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Order injunction against GEDI News Network S.p.a. - March 25, 2021

Record of measures

n. 116 of 25 March 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 (hereinafter, the "Regulation");

GIVEN the Code regarding the protection of personal data, containing provisions for the adaptation of the national system to Regulation (EU) 2016/679 (Legislative Decree 30 June 2003, n.196, as amended by Legislative Decree 10 August 2018, no. 101, hereinafter the "Code");

GIVEN the complaint pursuant to art. 77 of the Regulations presented to the Guarantor on 1 May 2019 by Mr. XX, through his lawyer, Avv. Andrea Caristi, with whom, preliminarily complaining of the lack of response to his request sent to the owner pursuant to art. articles 17 and 21 of the Regulations, asked to order GEDI News Network as editor of "lastampa.it" to delete their personal data from the article entitled "XX", published in extract at URL: [http: / / ...](http://...)), or "to publish them only anonymously";

CONSIDERING that the interested party has, in particular, represented that:

- the article refers, "in absolutely non-current and prejudicial terms", to a legal matter that affected him in the distant year 1998, without reporting any subsequent developments, given that, in the meantime, the charge against him (embezzlement aggravated) was declared extinct by prescription by the Supreme Court of Cassation;
- despite the aforementioned URL has already been de-indexed - and, therefore, is not returned by search engines as a result in association with the personal details of the complainant - an excerpt that "does not cease to produce its harmful effects due, in any case, to the visibility, in clear text, within it, of the extended personal details of the interested party; in addition, access to the full article is reserved only for subscribers of the online newspaper and therefore "the usability of the aforementioned

extract is for mere commercial purposes";

— the URL in question was shared in derogatory terms by an anonymous user on another site ([http: // ...](http://...));

— the request made on March 14, 2019 to the owner, pursuant to art. 5 lett. c), 17 and 21 of EU Reg. 679/16 aimed at obtaining the removal of the article or the adoption of "any technically suitable measure to prevent the aforementioned article from being directly associated with the person of the XX by providing for the so-called anonymization of the extended personal details of the twentieth century and to place the aforementioned article at a different URL, in order to interrupt the harmful sharing of the aforementioned article already in progress "";

— the treatment described, which involves judicial data - subject to a particular regime also in the light of the Presidential Decree 15 January 2018, n.15 (relating to the treatments carried out for police purposes) and of the sentence n. 21362/2018 of the Supreme Court - is in contrast with the general principles provided for by the Regulation, including that of limitation of the purpose, of minimization and limitation of data retention (Article 5), as well as with the principles relating to the right to " oblivion indicated by the jurisprudence of the Supreme Court in sentence 5525/2012 also operating for treatments carried out for archival purposes;

GIVEN the note of 8 July 2019 with which GEDI News Network S.p.a. as the owner of the website in question stated that:

— the extract available at the URL indicated by the complainant refers to news that is relevant from the point of view of the exercise of freedom of expression, which maintains its informative value and social utility - that is, that of allowing those who enter into a professional relationship with the claiming to know the episode that affected the latter and to form an opinion - transforming itself from topical information to historical information; this perspective has in fact led to circumscribe the availability of the article through a series of measures - its de-indexing with respect to search engines, the availability in the archive of only a short excerpt and the reading of the entire article exclusively to subscribers to the newspaper - aimed at guaranteeing a fair balance between freedom of information and the right to personal identity;

— the processing in question therefore has a legitimate basis in Article 17, par. 3, lett. a) and d) of the Regulations, as the exercise of free expression and archiving for purposes of public interest, also taking into account the "significant historical interest" attributed to the archive of "La Stampa" by the Regional Archival Superintendency;

— the date of publication and the location of the article in the archive makes it possible to contextualise the story for which, in any case, the complainant has never provided elements and / or documents regarding the relative developments, which are

furthermore considered not suitable "to affect the correctness and / or truthfulness of the news since the Supreme Court would have limited itself to ascertaining the prescription without taking any position on the merits";

— the complainant's request underlies another real intent: "the transfer of the content under a URL other than the current one in order to make certain links to the article disseminated by third parties not working", a circumstance which leads to the assertion that the complainant should have formulate one's grievances directly to them;

— is in any case available to supplement the news with a reference to the sentence of the Supreme Court mentioned by the complainant who ruled on the prescription, subject to availability of a copy of the same;

GIVEN the reply note of 24 July 2019 in which the complainant, in reiterating his requests, also represented that:

— the interpretation of the freedom of information provided by the data controller results in an infringement of the right to the protection of one's current and effective personal identity, depriving the same of a "possibility of redemption and liberation with regard to events now very much going back in time »For which he has not received any conviction;

— based on what was expressed by the Supreme Court in the aforementioned sentence no. 5525/2012, the right to personal identity "can translate, even in the case of real news ... into the claim to contextualise and update the news and, if necessary, having regard to the purpose of storage in the archive and which underlies it, even to the relative cancellation ";

— the need, proposed by the owner, to keep the news, in order not to deprive the press of being able to correlate the events in the event that the complainant again becomes the protagonist of a similar episode, is in contrast with the constitutional principle of not guilty ;

— the news reported in the article has lost its relevance and is not updated, a profile attributable to an inertia of the owner and not of the interested party who is not responsible for providing proof of developments in his favor; however, in this regard, in response to the request to have a copy of the sentence, "it would appear at least reckless to provide the respondent with further journalistic material";

— a specific legal action has been initiated against Google in relation to the separate treatment carried out by the anonymous user;

DETECTED the absence, during the preliminary investigation, of specific arguments by GEDI News Network S.p.a. with regard to the failure to respond to the "request for removal, pursuant to art. 5 lett. c), 17 and 21 "of the Regulations formulated by the complainant on 14 March 2019 (in the complaint related to a probable typo on 14 May 2019);

GIVEN the note from the Office of 23 September 2020 (prot. No. 35398/20) with which:

- pursuant to art. 166, paragraph 5, of the Code, was communicated to GEDI News Network S.p.a. the initiation of the procedure for the possible adoption of the measures referred to in art. 58, par. 2, of the Regulations and notified of possible violations of the law in relation to art. 12, paragraphs 3 and 4 of the Regulations in light of the failure to respond to the claimant's request;

- Further information was requested in relation to the general principles of processing pursuant to art. 5 par. 1, lett. c), d), e) of the Regulations and the specific provisions applicable to the case in question (89 of the Regulations; 97 et seq. of the Code regarding processing for archiving purposes in the public interest, scientific or historical research and related Rules ethics referred to in attachment A3; articles 136 et seq. of the Code regarding processing for journalistic purposes and other manifestations of thought and related ethical rules referred to in attachment A1);

GIVEN the note of 23 October 2020 with which GEDI News Network S.p.a., in recalling the previous defenses, responded to the aforementioned Office note specifying that:

- from June 2019 the article can be consulted in the newspaper archive only through a targeted search by those who have a subscription and have specific elements (title, author of the article or topic of the publication) to identify it;
- the request for removal formulated by the complainant to the publisher "amounted to a real attack and censorship of the press as well as to the same function of the historical journalistic archives" consisting in providing "the photograph and the historical memory (unchanged and immutable) of a certain occurrence, like the paper archives "as confirmed by the jurisprudence (Court of Milan, section I, March 18, 2010, Court of Rome, section I, June 20, 2013, n.13637, Cass. Civ. section I, ordinance no. .9147 of 19 May 2020) which identifies de-indexing as a balancing measure between the rights of the data subject and the purposes of information and historical documentation;
- by the combined provisions of arts. 99, 136, 137 and 139 of the Code and Article 17, paragraph 3 lett. a) of the Regulations it follows the limitation of the right to delete personal data to the extent that the processing is necessary for the purpose of exercising the right to information or for archival purposes;
- failed to provide feedback to Mr. XX "for an innocent and involuntary inattention of one's own office", but "has in substance (and, therefore, in a decisive and concrete way) offered an immediate response to the needs of the applicant / complainant ... proceeding with the de-indexing of the article in contestation », a measure suitable for guaranteeing the necessary balance

between the needs of the interested party and those of the Publisher who owns the historical archive;

— the complainant "invoked an alleged update of the news concerning him without, however, taking care to provide - as was his main burden - evidence of this (alleged) non" topicality "of the information contained in the aforementioned article", limiting himself to stating that " having been the recipient of a sentence of the Court of Cassation (whose details and exact content are unknown) which would have declared the prescription of the offense ascribed to him at the time ";

CONSIDERING 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 "False statements to the Guarantor and interruption of the execution of the tasks or the exercise of the powers of the Guarantor";

GIVEN the articles 17 and 21, par. 1, of the Regulations;

DETECTED, with regard to the complainant's request aimed at also obtaining the cancellation of personal data from the article contained in the archive of the newspaper itself ("or to publish them only anonymously") that:

the processing of the personal data of the interested party appears to have been carried out, at the time of the original publication of the news, in the exercise of the right to press as it responds to the interest of the public to know the events reported in the relative articles also in consideration of the professional activity carried out by the interested party (art. 6 Deontological rules) and which, for this reason, cannot be considered illegal;

the current processing carried out through the conservation of the article in the publisher's online archive must be considered to correspond to a legitimate archiving purpose of historical-documentary interest which, although different from the original purpose of news reporting, is compatible with it as expressly provided for by art. 5, par. 1, lett. b) and e), of the Regulations and by art. 99 of the Code;

the aforementioned adoption, by the owner, already in the period prior to the submission of the complaint, of specific technical de-indexing measures aimed at making the article inaccessible from search engines external to the newspaper site can be considered suitable to satisfy the need for balancing between the right to be forgotten invoked by the complainant and the safeguarding of the information purposes indicated above (Cass., I Section civ., ordinances March 27, 2020, n. 7559 and May 19, 2020, n. 9147),

the right to delete data is limited with reference to the processing carried out for the information purposes described above

(Article 17, paragraph 3 letter a) and d) of the Regulation; cf. also prov. of 10 December 2020 in course of publication);

NOTING also that the reference to the limits of conservation of judicial data indicated in the Presidential Decree 15 January 2018, n.15 concerns the treatments carried out for police purposes, meaning those "directly related to the exercise of the police duties of crime prevention, protection of order and public safety" and that the same Presidential Decree it also provides for the compatibility of the further processing of the same data for historical documentation purposes;

CONSIDERING therefore that the request for deletion of personal data from the article contained in the archive of "Lastampa.it" ("or to publish them only anonymously"), made by the complainant, must be considered unfounded;

CONSIDERING that, in relation to judicial news reports dating back over time, such as the one in question, the interested party has the right to update and / or supplement the news already in the news concerning him, i.e. the connection of the news to other information subsequently published, concerning the evolution of the affair "(Cass. n.5525 / 2012), but that, on the other hand, such developments do not appear to have been documented to the data controller (nor to the Authority), even after the availability made by the owner himself to provide for it and that in the state of the deeds it is not possible to attribute to the latter any non-compliance in this sense; therefore considered that the conditions for the adoption of measures in this regard by the Authority do not exist;

NOTING, from another point of view, that, in the face of a request previously addressed to the data controller, the latter did not provide the necessary feedback pursuant to art. 12, paragraph 4 of the Regulation and that the arguments provided in this regard - "involuntary and innocent carelessness of the Office" - cannot be taken into consideration in terms of exemptions, having regard to the relevance and activity carried out by the owner who, of the well-known principles of accountability and privacy by design introduced by the Regulation (articles 24 and 25), is required to adopt the appropriate technical and organizational measures in order to meet the requirements of the legislation on the protection of personal data and protect the rights of the interested parties;

CONSIDERING therefore that the complaint with reference to this complaint is well founded and consequently having to adopt in this regard, against GEDI News Network S.p.A., a specific order-injunction pursuant to art. 166, paragraph 7, of the Code and 18 of law no. 689/1981, for the application of the pecuniary administrative sanction provided for by art. 83, par. 5, lett. b) of the Regulations;

NOTING that for the determination of the amount of the financial penalty, it is necessary to take into account the elements

indicated in art. 83, par. 2, of the Regulation and that in the present case it is necessary to take into consideration, on the one hand:

- the repeated "inattention" with respect to the profile relating to compliance with the provisions on the exercise of rights, also found in the failure to respond to the request for clarification made regarding this specific non-compliance by the Authority during the preliminary investigation;
- the circumstance of having provided similar reasons with respect to other cases in which the Authority has objected to the failure to respond to a request to which the owner was required by law to provide a response (provision of 25 February 2021);
- the relevant organizational, economic and professional conditions of the offender;

and, on the other hand:

- the purposes pursued by the owner, attributable to the exercise of freedom of expression and information and, therefore, the need to ensure in this context the relative balance with the fundamental right to the protection of personal data, as established by the Regulation (art. 85 and 89) and the Code (articles 97 et seq. And 136 et seq.);
- the circumstance of having de-indexed the article in any case before the filing of the complaint;

CONSIDERING the above parameters and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1, of the Regulations;

CONSIDERING that, on the basis of all the elements indicated above, a pecuniary administrative sanction must be applied in the amount of twenty thousand euros (20,000.00);

CONSIDERING also, in consideration of the peculiarity of the violation, that, pursuant to art. 166, paragraph 7, of the Code, and 16, paragraph 1, of the Guarantor Regulation no. 1/2019, this provision should be published on the Guarantor's website, as an ancillary sanction;

CONSIDERING that the conditions exist to proceed with the annotation in the internal register of the Authority referred to in art. 57, par. 1, lett. u), of the Regulation, in relation to the measures adopted in this case in compliance with art. 58, par. 2, of the same Regulation;

HAVING REGARD to the documentation on file;

HAVING REGARD to the observations made by the Secretary General pursuant to art. 15 of the regulation of the Guarantor n. 1/2000;

Rapporteur Dr. Agostino Ghiglia;

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1 letter f), of the Regulation:

a) declares the complaint unfounded with regard to the request for deletion of personal data ("or to publish them only anonymously"), reported in the article contained in the archive of "LaStampa.it", indicated in the introductory deed of the procedure;

b) believes, in the absence of the production of relevant documentation, that there are no conditions for the adoption of measures by the Authority regarding the request for updating the information referred to in the introduction;

c) declares the complaint founded with regard to the lack of response by GEDI News Network S.p.a. to the request made by the complainant in exercising the rights referred to in Articles 15-22 of the Regulations;

ORDER

pursuant to art. 58, paragraph 2 letter. i) and 83 of the Regulation to GEDI News Network S.p.a. to pay the sum of € 20,000.00 (twenty thousand) as a pecuniary administrative sanction for the violations indicated in the motivation, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute by paying, within thirty days, an amount equal to half of the sanction imposed;

INJUNCES

To GEDI News Network S.p.a. in the event of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of € 20,000.00 (twenty 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.

HAS

pursuant to art. 166, paragraph 7, of the Code, the full 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 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, as well as art. 152 of the Code and 10 of the d. lg. 1 September 2011, n. 150, against this provision, opposition may be proposed to the ordinary judicial authority, with an appeal filed, alternatively, at the court of

the place where the data controller resides or is based or at that of the place of residence of the interested party within the deadline of thirty days from the date of communication of the provision itself or sixty days if the applicant resides abroad.

Rome, March 25, 2021

PRESIDENT

Stanzione

THE RAPPORTEUR

Ghiglia

THE SECRETARY GENERAL

Mattei