

[doc. web n. 9813385]

Injunction order - July 28, 2022

Record of measures

n. 275 of 28 July 2022

THE GUARANTOR FOR THE PROTECTION OF PERSONAL DATA

IN today's meeting, which was attended by prof. Pasquale Stanzione, 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 submitted to the Guarantor, pursuant to art. 77 of the Regulation, dated 6 May 2021, with which XX, represented by the lawyer XX, asked to take all appropriate measures against the owner of the domain [https: // ...](https://...) and in particular to order the "removal or de-indexing of the web page" [https: // ...](https://...) in relation to reproduction and publication of an article, taken from the Corriere della Sera of May 2015 and relating to a legal matter that had involved the father;

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

the story referred to in the article concerned the father, XX, former President of XX;

the internet page in question reports "word for word" the content of said article, narrating "(...) of Mr. XX in connection with the legal case of his father";

the complainant has never had any roles in the company chaired by his father, nor has he ever been investigated or suffered any conviction and that, moreover, the criminal proceedings against XX ended with a declassification of the crime;

following a specific dispute of 27 July 2018 "the webmaster of the publication, RCS Media Group S.p.A., has agreed to de-index its internet page" and that the publication of Corriere della Sera is not among the results of the search carried out with the name XX, being available only in the historical archive of the publisher;

the alleged publication is therefore in violation of art. 5 of Regulation (EU) 2016/679 and in particular of the principles of

minimization, accuracy and limitation of conservation, since this is a publication dating back to 2015 that "sets out the facts without any historical contextualization and without any clarification and / or updating of the legal matter ", As well as in violation of art. 16, 17 and 18 of the Regulation itself;

GIVEN the note of 26 May 2021 with which the Authority asked the XX owner of the website XX and Mr. XX who, from the privacy policy on the site itself, appears to be the data controller, to provide their observations in relation to what is represented in the complaint and to communicate its possible intention to comply with the requests of the complainant;

CONSIDERING that this request, duly sent to the ordinary mailbox of the site, as well as delivered in the certified mailbox of Mr. XX, was not followed by any response, as well as to a subsequent request for information formulated pursuant to art. . 157 of the Code;

CONSIDERING that, due to this further omission, the aforementioned Association and Mr. XX were the recipients of the subsequent notification, subject to the Guardia di Finanza, of a notice of initiation of the administrative procedure pursuant to art. 166, paragraph 5 of the Code with which the violation of the provisions of art. 157 and 166, paragraph 2, of the Code for failing to provide feedback to the request for information made by the Authority;

CONSIDERING that the data controller has not exercised his right of defense in relation to the disputed charges and has not produced defensive briefs or requested a hearing pursuant to art. 166, paragraph 6 of the Code and art. 13 of regulation no. 1/2019 of the Guarantor;

GIVEN the note of 4 April 2020 with which it was communicated to the parties, pursuant to art. 143, paragraph 3, of the Code, as well as art. 8, paragraph 1, of the Authority's regulation no. 2/2019, the extension of the deadline for the definition of the procedure;

GIVEN the communication dated 22 June 2022 with which Mr. XX, as administrator of the website XX and data controller, acknowledged the removal of the article corresponding to the URL [https: // ...](https://...) from the aforementioned site and to have also communicated it to the lawyer of Mr. XX;

CONSIDERING, therefore, that, with regard to the aforementioned request, there are no conditions for the adoption of measures in this regard by the Authority;

CONSIDERING, however, that it is necessary to adopt, with regard to the ascertained responsibility of the XX owner of the website XX., Qualified as data controller by the relative privacy policy, in the person of its administrator Mr. XX with reference

to the violation referred to in articles . 157 and 166 paragraph 2 of the Code, an injunction order pursuant to art. 166, paragraph 7 of the Code and 18 of law no. 689/1981 for the application of the administrative pecuniary sanction provided for by art. 83, par. 5 of the Regulations;

NOTING that, for the determination of the amount of the pecuniary sanction, it is necessary to take into account the elements indicated in art. 83, par. 2, of the Regulation and which, in this case, must be taken into consideration:

what aggravating circumstances:

a) the seriousness of the violation (Article 83, paragraph 2, of the Regulations), taking into account the repetition of the omissive conduct put in place by the XX which did not provide any feedback to the notes sent by the Office both in the form of the invitation to adhere to the requests of the interested party both in the form of the request for information pursuant to art.

157 of the Code;

b) the duration of the conduct put in place (Article 83, paragraph 2, letter a) of the Regulations) which considerably extended the time for processing the complaint and responding to the requests of the interested party;

c) the lack of cooperation with the Authority in order to remedy the violation (Article 83, paragraph 1, letter f) of the Regulations) despite the Association and Mr. XX himself being recipients, in several phases of the procedure, of communications whose acknowledgment could have allowed a complete definition of the question;

as extenuating circumstances, it is deemed necessary to take into account the legal nature of the offender, as well as the absence of previous initiation proceedings with regard to the processing of personal data carried out through the website XX; which additional factors to be taken into consideration to parameterize the sanction (Article 83, paragraph 2, letter k) of the Regulation) must be considered the associative character with cultural and information purposes covered by the owner of the website in question, as well as the presence of reduced human and managerial resources;

CONSIDERING that, based on the set of elements indicated above and the principles of effectiveness, proportionality and dissuasiveness indicated in art. 83, par. 1 of the Regulation and taking into account the general context marked by the economic repercussions deriving from the pandemic, the administrative sanction of the payment of a sum of Euro 1,000.00 (one thousand) must be applied to it;

CONSIDERING that the conditions exist to proceed with the annotation in the internal register of the Authority referred to in art. 57, paragraph 1, lett. u) of the Regulations, as well as art. 17 of regulation no. 1/2019 of the Guarantor, in relation to the

measures adopted in this case in accordance 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;

SPEAKER Attorney Guido Scorza;

WHEREAS, THE GUARANTOR

pursuant to art. 57, par. 1 letter f), of the Regulations, takes note of what was declared by Mr. XX as administrator of the website XX and data controller regarding the removal of the article corresponding to the URL [https: // ...](https://...) from the aforementioned site and, therefore, he believes that there are no conditions for the Authority to adopt measures in this regard;

ORDER

pursuant to art. 58, paragraph 2, lett. i) and 83 of the Regulations, XX, owner of the website XX, with registered office in XX, in the person of Mr. XX, as site administrator and data controller as qualified by the relative privacy policy, to pay the sum of Euro 1,000.00 (one 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:

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to XX in the person of Mr. XX, in case of failure to settle the dispute pursuant to the aforementioned art. 166, paragraph 8, of the Code, to pay the sum of € 1,000.00 (one 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.

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, July 28, 2022

PRESIDENT

Stanzione

THE RAPPORTEUR

Peel

THE SECRETARY GENERAL

Mattei