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Provision of 23 March 2023

Register of measures

no. 110 of 23 March 2023

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 (hereinafter, the "Regulation");

HAVING REGARD TO the Code regarding the protection of personal data, containing provisions for the adaptation of the national legal system to Regulation (EU) 2016/679 (legislative decree 30 June 2003, n. 196, as amended by legislative decree 10 August 2018, n. 101, hereinafter "Code");

HAVING REGARD to the complaint presented to the Guarantor on 14 October 2022, pursuant to art. 77 of the Regulation, with which Mr. XX, represented and defended by the lawyer. XX, complained of a violation of current legislation on the protection of personal data in relation to the dissemination by the newspaper Il Tirreno (XX edition of 17 January 2022), in the article "XX", of identification data concerning him, as well as other information, also detailed and of a medical nature, on the story in which he was involved: a fall on a bicycle which took place in 2014, due to a hole, in which the complainant broke his shoulder, and for which he requested and obtained, through a sentence of the first instance of the Civil Court of XX, a substantial compensation;

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

that the aforesaid article, referring to the trial started for the facts described above, in addition to reporting numerous details relating to the matter, contains a series of information, also of a sensitive nature, contained in the sentence of the Civil Court of XX; in particular, as reported in the article, the complainant - who was 51 years old at the time - suffered, according to the official technical consultant, "biological damage, in terms of reduction of the previous psychophysical integrity, equal to the 11-12 per cent", to the extent of 7 per cent to be ascribed to the claim and for the residual part to the inappropriate therapeutic treatment provided at the hospital;

to have been warned by an acquaintance of his that his name and personal data had been published by the newspaper Il Tirreno, which also contains an interview with his trusted lawyer, lawyer XX (also interviewed in other pages of the same newspaper, in relation to another news item);

the violation of a series of provisions, among which, in particular, the art. 5, paragraph 1, lett. a), b), c), d), e) and art. 17 of EU Regulation no. 2016/679 as well as articles 137 and following of the Code;

HAVING REGARD to the note dated 19 October 2022 with which this Authority asked the SAE S.p.A. Group, as publisher of Il Tirreno, to provide feedback to the requests of the complainant and to disclose whether there was an intention to comply with them;

HAVING REGARD to the note dated 7 November 2022, with which the holder declared:

- to have become aware of the requests of Mr. XX only after notification of the complaint in question, having not received prior to this circumstance any request to exercise rights either from the complainant himself, or from his legal precedent, or from the current one;
- to have proceeded, following the requests of the complainant, who invoked the right to be forgotten regarding the journalistic article in question, to remove the content on 7 November 2022;
- that he limited himself to reporting the contents of the interview, as released by the lawyer XX, relying on the information reported by the lawyer who, as a lawyer, was a reliable and official source, and therefore that he had acted in good faith.

HAVING REGARD to the note from the complainant, received on 14 November 2022, in reply to the observations formulated by the SAE S.p.A. Group, in which it notes that the removal of the contents does not eliminate the responsibility for having published and disseminated information that violates the rights of the complainant;

GIVEN the note of this Authority dated 24 November 2022, with which, pursuant to art. 166, paragraph 5, of the Code, the data controller was notified of the start of the procedure for the possible adoption of the provisions pursuant to art. 58, par. 2 of the Regulation and the alleged violations of the law were also notified to the same owner, identified, in the specific case, in the violation of art. 5 of the Regulation and of the articles 2-quater, paragraph 4, 137 and 139 of the Code and articles 6 and 10 of the Deontological Rules;

HAVING REGARD to the note dated 23 December 2022, with which the SAE S.p.A. Group stated that:

- the processing of the complainant's personal data appears to have been carried out in the exercise of the right of journalistic

reporting, reporting the interview of the interested party's lawyer and therefore trusting in good faith in the will to disseminate such information;

- this treatment also responds to a legitimate journalistic purpose as there is a public interest in knowing the story relating to the refundability of such damages, in the face of ascertained responsibilities by the health institutions and facilities, and the story in question represents an important example and precedent for the community;

- there is no restriction, in the present case, on the diffusion of the personal details of the interested party, as they are to be considered subject to the secrecy-publicity regime in particular cases regulated by the provisions of the criminal procedural system, in the light of which the the interested party appears to be neither a subject under investigation nor a convict, but the victim of an accident; finally, the publication of his data is not believed to have been a source of risk for the victim, rather offering the news a positive connotation to an originally negative event;

- as regards the dissemination of particular data relating to the state of health, the incapacity that affected the complainant was temporary, therefore, at the date of publication of the article, approximately seven years after the accident, it is presumed fully recovered and the disclosure of this circumstance is not capable of harming the dignity of the interested party;

CONSIDERING that, unless the fact constitutes a more serious offence, whoever, in a proceeding before the Guarantor, falsely declares or certifies news or circumstances or produces false deeds or documents is liable pursuant to art. 168 of the Code "False statements to the Guarantor and interruption of the performance of the duties or exercise of the powers of the Guarantor";

Whereas:

- the disputed article must be traced back to the treatments carried out in the exercise of freedom of expression and which therefore find application in their entirety of the articles 136 - 139 of the Code and the ethical rules pursuant to art. 139 of the Code itself;

- the art. 137, paragraph 3, of the Code and the articles 6 and 10 of the Rules of Conduct identify as a limit to the dissemination of personal data for the purposes described the respect of the principle of the "essential nature of the information regarding facts of public interest", to which the journalist is bound, in particular when dealing with issues relating the state of health of a person;

NOTING that compliance with the aforementioned Rules of Conduct is an essential condition for the lawfulness and

correctness of the processing of personal data (Article 2-quater of the Code);

NOTING that the article in question is in contrast with these provisions, and in particular with the principle of essentiality of information, as it publishes the identification data of the complainant, together with detailed information relating to the consequences that have occurred on the state of health of the same, as well as on the extent of the compensation for the damage that has been recognized to him, thereby providing data exceeding correct information, which expose the story of the interested party to an attention that goes far beyond the circle of his acquaintances;

CONSIDERING therefore the unlawfulness of the article object of the complaint, as it is in contrast with the aforementioned provisions - in particular, with the articles 137, paragraph 3, and 139 of the Code and the articles 6 and 10 of the Deontological Rules - and therefore with the general principles of lawfulness and correctness of the processing of personal data pursuant to art. 5, par. 1 lit. a), of the Regulation;

HAVING ACKNOWLEDGED the measures put in place during the investigation by Gruppo SAE S.p.A. aimed at avoiding further dissemination of the data subject to a complaint from the online version of the publication;

DEEMED pursuant to art. 57 par. 1, lit. f), of the Regulation of having to evaluate the well-founded complaint and as a result, pursuant to art. 58, par. 2, of the Regulation of having to:

- impose on the SAE S.p.A. Group, pursuant to art. 58, par. 2, lit. c) and g), of the Regulation, the prohibition of processing the personal details of the complainant within the article in question;
- adopt an order-injunction, pursuant to articles 166, paragraph 7, of the Code and 18 of the law n. 689/1981, for application to the SAE S.p.A. Group of the pecuniary administrative sanction provided for by the combined provisions of Articles 2-quater, 166, paragraph 2, of the Code, and 83, par. 3 and 5, of the Regulation;

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 that in the present case it is necessary to take into consideration, on the one hand:

a) the seriousness of the violation (Article 83, paragraph 2, letter a) of the Regulation) taking into account the particular nature of the data processed, suitable for revealing the state of health;

b) the relevant conditions on the organisational, economic and professional level of the offender;

and, on the other:

c) the data controller has declared that he has acted in the legitimate exercise of the right to report with respect to a topic of particular public interest and that he has not in any case received any request for cancellation or opposition to the treatment prior to the complaint, pursuant to articles 15 et seq. of the Regulation;

d) the owner has taken steps, since the start of the investigation, to guarantee the non-republication of the article in question;

e) the subject involved in the disputed matter is only the claimant;

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

CONSIDERING that, on the basis of all the elements indicated above, the pecuniary administrative sanction of 10,000.00 euros (ten thousand euros/00) must be applied;

HAVING DEEMED that the conditions exist for proceeding with the annotation in the internal register of the Authority pursuant to art. 57, par. 1, lit. u), of the Regulation, in relation to the measures adopted in the specific case in compliance with art. 58, par. 2, of the same Regulation;

HAVING REGARD to the documentation in the deeds;

HAVING REGARD TO the observations made by the general secretary pursuant to art. 15 of the Guarantor's regulation n. 1/2000;

SPEAKER the lawyer Guido Scorza;

ALL THIS CONSIDERED

pursuant to articles 57 par. 1, lit. f) of the Regulations, declares the complaint founded for the reasons mentioned in the introduction and, in particular, pursuant to art. 58, par. 2, lit. f), orders against Gruppo SAE S.p.A. the prohibition of further processing, of the name and surname of the claimant, in the terms described above, as in contrast with the articles 2 quater, paragraph 4, 137, paragraph 3, and 139 of the Code and articles 6 and 10 of the Deontological Rules, and with the general principles referred to in art. 5, par. 1 lit. a) and c) of the Regulation, except for mere conservation for the purpose of their possible use in court;

ORDER

pursuant to articles 58, paragraph 2 lett. i) and 83 of the Regulation to Gruppo SAE S.p.A., with registered office in Viale Vittorio Alfieri 9 - 57124 XX (LI) Tax code 01954630495, to pay the sum of 10,000.00 (ten thousand) euros as a pecuniary

administrative fine for the violations indicated in motivation, representing that the offender, pursuant to art. 166, paragraph 8, of the Code, has the right to settle the dispute, by paying, within the term of thirty days, an amount equal to half of the fine imposed;

ENJOYS

to Gruppo SAE 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 Euro 10,000.00 (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 law n. 689/1981.

HAS

pursuant to art. 17 of the Guarantor's regulation n. 1/2019, the annotation in the internal register of the Authority pursuant to art. 57, par. 1, lit. u), of the Regulation, of the measures adopted against Gruppo SAE S.p.A, in compliance with art. 58, par. 2, of the same Regulation.

Pursuant to art. 78 of the Regulation, as well as the articles 152 of the Code and 10 of Legislative Decree lg. 1 September 2011, no. 150, opposition to this provision may be lodged with the ordinary judicial authority, with an appeal filed, alternatively, with the court of the place where the data controller resides or has its registered office or with the court of the place of residence of the interested party within the term of thirty days from the date of communication of the provision itself or sixty days if the appellant resides abroad.

Rome, 23 March 2023

PRESIDENT

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THE SPEAKER

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THE SECRETARY GENERAL

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