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Injunction order against Liceo Nobel of Torre del Greco - 30 January 2020

Register of measures

no. 21 of 30 January 2020

GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

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

HAVING REGARD TO Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, as well as on the free circulation of such data and repealing Directive 95/46 /CE, "General Data Protection Regulation" (hereinafter the Regulation);

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data (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, doc. web no. 9107633 (hereinafter "Regulation of the Guarantor n. 1/2019");

Given the documentation in the deeds;

Given the observations made by the Secretary General pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the office of the Guarantor for the protection of personal data, in www.gpdp.it, doc. web no. 1098801;

Speaker Dr. Giovanna Bianchi Clerici;

WHEREAS

1. Introduction

This Authority has received a complaint from Mr. XX in order to publish, on the website of the Nobel Scientific High School of Torre del Greco, an Institute ranking, relating to band III teaching staff, containing personal data such as the residence address

and telephone number of the teachers.

2. The preliminary investigation

From the preliminary verification carried out by the Office on 23 November 2018, it emerged that on the institutional website of the aforementioned Institute, at the url: <https://...>, the aforementioned rankings were visible and freely downloadable, as well as further rankings relating to 1st and 2nd level teachers. The personal data relating to more than 2,000 interested parties were present in the aforementioned rankings.

As part of the verification carried out, the Office found that, in these rankings, in addition to the personal data indicated by the complainant, there were further information of a personal nature relating to the teachers that was not necessary with respect to the purpose pursued with the publication, among which tax code and e-mail addresses and that, in the fields called "Pref. 1" "Pref. 2" "Pref. 3" "Pref. 4" some alphabetic abbreviations were reported, including the letter "S". This letter, according to what is reported in Annex 6 (preference codes) of the Decree of the Ministry of Education, University and Research of 1 April 2014, n. 235 (Update of the rankings once the teaching and educational staff are exhausted, valid for the three-year school years 2014/15, 2015/16 and 2016/17), identifies the category of "invalid and maimed civilians". The interested parties for whom the presence of the abbreviation "S" was detected were around 20.

In this regard, the Nobel Scientific High School responded to the request for information from this Authority (note prot. n. XX of XX) with the note prot. no. XX of the XX

Specifically, the Headmaster, avv. XX, in response to the request for information formulated by the Office, represented, among other things, that:

- a) "in relation to what was reported following the complaint against the dissemination on the institutional website of the ranking of Institute XX showing data covered by privacy, (...) this document was immediately removed from the school website";
- b) "the writer is proceeding, after the appointment of the Data Protection Manager, to implement all the measures envisaged by the regulations in force also in line with the other School institutions of the Territory in order to respect the principle of minimization of the data subject to dissemination with respect to the purposes pursued with the publication."

The Office, on the basis of the checks carried out and the elements acquired, also through the documentation sent by the school and the facts that emerged following the preliminary investigation, as well as the subsequent evaluations, has ascertained that the Liceo Nobel, with the complete publication on the institutional website, of the Institute rankings relating to

teachers, at the url: <https://...>, also containing unencrypted information that is not necessary with respect to the purposes pursued with the publication, as well as data relating to the health of some teachers, has carried out a treatment that does not comply with the relevant regulations on the protection of personal data.

Thus we proceeded with the notification of the violations carried out, pursuant to art. 166, paragraph 5, of the Code, to the school, communicating the start of the procedure for the adoption of the measures referred to in article 58, paragraph 2, of the Regulation and inviting the aforementioned high school to send the Guarantor defensive writings or documents and, possibly, to ask to be heard by the Authority, within 30 days (article 166, paragraphs 6 and 7, of the Code; as well as article 18, paragraph 1, of law no. 689 of 11/24/ 1981).

In particular, the Office considered that the publication of the aforementioned rankings occurred in violation of the legislation on the protection of personal data, resulting in the processing of personal data:

- a) not compliant with the principles of "lawfulness, correctness and transparency" and "data minimization", in violation of art. 5, par. 1, lit. a) and c), of the Regulation;
- b) in the absence of a regulatory prerequisite for the publication of certain personal data such as tax code, address, landline and mobile telephone number, e-mail address, preference codes, data relating to the health of the interested parties, in violation of art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation and 2-ter, paragraphs 1 and 3, of the Code;
- c) in violation of the prohibition of dissemination of data relating to health pursuant to art. 2-septies, paragraph 8, of the Code, and art. 9, par. 1, 2, 4, of the Regulation.

With a note of the XX (prot. n. XX) the Liceo sent its defense briefs, and declared, in particular that:

- a) "the period in which the violations were ascertained coincided with a change in the layout and management of the site. Internal investigations revealed, during the modernization/structural adjustment of the site in the transition from .gov to .edu, that unfortunately some documents present on the old site were not deleted, as expected, due to technical problems related to these migration operations of information systems. These updates made, now provide for an upstream check, before publication through an extended validation certificate; therefore, in the future, such problems will not arise again. to violation."
- b) "the undersigned asks to take into account, with reference to the letter "S" present in the aforementioned ranking, that the meaning of the same is not immediately attributable to information relating to data relating to "health" except by reading the MIUR decree of 1 April 2014 n. 235".

3. Outcome of the investigation relating to the complaint presented. Applicable legislation

As a preliminary point, it should be noted that, although the violation of personal data subject to the investigation by this Authority began before the date of full application of the Regulation, in order to determine the applicable regulatory framework in terms of time, the principle must be recalled of legality pursuant to art. 1, paragraph 2, of the law n. 689 of 24 November 1981 which, in providing that "The laws that provide for administrative sanctions are applied only in the cases and within the times considered in them", establishes the recurrence of the principle of *tempus regit actum*. The application of this principle therefore determines the obligation to take into consideration the provisions in force at the time of the violation committed. In the case in question, considering the permanent nature of the disputed conduct, for the purpose of correctly identifying the disciplinary framework, the moment of cessation of the unlawful conduct is relevant, which from the preliminary investigation documents, as mentioned, appears to have lasted at least until the verification carried out by the Office on 23 November 2018, i.e. after 25 May 2018 in which the Regulation became applicable. In this context, the assessment of the lawfulness of the processing of personal data put in place remains unaffected.

Pursuant to the relevant legislation, "personal data" is "any information relating to an identified or identifiable natural person ("data subject")" (Article 4, paragraph 1, no. 1, of the Regulation). Furthermore, "an identifiable natural person is one who can be identified, directly or indirectly, with particular reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more characteristic elements of his physical, physiological, genetic, psychic, economic, cultural or social identity" (*ibidem*).

The processing of personal data carried out in the public sphere is lawful only if such processing is necessary "to fulfill a legal obligation to which the data controller is subject" 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, letters c) and e)).

European legislation also 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), by determining more precisely requirements specific for the treatment and other measures aimed at guaranteeing a lawful and correct treatment (...)" with the consequence that, in the present case, the provision contained in the art. 2-ter of the Code, according to which the operation of dissemination of personal data (such as publication on the Internet), in the public sphere is permitted only when required by law or, in the cases provided for by law, by regulation.

In this context, the processing of personal data must take place in compliance with the principles indicated in the art. 5 of the Regulation, including those of "lawfulness, correctness and transparency" as well as "data minimization", according to which personal data must be - respectively - "processed in a lawful, correct and transparent manner in relation to the interested party" as well as "adequate, pertinent and limited to what is necessary with respect to the purposes for which they are processed" (par. 1, letter a) and c).

In any case, the dissemination of data relating to health is absolutely prohibited (article 9, paragraphs 1, 2 and 4, of the Regulation, article 2-septies, paragraph 8, of the Code), i.e. "personal data pertaining 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, paragraph 1, no. 15; recital no. 35, of the Regulation) .

Furthermore, the Guarantor, in provision no. 243 of 15 May 2014 (web doc. n. 3134436) containing the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public entities and other entities obliged" with reference to the publicity of the results of the competition tests and the final rankings, however, highlighted that "only the pertinent and not excessive data referring to the interested parties must be disclosed. Therefore, data relating to the contact details of the interested parties cannot be published (think of landline or mobile phone numbers, residential or e-mail addresses, tax code, the ISEE indicator, the number of disabled children, results of psycho-aptitude tests or educational qualifications), nor those concerning the health conditions of the data subjects (see Article 22, paragraph 8, of the Code), including references to conditions of invalidity, disability or physical and/or mental handicap " (see part two par. 3.b.).

4. Conclusions

In the light of the considerations 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 and considering that, with reference to the present case, the defense briefs produced by the Institute did not produce elements such as to determine the closure of the proceeding, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing is noted of personal data carried out by the Nobel Scientific High School, for having disseminated, through the complete publication on the institutional website of the Institute rankings relating to the teachers at the url: <https://...>, personal data not necessary with respect to the purposes pursued with the publication of the ranking (tax

code, address, landline and mobile phone number, email address, preference codes) concerning the complainant and over two thousand teachers included in the aforementioned rankings (see with regard to the publication of irrelevant data contained in school rankings, Provision 6 June 2013, n. 275, web doc. n. 2536184, 2536409 and 2535862).

It is also ascertained that the same rankings contained data relating to the health of about 20 teachers. Contrary to what the Institute claims, in fact, the indication of the letter "S" next to the names of the interested parties provides information relating to the state of health of the same, even through the consultation of annex 6 to the MIUR decree of 1 April 2014, no. 235, in violation of the general ban on the dissemination of health data (art. 2-septies of the Code; art. 9 of the Regulation; see, in particular, the consolidated orientation of the Guarantor, even with regard to the previous regulatory framework, Provision n. 35 dated 4 February 2016, web doc. n. 4727305 and 4912481; Provision n. 244 dated 1 June 2016, web doc. n. 5260571, and the provisions cited therein).

The aforementioned dissemination of data continued at least until the verification carried out by the Office, on 23 November 2018, i.e. after the date of 25 May 2018 on which the Regulation became applicable.

This publication took place in violation of the legislation on the protection of personal data and, specifically:

- a) in violation of the principles of "lawfulness, correctness and transparency" and "minimization of data", pursuant to art. 5, par. 1, (par. 1, letters a) and c) of the Regulation;
- b) in the absence of a regulatory prerequisite for the publication of certain personal data such as tax code, address, landline and mobile telephone number, e-mail address, preference codes, in violation of art. 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b), of the Regulation and 2-ter, paragraphs 1 and 3, of the Code;
- c) in violation of the ban on the dissemination of data relating to health (art. 9, par. 1, 2, 4, of the Regulation and art. 2-septies, paragraph 8, of the Code).

In this context, considering, in any case, that the conduct has exhausted its effects, given that the Institute has declared that it has taken steps to remove the document from the school website (see note of 14 December 2018), a circumstance verified by the Office, the conditions for the adoption of corrective measures pursuant to art. 58, par. 2, of the Regulation.

5. Adoption of the injunction order for the application of the pecuniary administrative sanction (articles 58, paragraph 2, letter i, and 83 of the Regulation).

The Nobel scientific high school appears to have violated articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par.

3, letter. b); 9, par. 1, 2, 4, of the Regulation; articles 2-ter paragraphs 1 and 3 and 2-septies, paragraph 8, of the Code.

Therefore, the art. 83, par. 3, of the Regulation, on the basis of which, if, in relation to the same treatment or related treatments, a data controller violates, with willful misconduct or negligence, various provisions of the Regulation, the total amount of the pecuniary administrative sanction does not exceed the amount specified for the most serious violation (referred to in Article 83, paragraph 5, of the Regulation), thus absorbing the other less serious violations. Therefore, the aforementioned violations concerning, among others, the prohibition of dissemination of health data pursuant to art. 2-septies, paragraph 8, of the Code, are to be traced back, pursuant to art. 83, par. 3 of the same Regulation and of the art. 166, paragraph 2, of the Code, in the context of the sanction envisaged for the aforementioned violation with consequent application of the sanction envisaged in art. 83, par. 5, of the Regulation.

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 corrective 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, depending on the circumstances of each individual case" and, in this framework, "the Board [of the Guarantor] adopts the injunction order, with which it also orders the application of the ancillary administrative sanction of its publication, in full 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).

The aforementioned pecuniary administrative sanction imposed, depending on the circumstances of each individual case, must also 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, it was considered that: the detected conduct, carried out in violation of the regulations on the protection of personal data, had as its object the dissemination: of personal data not necessary with respect to the purposes underlying the publication of the rankings (tax code , address, landline and mobile phone number, e-mail address, preference codes), referring to a large number of subjects (more than 2000); of the data relating to the health of about 20 individuals, identified in the ranking through the annotation, next to the names concerned, of the letter "S" as a title of preference indicating the category of "invalid and maimed civilians", pursuant to MIUR Decree 1st April 2014, No. 235, Annex 6, relating to "preference codes". This dissemination of personal data lasted for a considerable amount of time (several years).

The violations derive from the publication of rankings relating to teaching staff on the school's institutional website; in relation to forms of diffusion similar to those in question, in the past, the Guarantor had adopted the aforementioned "Guidelines on the

processing of personal data, also contained in administrative deeds and documents, carried out for the purpose of advertising and transparency on the web by public subjects and other obliged bodies” with which he had given a series of indications to public subjects to comply with the provisions on data protection when they disseminate personal data on the web.

On the other hand, it was considered that: the represented technical problems highlight the culpable nature of the violation; the Institute took action to remove the personal data of the interested parties as soon as it received the request for information and therefore collaborated with the Authority during the investigation of the present proceeding in order to remedy the violation and mitigate its possible negative effects; the Institute has launched a series of actions aimed at implementing the technical and organizational measures. Furthermore, there are no previous violations of the pertinent Regulations committed by the Nobel High School.

Based on the aforementioned elements, evaluated as a whole, also taking into account the phase of first application of the sanctioning provisions pursuant to art. 22, paragraph 13, of Legislative Decree lgs. 10/08/2018, no. 101, it is deemed necessary to determine pursuant to art. 83, par. 2, of the Regulation, the amount of the pecuniary sanction, provided for by art. 83, par. 5, letter. a) of the Regulations, to the extent of 4,000.00 (four thousand) euros for the violation of articles 5, par. 1, lit. a) and c); 6, par. 1, lit. c) and e), par. 2 and par. 3, letter. b) of the Regulation; 9, par. 1, 2, 4, of the Regulation, articles 2-ter paragraphs 1 and 3 and 2-septies, paragraph 8, of the Code, as a pecuniary administrative sanction deemed effective, proportionate and dissuasive pursuant to art. 83, par. 1, of the same Regulation.

In relation to the specific circumstances of the present case, it is also believed - also in consideration of the high number of interested parties involved; the type of data being unlawfully disclosed; of the time elapsed from the time of publication until the ranking is removed from the website of the aforementioned high school - that the accessory sanction of publication of this provision on the website of the Guarantor must 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

declares the illegality of the processing of personal data carried out by the Liceo Nobel of Torre del Greco, for the violation of the articles 5, par. 1, lit. a) and c); 6, par. 1, c) and e), par. 2 and par. 3, letter. b); art. 9, par. 1, 2, 4, of the Regulation; articles

2-ter paragraphs 1 and 3 and 2-septies, paragraph 8, of the Code, in the terms set out in the justification;

ORDER

pursuant to articles 58, par. 2, lit. i) and 83 of the Regulation, as well as art. 166 of the Code, at the Nobel State Scientific High School of Torre del Greco, with registered office in Via Alcide De Gasperi, 80/Bis, 80059, Torre Del Greco (Naples) – Tax Code 80060960632, in the person of the pro-tempore legal representative, to pay the sum of 4,000.00 (four thousand) euros as an administrative fine for the violations indicated in this provision; 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 the term of thirty days, an amount equal to half of the fine imposed;

ENJOYS

to the same Institute, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, 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 the adoption of the consequent executive deeds pursuant to art. . 27 of the law n. 689/1981;

HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor and believes 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.

Pursuant to art. 78 of the Regulation, of the articles 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, 30 January 2020

PRESIDENT

Soro

THE SPEAKER

Cleric Whites

THE SECRETARY GENERAL

Busia