29, 2021, the Office, on the basis of the documentation in the deeds and the elements acquired during the investigation, notified the Italian swimming federation of the initiation of the procedure for the adoption of the measures referred to in Articles 58, par. 2, and 83, of the Regulation in relation to the violation of articles 12 and 15, of the same; this in accordance with the provisions of art. 166, paragraph 5, of the Code.

In this regard, the Association, with a note dated January 31, 2022, sent its defense writings, referred to here in full, with which it, in particular, reiterated that:

in the case of membership of the Italian swimming federation in the "amateurs" category "there is no transfer of documentation to the federation as the current regulation provides for the conservation only of the documents of the proposing company (..).

The text of the regulation is clear in excluding any management and storage of data by the FIN as this duty is foreseen only by the company that must keep them and make them available only and exclusively in the case of Federation checks (...). Based on the foregoing, it is clear that the request for access to the documents carried out by Mrs. XX could not be processed by the FIN for reasons of lack of passive legitimacy of the same "(see note of January 31, 2022, pages 2-3) ;

the Association, following the opening of the investigation by the Guarantor, proceeded to transmit, with communication of 14 December 2021, the documentation containing the personal data of the complainant; this also "in order to prove, where necessary, the complete willingness to collaborate" with the Authority (see note of January 31, 2022, pages 1 and 3).

2. The outcome of the investigation.

First of all it is represented that, unless the fact constitutes a more serious crime, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false acts or documents, is liable pursuant to art.

168 of the Code "Falsehood in declarations to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor".

Having said this, following the examination of the documentation on file and of the declarations made by the Italian Swimming Federation during the proceedings, it was ascertained that the aforementioned Association, as data controller - a condition never contested in this case - , did not provide feedback to the request for access to personal data formulated by the complainant, within the term provided for by art. 12, par. 3, of the Regulations; likewise, the same did not inform the applicant, within the same term, of the reasons for the non-compliance or of the possibility to lodge a complaint with a supervisory authority as well as to propose a judicial appeal (Article 12, paragraph 4, of the Regulation).

In fact, it emerged that the request to exercise the rights was duly notified to the Federation, a circumstance also confirmed by the same owner in the feedback provided to the Guarantor on 30 April 2021 (see note of 30 April 2021, pages 1-3).

Furthermore, the aforementioned communication, unlike what is claimed by the Association regarding the qualification of the same in terms of request for access to documents pursuant to l. of 7 August 1990, n. 241, was clearly identifiable as an instance of exercising rights pursuant to the legislation on the protection of personal data; this is because it expressly bears the words "Request for Access to personal data pursuant to art. 15 -22 of Regulation 679/2016 "both in the subject of the e-mail message containing the request, and in the body of the aforementioned communication and the file attached to it (see complaint of 25 March 2021, Attachments 5 and 6).

The owner, therefore, should have provided timely feedback in the terms and in the manner set out in Articles. 12 and 15, of the Regulations, to nothing, noting the "lack of passive legitimacy" alleged by the Federation as a justification for the failure to reply.

The complaint filed by Ms XX, therefore, in the light of the considerations highlighted above, is well founded, having to recognize the failure of the Italian Swimming Federation to promptly reply to the request for access formulated by the same in violation of Articles 12, paragraphs 3 and 4, and 15, of the Regulation.

In consideration of the spontaneous fulfillment by the owner during the procedure (see below par. 1), there is no prerequisite for adopting a provision with respect to the request to "order the data controller to satisfy the requests to exercise the rights referred to in Articles from 15 to 22 of the Regulations "(see complaint of 25 March 2021, page 4).

3. Conclusions: illegality of the treatments carried out.

In light of the foregoing assessments, it is noted that the statements made by the data controller in the defense briefs, although worthy of consideration and whose truthfulness may be called upon to respond pursuant to the aforementioned art. 168 of the Code, do not allow the findings notified by the Office to be overcome with the act of initiating the procedure and are insufficient to allow archiving, however, none of the cases provided for by art. 11 of the regulation of the Guarantor n. 1/2019, concerning the internal procedures of the Authority having external relevance.

For the above reasons, therefore, the complaint submitted pursuant to art. 77 of the Regulation and, in the exercise of the corrective powers attributed to the Authority pursuant to art. 58, par. 2, of the Regulation, the application of a pecuniary administrative sanction pursuant to art. 83, par. 5, of the Regulation.

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 (art. 18. L. 24 November 1981 n. 689), in relation to the processing of personal data referring to the complainant, whose unlawfulness has been ascertained, within the terms shown above.

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 fact that the violation concerned respect for the rights of the data subject;

as regards the subjective element of the transgressor, the circumstance that the conduct was put in place due to an erroneous qualification of the request by the holder as a request for access to documents, partly also due to the wording used by the complainant (in this case, "I request access and copy of documents containing personal data"; see in this regard, complaint of 25 March 2022, Annex 5).

the collaboration of the Federation with the Authority itself during the procedure;

the absence of previous violations for the same case against the same;

the aforementioned circumstances relating to the action taken by the data controller during the proceedings before the

Authority (see paragraph 1 below).

On the basis of the aforementioned elements, assessed as a whole, as well as the particular nature of the owner (as a non-profit association body), the amount of the pecuniary sanction is determined in the amount of € 2,000.00 (two thousand) for the violation of articles 12, paragraphs 3 and 4, and 15, of the Regulation.

In this context, also in consideration of the type of violation ascertained relating to compliance with one of the main obligations imposed on the data controller by the legislation on the protection of personal data, it is believed that we must proceed, pursuant to art. 166, paragraph 7, of the Code, upon the publication of this provision on the website of the Guarantor (see also art.16, paragraph 1, of the regulation of the Guarantor no. 1/2019).

Finally, it is noted that the conditions set out in art. 17 of the Guarantor Regulation n. 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

a) declares, pursuant to art. 57, par. 1, lett. f) and 83, of the Regulations, the unlawfulness of the processing carried out by the Italian Swimming Federation, based in Rome at the Olympic Stadium curve north SNC, P.I. 01384031009, in the terms set out in the motivation, for the violation of articles 12, paragraphs 3 and 4, and 15, of the Regulation;

b) 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.

ORDER

c) pursuant to art. 58, par. 2, lett. i) of the Regulations, to the aforementioned Italian Swimming Federation to pay the sum of 2,000.00 (two thousand) euros as a pecuniary administrative sanction for the violation indicated in the motivation;

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d) then to the same Association to pay the sum of € 2,000.00 (two 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 submission of the appeal as indicated below.

HAS

e) 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 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, June 16, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei