Ufficio Stampa della Corte costituzionale

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PUBLIC-SECTOR MANAGERS – UNCONSTITUTIONALITY OF THE GENERAL OBLIGATION TO PUBLISH DATA ON INCOME AND ASSETS ON THE INTERNET: THE OBLIGATION APPLIES ONLY TO TOP-RANKING POSITIONS

There is no longer an obligation to publish, on the Internet, personal data on the income and assets of public-sector managers, except for those in top-ranking positions.

In Judgment no. 20, filed today (Judge Rapporteur: Nicolò Zanon), the Constitutional Court declared the unconstitutionality of the provision that extended the obligations to publish established for holders of political office to all public-sector managers.

The publishing in question regards, in particular, the remuneration received for the public-sector managers' performance of their assignment, as well as information on assets and liabilities that may be drawn from their income tax returns and specific attestations of rights *in rem* over real estate and movable assets registered in public registries, over company shares and over quotas of ownership in companies.

According to the censured provision, these data were to be disseminated through the institutions' websites and could be processed in ways that allowed for their indexing, tracing via Internet search engines and even reuse.

The Court considered unreasonable the balance struck by the law between two rights: the right to confidentiality of personal data – understood as the right to control the circulation of information relating to oneself – and the right of citizens to freely access the data and information held by public administrations.

According to the constitutional judges, the legislator, in extending all above-described obligations to publish to the approximately 140 000 public-sector managers (and to their spouses and first- and second-degree relatives, although for these categories, the consent of the persons involved had to be sought), violated the principle of proportionality, the cornerstone of the protection afforded to personal data, and that is safeguarded by Article 3 of the Constitution. While acknowledging that the obligations in question are functional to the objective of transparency, and especially to the fight against corruption in the Public Administration, the Court held that, of the various appropriate measures, the option chosen was not the one entailing the least onerous burdens for the opposing rights, as would instead be required under the principle of proportionality.

In view of the transformation of the Public Administration into a "glass house", the legislator can provide tools that enable free access to information. However, knowledge of such information must be reasonably and effectively linked to the exercise of a check over both the correct performance of institutional functions and on the virtuous use of public resources.

This certainly applies to remuneration of any kind connected with taking office, as well as for expenses relating to duty travel and missions paid for with public funds; the Court's ruling upholds the obligation to publish such data for all public-sector managers. This is not the case, however, for the other data relating to personal income and assets, the publishing of which was imposed upon all holders of management positions, without distinction.

In fact, these data are not necessarily and directly connected with the performance of the assigned task. Moreover, their publishing cannot always be justified – as is the case instead for holders of political offices – by the need to account to citizens for every aspect of their economic and social conditions to the end of maintaining, during the mandate, the strength of the fiduciary relationship that fosters popular consensus.

In addition, the publication of such massive amounts of data – devoid of any distinction between managers on the basis of their roles, responsibilities and positions – does not at all facilitate the search for the most important information, including for anti-corruption purposes; indeed, it risks generating "opacity by confusion" instead, as well as prompting research having the sole aim of satisfying mere curiosity.

As it is not for the Constitutional Court to indicate another solution that may more suitably balance the opposing rights, the Judgment safeguards – in addition to the right to privacy – the minimum protection afforded to the requirements of administrative transparency, in that it identifies top-ranking managers of State administrations (as established in Article 19, paragraphs 3 and 4 of Legislative Decree No. 165 of 2001) as those to whom the obligations to publish imposed by the censured provision apply.

According to the Court, the fact that these managers are assigned extremely important tasks – tasks requiring a proactive approach, and tasks relating to organization, management (of human and material resources) and spending – makes it not unreasonable for the transparency requirements in question to remain in place for them alone.

It is now for the legislator to redesign – with the necessary differentiations and for all public administrations, including non-State ones – the subjects to whom the transparency requirements are to be addressed and the ways in which these requirements are to be implemented. In doing so, the legislator must ensure compliance with the principle of proportionality, which protects the privacy of the interested parties.

Rome, 21 February 2019