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Injunction order against the Municipality of Afragola - May 26, 2022

Record of measures

n. 198 of May 26

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 dr. Claudio Filippi, Deputy Secretary General;

GIVEN the Regulation (EU) 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 and which repeals Directive 95/46 / CE, "General Data Protection Regulation" (hereinafter, "Regulation");

GIVEN the legislative decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of individuals with regard to to the processing of personal data, as well as to the free circulation of such data and which repeals Directive 95/46 / EC (hereinafter the "Code");

GIVEN the Regulation 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 April 2019, published in the Official Gazette n. 106 of 8 May 2019 and in 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. Introduction.

With a complaint of the XX, submitted pursuant to art. 77 of the Regulations, the complainant, a former employee, with the

qualification of manager, of the Municipality of Afragola (hereinafter, the "Municipality"), complained about the dissemination of his personal data in the context of the publication of his curriculum vitae on the institutional website of the Municipality, despite the employment relationship with the person concerned had already ceased on XX.

The complainant stated that his curriculum vitae was also available on a website attributable to the Municipality (https: // ...).

The publication on this web page of the complainant's curriculum vitae (which contained data such as residential address, mobile phone number and personal e-mail addresses), and its indexing on search engines have been ascertained by the Authority dated XX.

With the complaint, the interested party also pointed out their particular personal condition, in the region of which the dissemination of their personal data could have entailed risks for themselves and their family.

The complainant also complained of having submitted to the Municipality, on the 20th, an application to oppose the disclosure of their personal data, without having, however, received a reply.

2. The preliminary activity.

With a note of the XX (prot. No. XX), the Authority, pursuant to art. 15 of the “Regulation no. 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 "of April 4, 2019 (web doc. N. 9107633), invited the Municipality to adhere to the requests made by the interested party, providing feedback to the same within twenty days from the date of receipt of the invitation (or by the 20th) and proceeding to inform the Authority about the decisions adopted. Moreover, on that occasion, the Authority informed the Municipality of the aforementioned particular personal situation in which the complainant found himself, highlighting the opportunity to promptly accept the request for opposition to the disclosure presented by the same.

With a note of the XX (prot. N. XX of the XX), also sent to the Authority for information, the Secretary General of the Municipality invited and warned the company XX, which managed, on behalf of the Municipality, the "Transparent Administration" page on the relative institutional website, to delete the personal data of the complainant (address, residence and mobile number), simultaneously asking the competent Manager "to act promptly in order to ensure, in a short time, the correct processing of the request" of the interested party.

With a note of the XX (prot. N. XX), also sent to the Authority for information, the Secretary General of the Municipality asked the same Manager to "provide a brief report regarding the publication of the curriculum vitae in question in which it is specified:

the causes of the delay in replying to the interested party [...] [and] the feasibility or otherwise, pursuant to Legislative Decree 33/2013, of removing the document from "Transparent Administration" ".

With a note of the XX (prot. N. XX), also sent to the Authority for information, the Secretary General of the Municipality "invites [goes] and warns [goes] the Manager [...] to take action with extreme concern for the removal of data [of the complainant] ".

With a note of the XX (prot.n.XX), also sent to the Municipality, the Manager in question declared that:

"The Municipality [...] promptly proceeded to eliminate from its Transparent Administration website any reference to the assignment conferred on the [complainant], both five years from publication and three years following the expiry of the assignment having elapsed, so as prescribed pursuant to Legislative Decree 33/2013 ";

"The [Municipality] cannot proceed autonomously with the cancellation of such data, given that currently the Municipality [...] is no longer supported in the management relating to the publication of data on" Transparent Administration ", by company XX, the company at the time entrusted of the aforementioned service, for which with note prot. N. XX of the XX, signed by the Secretary General, [...] the company XX was invited and warned, for violation of the rules on privacy, to delete the personal data of the [complainant], [...], which can still be found in the search engines ";

"With subsequent note prot. n. XX of the XX [it] urged and warned again the XX company to solve the problem, obscuring the link ... ";

“The Municipality […] has, therefore, promptly and within the terms indicated, by the Guarantor […], found the requests for exercise of the rights of the [complainant], providing for the part of its competence to eliminate from Sect. Transparent Administration of its website, both the curriculum and any other reference to the assignment given to the [complainant,] having expired the prescribed publication terms. Therefore, no charge can be made to the Municipality […], for lack of or unsuitable reply ”;

With a note of the XX (prot. N. XX), the Municipality informed the interested party, and for knowledge also the Authority, that it had "eliminated from its Transparent Administration website not only the sensitive data contained in the curriculum vitae but also any reference to the assignment […] conferred [to the complainant] by [the] Administration, since both the five years from the publication and the three years following the expiry of the assignment have elapsed, as prescribed pursuant to Legislative Decree 33/2013 ".

In the same note, the Municipality also communicated that "the Municipality of Afragola is no longer supported in the

management relating to the publication of data on" Transparent Administration ", by company XX, the company at the time entrusted with the aforementioned service", having , therefore, the Municipality invited and warned the same to provide for the cancellation of "personal data, in their possession, still found in search engines". In this regard, the complainant was informed that "the company XX has also provided, to the extent of its specific competence, the cancellation of [...] personal data by obscuring the link ....

With a note of the XX (prot. No. XX), the Office, on the basis of the elements acquired, the verifications carried out and the facts that emerged as a result of the investigation, notified the Owner, pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the measures referred to in art. 58, par. 2, of the Regulation, concerning the alleged violations of articles 5, par. 1, lett. a) and c), 6 and 12, para. 3 and 4, of the Regulations, as well as 2-ter of the Code (in the text prior to the changes made by the Legislative Decree 8 October 2021, n.139), inviting the aforementioned holder 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, as well as art. 18, paragraph 1, of the l. 24 November 1981, n. 689).

With a note of the XX (prot.n.XX), the Municipality presented a defensive brief, declaring, in particular, that:

"There is no subjective element of guilt on the part of the Municipality of Afragola, taking into account that the technical intervention on the publication platform was not available to the Municipality and that the same was no longer supported in the management relating to the publication of data on "Transparent Administration", by company XX, the company at the time entrusted with the aforementioned service ";

"In particular, the publication service on transparent administration, entrusted to an external software house, should have been implemented by ensuring, by default and by design, the automatic removal of the curriculum upon expiry of the term provided for by art. 15, paragraph 1, of the legislative decree 14 March 2013, n. 33 with regard to the holders of collaboration or consultancy assignments ";

"With regard to the diligent behavior of the Municipality, the absence of fault must be recognized in the circumstance that, promptly, with note prot. n. XX of the XX, signed by the Secretary General, and with subsequent note prot. n. XX of the XX of the Human Resources Service invited and warned, the XX to the cancellation of the personal data [of] the complainant, in their possession, still found in the search engines ";

"With communication of the XX, XX communicated that" (...), the data published on the portal installed on our web servers,

starting from the XX will no longer be visible and from the XX the data will be deleted "";

"Following a check carried out in the afternoon of the twentieth, it appeared that the curriculum was no longer visible";

the Municipality intends to adopt a series of initiatives, including training, to ensure compliance with the legislation on data protection when publishing deeds and documents on the institutional website for the purpose of transparency of the administrative action;

"The complaint was received on XX [...] and the communication to the interested party and the Authority took place on XX [...], [the] [...] violation of art. 12, par. 3 and par. 4 of the Regulations, having [the Municipality] provided such feedback within one month ".

3. Outcome of the preliminary investigation.

3.1 Failure to respond to the request to exercise the rights of the interested party.

Art. 12 of the Regulation provides that the data controller must provide the data subject with information relating to the action taken regarding a request pursuant to articles 15 to 22 of the Regulation without undue delay and, in any case, at the latest within one month of receipt. of the request itself (par. 3). If he does not comply with the data subject's request, the data controller must inform the data subject without delay, and at the latest within one month of receiving the request, of the reasons for the non-compliance and of the possibility to lodge a complaint with a supervisory authority. and to propose a judicial appeal (par. 4).

In the present case, as emerges from the documentation in the deeds, the interested party submitted to the Municipality his application for opposition to the processing on the XXth date and the Municipality provided a reply to the same only on the XXth date, therefore well after the deadline of one month. provided for by the legislation on data protection and only following the invitation formulated by this Authority, without, however, having informed the complainant of the reasons for the non-compliance and of the possibility to lodge a complaint with a supervisory authority and appeal jurisdiction within the same term, in violation of art. 12, para. 3 and 4, of the Regulation.

3.2 The dissemination of personal data.

The personal data protection discipline provides that public subjects, in the context of the work context, may process the personal data of the interested parties, also relating to particular categories, if the processing is necessary, in general, for the management of the employment relationship. and to fulfill specific obligations or tasks provided for by the law or the law of the

Union or of the Member States (art. 6, par. 1, lett. c), 9, par. 2, lett. b) and 4 and 88 of the Regulation). The processing is also lawful when it is "necessary for the performance of a task of public interest or connected to the exercise of public authority vested in the data controller" (Article 6, paragraph 1, letter e), 2 and 3, and art. 9, par. 2, lett. g), of the Regulations; art. 2-ter of the Code, in the text prior to the changes made by Legislative Decree 8 October 2021, n. 139).

European legislation provides that "Member States may maintain or introduce more specific provisions to adapt the application of the rules of the [...] Regulation with regard to processing, in accordance with paragraph 1, letters c) and e), determining more precisely specific requirements for processing and other measures aimed at guaranteeing lawful and correct processing […] "(Article 6, par. 2, of the Regulation). In this regard, it should be noted that the dissemination of personal data (such as publication on the Internet) by public entities is permitted only when provided for by a law or, in the cases provided for by law, by regulation (cf. . art. 2-ter, paragraphs 1 and 3, of the Code, in the text prior to the changes made by the legislative decree 8 October 2021, n. 139).

The data controller is required, in any case, to comply with the principles of data protection, including that of "lawfulness, correctness and transparency" as well as "data minimization", on the basis of which personal data must be "processed in a lawful, correct and transparent manner towards the data subject" and must be "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter a) and c), of the Regulation).

That said, it is noted that the Municipality has published the curriculum vitae of the complainant up to the XX, well beyond the term of three years from the date of termination of the employment relationship (ie the XX), provided for by art. 14, paragraph 2, of the legislative decree 14 March 2013, n. 33. In this regard, it is noted that the fact that the curriculum vitae in question remained available online beyond the time frame provided for by the aforementioned sector regulations, led to the dissemination of personal data in the absence of a legal basis.

Moreover, the aforementioned curriculum vitae contained additional data other than those necessary to fulfill this legal obligation, such as the residential address, mobile phone number and private e-mail addresses. In this regard, it should be noted that already in the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purposes of advertising and transparency on the web by public entities and other obliged entities" (provision 15 May 2014, n.243, web doc. n. of transparency pursued. Therefore, "before publishing the curricula on

the institutional website, the data controller must [...] make a careful selection of the data contained therein", failing to publish "excess data, such as personal contact details or tax code of the interested parties, also in order to reduce the risk of so-called identity theft "(part one, par. 9.a.).

As it emerged during the investigation, the Municipality has instead published the curriculum vitae of the complainant without previously obscuring the data relating to the personal sphere of the same (such as the residential address, the mobile number and the e-mail addresses personal), which cannot be considered "adequate, relevant and limited to what is necessary with respect to the purposes for which they are processed" (Article 5, paragraph 1, letter c), of the Regulation; cfr., with regard to the online publication of curriculum vitae containing personal data not necessary with respect to the purposes pursued, prov. 16 December 2021, n. 448, doc. web n. 9742923 and prov. of 29 April 2021, n. 171, doc. web n. 9682169, as well as the previous provisions. referred to in them).

As for the defense thesis advanced by the Municipality, according to which the publication of the complainant's curriculum vitae would have depended on the negligent conduct of the supplier who had been entrusted with the management of the "Transparent Administration" page of its institutional website, it is noted that the data controller is the subject on whom the decisions regarding the purposes and methods of processing the personal data of the interested parties fall and who has a "general responsibility" on the treatments put in place (cons. 79 of the Regulation; see art. 5, par. 2 , the so-called principle of "accountability", and 24 of the Regulation), even when certain processing operations are carried out by a manager on his behalf, on the basis of the instructions given by the owner (see, lastly, provision of 10 February 2022 , n. 43, web doc. n. 9751498 and the previous provisions referred to therein; see also the "Guidelines 07/2020 on the concepts of data controller and manager of the processing pursuant to the GDPR ", adopted by the European Data Protection Committee on 7 July 2021, spec. par. 174).

In this regard, it should be noted that, based on art. 28, par. 3, lett. g), of the Regulation, the data protection agreement, which the owner and the manager are required to stipulate before starting the processing, must specifically provide that "the data controller [...] at the choice of the data controller, deletes o returns all personal data to him after the provision of the services relating to the processing has ended and deletes existing copies, unless the law of the Union or of the Member States provides for data retention ". It is therefore up to the owner to take, among other things, decisions regarding the cancellation or return of the personal data being processed, giving the necessary information to the manager and ensuring that they are correctly

carried out. This also in order to avoid that the owner does not lose full control over the data that, as in this case, he must process to fulfill specific legal obligations (with regard to the possible risks deriving from the absence or inappropriate regulation of the relationship with the data processor, see prov. September 17, 2020, n.160, web doc. n. 9461168).

In the present case, the Municipality has not proved that it has given its supplier - neither during the contractual relationship nor at its termination - adequate indications for the purposes of the correct management of the life cycle of personal data processed on its own behalf.

The disclosure of the complainant's personal data, which, by reason of the foregoing, must be considered, in any case, attributable to the Municipality, as data controller, has therefore occurred in a manner that does not comply with the principles of "lawfulness, correctness and transparency "and" data minimization ", and in the absence of an appropriate legal basis, in violation of Articles 5, par. 1, lett. a) and c), and 6 of the Regulations, as well as 2-ter of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021).

4. Conclusions.

In light of the aforementioned assessments, it is noted that the statements made by the data controller during the investigation □ the truthfulness of which one may be called to respond pursuant to art. 168 of the Code □, although worthy of consideration, do not allow to overcome the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the dismissal of this proceeding, since none of the cases provided for by the 'art. 11 of the Guarantor Regulation n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed and the unlawfulness of the processing of personal data carried out by the Data Controller is noted, for having disclosed the complainant's personal data, including those relating to his or her private sphere, in a manner that does not comply with the principles of "lawfulness , correctness and transparency "and" data minimization ", and in the absence of a legal basis, as well as for not having promptly responded to the complainant's request to exercise the right to object to the processing, without, however, having informed him of the reasons for the non-compliance and the possibility to lodge a complaint with a supervisory authority and to propose a judicial appeal, in violation of articles 5, par. 1, lett. a) and c), 6 and 12, para. 3 and 4 of the Regulations, as well as 2-ter of the Code (in the text prior to the changes made by Legislative Decree No. 139 of 8 October 2021).

The violation of the aforementioned provisions makes the administrative sanction provided for by art. 83, par. 5, of the Regulation, pursuant to art. 58, par. 2, lett. i), and 83, par. 3, of the same Regulation, as also referred to by art. 166, paragraph

2, of the Code.

In this context, considering, in any case, that the conduct has exhausted its effects - given that the dissemination of the data ceased on date XX and the owner has provided feedback to the interested party regarding his request to exercise his rights - the conditions for the adoption of further 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 and ancillary sanctions (articles 58, par. 2, lett. I and 83 of the Regulation; art. 166, paragraph 7, of the Code).

The Guarantor, pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations as well as art. 166 of the Code, has the power to "inflict an administrative pecuniary 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 single case "and, in this context," the College [of the Guarantor] adopts the injunction order, with which it also disposes with regard to the application of the ancillary administrative sanction of its publication, in whole or in excerpt, on the website of the Guarantor pursuant to Article 166, paragraph 7, of the Code "(Article 16, paragraph 1, of the Guarantor Regulation no. 1/2019).

In this regard, taking into account art. 83, par. 3, of the Regulations, in this case the violation of the aforementioned provisions is subject to the application of the pecuniary administrative sanction provided for by art. 83, par. 5, of the Regulation.

The aforementioned administrative fine imposed, depending on the circumstances of each individual case, must be determined in the amount taking into 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 had as its object the dissemination of personal data also relating to the personal sphere of the complainant (such as the residence address, mobile phone number and private e-mail addresses), despite the numerous indications given by the Guarantor to all public entities since 2014 with the "Guidelines on the processing of personal data, also contained in administrative deeds and documents, carried out for the purposes of advertising and transparency on the web by public entities and others obliged entities ", cited above. The dissemination of such information has, however, exposed the interested party, due to their particular personal situation, to potential risks for their own safety and that of their family. Account was also taken of the considerable period of time in which the personal data of the data subject were disseminated - i.e. from the expiry of the three years following the date of termination of the employment relationship (XX) up to the XX -, as well as the conspicuous delay with which the Municipality took steps, on the XXth date, to provide feedback to the interested party's request to exercise their rights, however only

following the invitation to adhere formulated by the Authority and after the deadline given by the Authority for the purpose of replying to the interested party (XX); this has also highlighted certain criticalities both within its organization regarding the division of tasks and responsibilities for the purpose of fulfilling the obligations established by the legislation on the protection of personal data, and in relations with the supplier .

On the other hand, it was favorably taken into consideration that the violation did not concern particular categories of personal data and that it involved only one interested party. The owner then provided assurances regarding the ways in which in the future it will publish deeds and documents containing personal data on its institutional website. Furthermore, there are no previous relevant violations committed by the data controller or previous provisions pursuant to art. 58 of the Regulation.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the pecuniary sanction in the amount of € 10,000 (ten thousand) for the violation of Articles 5, par. 1, lett. a) and c), 6 and 12, para. 3 and 4, of the Regulations, as well as 2-ter of the Code (in the text prior to the changes made by Legislative Decree 8 October 2021, no. 139), as an administrative pecuniary sanction, pursuant to art. 83, par. 1, of the Regulation, effective, proportionate and dissuasive.

Taking into account the considerable period of time in which the complainant's personal data have been disclosed, it is also believed that the ancillary sanction of the publication on the website of the Guarantor of this provision, provided for by art. 166, paragraph 7 of the Code and art. 16 of the Guarantor Regulation n. 1/2019.

Finally, it is noted that the conditions set out in art. 17 of Regulation no. 1/2019.

WHEREAS, THE GUARANTOR

declares, pursuant to art. 57, par. 1, lett. f), of the Regulations, the unlawfulness of the processing carried out by the Data Controller for violation of Articles 5, par. 1, lett. a) and c), 6 and 12, para. 3 and 4, of the Regulations, as well as 2-ter of the Code (in the text prior to the amendments made by Legislative Decree No. 139 of 8 October 2021), within the terms set out in the motivation;

ORDER

pursuant to art. 58, par. 2, lett. i) and 83 of the Regulations, as well as art. 166 of the Code, to the Municipality of Afragola, in the person of the pro-tempore legal representative, with registered office in Piazza Municipio, 1 - 80021 Afragola (NA), C.F. 80047540630, to pay the sum of Euro 10,000 (ten thousand) as a pecuniary administrative sanction for the violations indicated

in the motivation. 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 30 days, an amount equal to half of the sanction imposed;

INJUNCES

to the aforementioned Municipality, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of € 10,000 (ten 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 l. n. 689/1981;

HAS

the publication of this provision on the website of the Guarantor pursuant to art. 166, paragraph 7, of the Code (see Article 16 of the Guarantor Regulation No. 1/2019);

the annotation of this provision in the internal register of the Authority, provided for by art. 57, par. 1, lett. u), of the Regulations, violations and measures adopted in compliance with art. 58, par. 2, of the Regulation (see art.17 of the Guarantor's Regulation no. 1/2019).

Pursuant to art. 78 of the Regulation, 152 of the Code and 10 of Legislative Decree no. 150/2011, 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, May 26, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE DEPUTY SECRETARY GENERAL

Philippi