

[doc. web n. 9673732]

Injunction order against the Rome Bar Association - April 15, 2021

Record of measures

n. 141 of April 15, 2021

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, 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 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 4/4/2019, published in the Official Gazette n. 106 of 8/5/2019 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;

Professor Ginevra Cerrina Feroni will be the speaker;

WHEREAS

1. The complaint.

With a complaint of 1 August 2019, submitted pursuant to art. 77 of the Regulations, Mr. XX complained that the Rome Bar Association (hereinafter, the "Order") would not have responded to a request to exercise the right to access personal data,

sent by the interested party, pursuant to art. 15 of the Regulations, by e-mail on 28 June 2019.

2. The preliminary activity.

With a note dated October 15, 2019 (prot. Authority over the decisions adopted).

With a note dated 31 October 2019 (prot. No. 21620), subsequently forwarded, on 22 November 2019, to a different e-mail address indicated by the complainant, the Order found the interested party's request to exercise their rights.

On the basis of the elements acquired, also through the documentation sent and the facts that emerged during the investigation, the Office notified the Order (note prot. 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 Regulations, concerning the alleged violation of art. 12, para. 3 and 4, of the Regulations, inviting the Order to produce defensive writings or documents to the Guarantor or to ask to be heard by the Authority (Article 166, paragraphs 6 and 7, of the Code, as well as Article 18, paragraph 1, of the l. no. 689 of 24 November 1981).

In its defense briefs, received with a note dated 18 June 2020 (acquired under protocol no. 22478/2020), and in the context of the hearing requested by the Order and held on 9 November 2020, the Order represented, in particular, that the late reply to the interested party was caused by a human error - which occurred despite an internal procedure for the management of the requests to exercise the interested parties - which led to the incorrect registration of the complainant's request and the failure to assign of the same to the competent official. The Order also highlighted that the application in question, presented in connection with a request for admission to free legal aid, was received in the summer period and, more generally, in a context of a high workload, managing the 'Order every year about fifteen thousand applications for admission to free legal aid for the civil sector. Finally, the Order argued that it was, however, an isolated case, considering that, since the Regulation became effective, it promptly responded to all requests for the exercise of rights received; in any case, after receiving the invitation from the Authority, the Order promptly activated itself to provide what was requested by the complainant.

3. Outcome of the preliminary investigation.

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 case of a complaint, the Order has responded to the request to exercise the right of access to personal data, presented by the complainant on 28 June 2019, only on 31 October 2019, and, therefore, well beyond the deadline. one month provided for by art. 12 of the Regulation, 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 to propose a judicial appeal within the same term.

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 filing of this proceeding, however, 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 Order is noted, for not having promptly responded to the complainant's request to exercise the right of access to personal data and for not having promptly informed the same 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, in violation of art. 12, para. 3 and 4, of the Regulation.

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) of the same Regulation.

In this context, considering, in any case, that the conduct has exhausted its effects, given that a response has been provided, albeit belatedly, to the request to exercise the rights of the interested party, 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. l 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, the violation of the aforementioned provision 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, the period of time elapsed between the date on which the interested party exercised his rights (28 June 2019) and the one in which the Order provided him with its feedback, albeit belatedly, was considered (October 31, 2019).

On the other hand, it was taken into consideration that, according to what was declared by the Order, this is the first case, which involved the Order, of untimely response to a request to exercise the rights of an interested party.

Due to the aforementioned elements, assessed as a whole, it is believed to determine the amount of the financial penalty in the amount of € 2,000.00 (two thousand) for the violation of art. 12, para. 3 and 4, of the Regulation.

Taking into account the considerable delay in finding the request to exercise the right of access of the interested party, 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 concerning internal procedures with external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1, lett. f), of the Regulations, declares unlawful the conduct held by the Rome Bar Association, described in the terms set out in the motivation, consisting in the violation of art. 12, para. 3 and 4, of the Regulations, within the terms set out in the motivation;

ORDER

to the Rome Bar Association, in the person of the pro-tempore legal representative, with registered office at the Palazzo Di Giustizia, Piazza Cavour - 00193 Rome (RM), Tax Code 80230130587, pursuant to art. 58, par. 2, lett. i), and 83, par. 5, of the

Regulations, to pay the sum of € 2,000.00 (two thousand) as a pecuniary administrative sanction for the violations indicated in the motivation;

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to the aforementioned Order 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 l. n. 689/1981. In this regard, it is recalled that the offender has the right to settle the dispute by paying - again according to the methods indicated in the annex - of an amount equal to half of the sanction imposed, within 30 days from the date of notification of this provision, pursuant to art. 166, paragraph 8, of the Code (see also Article 10, paragraph 3, of Legislative Decree no. 150 of 1/9/2011);

HAS

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

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, April 15, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Cerrina Feroni

THE SECRETARY GENERAL

Mattei