

[doc. web no. 9557793]

Order of injunction against the Order of Social Workers of the Lazio Region - 17 December 2020

Register of measures

no. 276 of 17 December 2020

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, president, prof.ssa Ginevra Cerrina Feroni, vice president, dr. Agostino Ghiglia and the lawyer Guido Scorza, components, and the cons. Fabio Mattei general secretary;

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

HAVING REGARD TO Legislative Decree 30 June 2003, n. 196 containing the "Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, relating to the protection of natural persons with regard to the processing of personal data, as well as to the free movement of such data and which repeals Directive 95/46/EC (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 general secretary pursuant to art. 15 of the Regulation of the Guarantor n. 1/2000 on the organization and functioning of the Guarantor's office for the protection of personal data, doc. web no. 1098801;

Speaker Dr. Agostino Ghiglia;

WHEREAS

1. The complaint.

With a complaint dated 10 January 2020, presented pursuant to art. 77 of the Regulation, Mr. XX complained that, on

November 27, 2019, he exercised, pursuant to art. 15 of the Regulation, the right of access to personal data, relating to oneself

and one's minor daughters, towards the Order of Social Assistants of the Lazio Region (hereinafter, the "Order"), by sending an e-mail message to the addresses oaslazio@oaslazio.it, Consiglio.disciplina@oaslazio.it and ctdpec@pec.oaslazio.it, not obtaining, however, any response from the Order.

2. The preliminary investigation.

With a note dated 29 May 2020 (prot. n. 0019714), the Office invited the Order to comply with the request of the complainant to exercise the right of access to personal data no later than 18 June 2020, proceeding to inform the complainant and the Authority regarding the decisions adopted.

With a note dated 17 June 2020 (prot. n. 3138/2020), the Order acknowledged the request of the complainant to exercise the right of access to personal data.

Based on the elements acquired, also through the documentation sent and the facts that emerged during the preliminary investigation, the Office notified the Order (prot. note no. 0024500 of 3 July 2020), in its capacity as data controller, to the pursuant to art. 166, paragraph 5, of the Code, the initiation of the procedure for the adoption of the provisions pursuant to art. 58, par. 2, of the Regulation, concerning the alleged violation of art. 12, par. 3 and 4, of the Regulation, inviting the Order to produce defense 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 law no. 689 of 24 November 1981).

The Order sent its defense briefs with a note dated 27 July 2020 (prot. n. 3442/2020), representing, in particular, that:

- "with an electronic note dated 11.27.2019, 09:28, the [complainant] sent a "request to exercise rights regarding the protection of personal data (articles 15- 22 of Regulation (EU) 2016/679", requesting in particular access to their personal data and those of their two minor daughters [...], a copy of the same as well as the content of the privacy policy";
- "the aforementioned request was preceded by another fifty-two electronic notes, one of which was sent a few minutes earlier, or at 9:18, again to the Territorial Disciplinary Council", concerning matters not pertaining to the protection of personal data;
- "the frequent repetitiveness of the contents of such communications, often reproduced for several days [...] generated an oversight in the Disciplinary Board recipient of the access request which erroneously considered that the note sent at 9:28 (access request to personal data) was of a similar content to the one sent shortly before (report/report at 9:18)";
- there is "absence of willful misconduct by the Data Controller, whose disciplinary body has culpably, but certainly not voluntarily, failed to acknowledge within the deadline the request to exercise the rights [...] sent by the complainant";

- "there are no [...] further requests to exercise the rights referred to in EU Reg. 2016/679 unfulfilled by the Data Controller";
- "these violations, albeit culpable [...], did not in fact cause any prejudice to the rights and freedoms of the interested party, given that the personal data [of the complainant and of his minor daughters] were already in possession of the aforementioned interested party at the time of forwarding the application pursuant to art. 15 of the Regulation", since "there was no infringement of the right of defense (or other right) of the whistleblower".

3. Outcome of the preliminary investigation.

The 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 unjustified 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 request of the interested party, the data controller must inform the interested party without delay, and at the latest within one month of receiving the request, of the reasons for the non-compliance and of the possibility of proposing a complaint to a supervisory authority and to propose a judicial appeal (par. 4).

In the case of the complaint, the Order responded to the request to exercise the right of access to personal data, presented by the complainant on 27 November 2019, only on 17 June 2020, and, therefore, well beyond the deadline of 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 of proposing a complaint to a supervisory authority and of proposing a judicial appeal within the same term.

4. Conclusions.

In the light of the assessments referred to above, it should be noted that 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 □, although worthy of consideration, do not allow overcoming the findings notified by the Office with the act of initiation of the procedure and are insufficient to allow the closure of the present procedure, since none of the cases provided for by the 'art. 11 of the Regulation of the Guarantor n. 1/2019.

Therefore, the preliminary assessments of the Office are confirmed and the illegality of the processing of personal data carried out by the Order is noted, for not having promptly responded to the request of the complainant to exercise the right of access to personal data and for not having informed the same of the reasons for the non-compliance and the possibility of proposing a complaint to a supervisory authority and of proposing a judicial appeal, in violation of art. 12, par. 3 and 4 of the Regulation.

The violation of the aforementioned provisions makes the administrative sanction envisaged by art. 83, par. 5, of the Regulation, pursuant to art. 58, par. 2, lit. i) of the Regulation itself.

In this context, considering, in any case, that the conduct has exhausted its effects, given that a response to the request to exercise the rights of the interested party has been provided, albeit belatedly, 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 accessory sanctions (articles 58, paragraph 2, letter i and 83 of the Regulation; article 166, paragraph 7, of the Code).

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 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, according to the circumstances of each single case" and, in this context, "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 whole 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).

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 pecuniary administrative sanction imposed, depending on the circumstances of each individual case, must 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, the considerable period of time elapsed between the date on which the interested party exercised his rights (November 27, 2019) and the one on which the Order provided him, belatedly, with its response was considered (June 17, 2020).

On the other hand, it was taken into consideration that, according to what was declared by the Order, this is the first case of untimely response to a request to exercise the rights of a data subject and that this case was determined by negligent behaviour, in the event of which the fact that the interested party's request had been preceded by numerous other notes also contributed, one of which was sent a few minutes earlier, in relation to issues not pertaining to the protection of personal data. Based on the aforementioned elements, evaluated as a whole, it is decided to determine the amount of the pecuniary sanction in the amount of 2,000.00 (two thousand) euros for the violation of art. 12, par. 3 and 4 of the Regulation.

Taking into account the considerable delay in acknowledging the request to exercise the right of access of the interested party, it is also believed that the ancillary sanction of publication on the website of the Guarantor of this provision should 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

pursuant to art. 57, par. 1, lit. f), of the Regulation, declares the conduct held by the Order of Social Assistants of the Lazio Region to be unlawful, described in the terms set out in the justification, consisting in the violation of art. 12, par. 3 and 4, of the Regulation, in the terms referred to in the justification

ORDER

to the Order of Social Workers of the Lazio Region, in the person of its pro-tempore legal representative, with registered office in Largo dei Colli Albani, 32 - 00179 Rome (RM), Tax Code 96294980584, pursuant to articles 58, par. 2, lit. i), and 83, par. 5, of the Regulation, to pay the sum of 2,000.00 (two thousand) euros as an administrative fine for the violations indicated in the justification. In this regard, it is recalled that the offender retains the right to settle the dispute by paying - always according to the methods indicated in the annex - an amount equal to half of the fine imposed, within 30 days from the date of notification of this provision, pursuant to art. 166, paragraph 8, of the Code (see also art. 10, paragraph 3, of Legislative Decree no. 150 of 09/01/2011)

ENJOYS

to the aforementioned Order, in the event of failure to settle the dispute pursuant to art. 166, paragraph 8, of the Code, to pay the sum of Euro 2,000.00 (two thousand) 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 acts pursuant to art. 27 of the law no. 689/1981;

HAS

pursuant to art. 166, paragraph 7, of the Code, the publication of this provision on the website of the Guarantor, believing that the conditions set forth in art. 17 of the Regulation of the Guarantor n. 1/2019 concerning internal procedures having external relevance, aimed at carrying out the tasks and exercising the powers delegated to the Guarantor.

Pursuant to articles 78 of the Regulation, 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, 17 December 2020

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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