

Opinion in relation to a query on the information requirement made by the State Tax Administration Agency regarding the participation of lawyers and attorneys in judicial proceedings in the years 2014, 2015 and 2016.

A letter from (...) is submitted to the Catalan Data Protection Authority in which it requests that the Authority issue an opinion on the suitability of a request for information to the personal data protection regulations made by the State Tax Administration Agency (hereinafter, AEAT) regarding the participation of lawyers and attorneys in judicial proceedings in the years 2014, 2015 and 2016.

A copy of the request made by the AEAT and of the agreement adopted by the Permanent Commission of the General Council of the Judiciary on the intended communication is attached to the consultation letter.

Having analyzed the request and the accompanying documentation, and having seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The consultation states that they have received a communication from the Technical Cabinet of the General Council of the Judiciary in which the agreement adopted by their Permanent Commission is attached in relation to the requirement of the AEAT to obtain information about lawyers and attorneys who have intervened in judicial proceedings during the years 2014, 2015 and 2016.

Specifically, in accordance with the aforementioned request, a copy of which is attached, the AEAT requests:

"By procedure:

- Identification of each Lawyer and Attorney who has intervened in legal proceedings in any of the Courts and Tribunals based in any part of the national territory. The information will contain the full number and NIF of the Lawyer or Procurator and his association number.
- Start date of the intervention in the procedure.
- Termination date (if applicable) in the procedure.
- Court or Tribunal before the one that has intervened.
- Locality
- Identification of the judicial procedure by means of its corresponding key.
- Start date of the procedure.
- Date of completion of the procedure (if applicable).
- Amount in litigation (if applicable).
- Identification of the client.

The information will refer to the years 2014, 2015 and 2016."

In the aforementioned agreement of the General Council of the Judiciary (hereinafter, CGPJ) the communication of this information to the AEAT, except for the data relating to the identification of the client, is favorably reported.

Given this, the consultation requests the opinion of this Authority on this matter.

III

In accordance with Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD), it corresponds to the data controller, understood as "the natural or legal person, of a public or private nature, or administrative body, which decides on the purpose, content and use of the treatment" (article 3.d)), decide on the origin of communicating or transferring (article 3.i) LOPD) the personal data of which it is responsible

In the present case, based on the information available, (...) would not be responsible for the treatment of the information relating to the interventions of lawyers and attorneys in judicial proceedings in the years 2014, 2015 and 2016 requested by the 'AEAT, but the jurisdictional bodies or judicial offices before which these procedures have been processed, or are being processed.

In accordance with article 236 ter of Organic Law 6/1985, of July 1, of the Judiciary (hereinafter, LOPJ):

"1. Courts may process personal data for jurisdictional or non-jurisdictional purposes. In the first case, the treatment will be limited to the data as long as they are incorporated into the processes they know about and their purpose is directly related to the exercise of jurisdictional authority.

2. The Courts will maintain, with full respect for the guarantees and rights established in the personal data protection regulations, the files that are necessary for the processing of the processes that follow them, as well as those that are required for its adequate management.

These files will be classified as jurisdictional and non-jurisdictional depending on the nature of the data processing that makes them up."

The regulation of these files -jurisdictional and non-jurisdictional- is contained in Regulation 1/2005, of the ancillary aspects of judicial proceedings, approved by Agreement of September 15, 2005 of the Plenary of the CGPJ.

In the present case, the information requested, relating to the actions carried out by lawyers and attorneys in judicial proceedings in the years 2014, 2015 and 2016, would form part of the so-called jurisdictional files (article 87 Regulation 1/2005).

In relation to these files, article 236 sexies of the LOPJ establishes that it will be responsible, for the purposes established in the LOPD, "the jurisdictional body or judicial office before which the processes whose data are included in the file are handled, and within it will decide who has the competence attributed by the regulations in force according to the request received from the citizen."

Therefore, it is up to the corresponding jurisdictional body or judicial office to decide on the purpose, content and use of the processing of the data for which it is responsible (article 3.d) LOPD), including communications or transfers of this data (article 3.i) LOPD).

For its part, article 37.1 of the LOPJ provides that:

"It corresponds to the Ministry of Justice or the competent body of the autonomous community with competences in matters of justice to provide the courts and tribunals with the necessary means for the development of their function independently and effectively."

As can be seen from the annexes of the Agreement of September 20, 2006, of the Plenary of the CGPJ, on the creation of the personal files dependent on the judicial bodies, the public administrations competent in the provision of these material means to the judicial bodies, each in their respective territorial scope, hold, with regard to the data included in both jurisdictional and non-jurisdictional files, the status of data controller, understood as "the natural or legal person, the public authority, the service or any other body that, alone or jointly with others, processes personal data on behalf of the data controller" (article 3.g) LOPD).

In the present case, it is up to (...) that formulates the query to provide the material means to the Administration of Justice, so it acts, in relation to the processing of the data requested by the AEAT, as data controller (article 3.g) LOPD).

Article 12 of the LOPD regulates access to data on behalf of third parties, in the following terms:

"1. The access of a third party to the data when the access is necessary for the provision of a service to the data controller is not considered data communication.

2. The performance of treatments on behalf of third parties must be regulated in a contract that must be in writing or in some other form that allows the agreement and content to be accredited, and must be established in such a way expresses that the person in charge of the treatment must only treat the data in accordance with the instructions of the person in charge of the treatment, who cannot apply or use them for a purpose other than that stated in the aforementioned contract, or communicate them to others people, not even to preserve them.

The contract must also stipulate the security measures referred to in Article 9 of this Law that the person in charge of the treatment is obliged to implement.

3. Once the contractual provision has been fulfilled, the personal data must be destroyed or returned to the person in charge of the treatment, and also any support or document containing any personal data that is the subject of the treatment.

4. In the event that the person in charge of the treatment uses the data for another purpose, communicates it or uses it in breach of the stipulations of the contract, he must also be considered responsible for the treatment, and must answer for the violations he has personally committed ."

It follows from this legal precept that the person in charge of the treatment must treat the personal data to which he has access in accordance with the instructions established in the agreement or contract commissioned by the person in charge of the treatment.

Therefore, it is necessary to keep in mind, for the purposes of interest, that it is up to the data controller, in this case, the jurisdictional body or judicial office, to decide on the eventual communications or transfer of data from their files. Therefore, (...) could only communicate the data requested by the AEAT with the prior authorization of the holders of the jurisdictional bodies or judicial offices before which the judicial procedures are processed.

IV

Having said that, it should be noted that, given that we are dealing with a possible communication of data included in jurisdictional files, the competence regarding its adequacy to the data protection regulations corresponds to the CGPJ.

This is clear from the Judgment of the Supreme Court of December 2, 2011 (rec. 2706/2008), FJ 3rd:

"The Organic Law of the Judiciary basically dedicates a precept to the protection of personal data. It's about art. 230, located in Title III ("Of judicial proceedings") of Book III, which enables in its first section Courts and Tribunals to use any technical, electronic, computer and telematic means, for the development of their activity and exercise of its functions, subject to data protection regulations. This precept also establishes the duty to safeguard at all times the confidentiality, privacy and security of the personal data contained in the judicial files. These legal duties, whose main addressees are the Judges and Magistrates themselves, are obligatory since the recognition of the protection of personal data as a fundamental right of the person in the STC 292/2000 and affect the action of the Courts in many different ways, especially if you take into account that Spanish and European legislation in general contains a very broad definition of what is meant by personal data (any information concerning identified or identifiable natural persons). In short, personal data are an essential part of judicial activity, they serve as a basis for the operation of certain judicial files and other public records of judicial use and allow the carrying out of fundamental duties for criminal investigation, which raises situations especially complex, given that other fundamental rights may be affected, as for example, in access to traffic data in electronic communications, police files or clinical history. In all these cases, the possibilities of judicial action in relation to personal data are certainly wide, hence the mandate of confidentiality, privacy and security contained in art. 230 LOPJ has special meaning.

But this organic precept is not limited to being a simple reminder of the principles that must govern the activity of Judges and Magistrates by virtue of the fundamental right to data protection. Hacer algo más, empowers the General Council of the Judiciary to issue a Regulation in which the requirements and other conditions that affect the establishment and management of the automated files that are under the responsibility of the judicial bodies will be determined in a way that ensures the compliance with the guarantees and rights established in the personal data protection legislation. This empowerment also appears reiterated in art. 107.10, second paragraph, of the LOPJ, with the purpose of also ensuring compliance with the legislation on the protection of personal data in the preparation of electronic books of sentences, their compilation, their treatment, dissemination and certification, to ensure for its integrity, authenticity and access. These legal regulations will be dictated by the CGPJ by virtue of the powers contained in art. 230 and 107.10 of the LOPJ which will modulate and adapt the system of protection to the judicial sphere, introducing specific guarantee mechanisms and fixing the extension and limits of the rights proper to this legal system - access, rectification, cancellation, etc...- that the general legislation (LOPD) recognizes those affected, that is to say all those natural persons who are the owners of the data that are the object of treatment in the scope of the Administration of Justice. The General Council of the Judiciary, to which the LOPJ is in charge of the supervisory function in this matter, is placed not only because of the

regulatory empowerment to which the art. 230 makes reference, but also to have exclusive powers attributed to the necessary control of the observance of rights and guarantees, because only the judicial governing body corresponds to the inspection of Courts and Tribunals (art. 107.3 LOPJ).

In addition, in line with what we are exposing, the content of art. 230 makes full sense if we bear in mind that when the precept was incorporated in its current wording into the LOPJ by Organic Law 16/1994, of November 8, the law that was in force in the area of data protection was Organic Law 5 /1992, of October 29, Regulation of the Automated Treatment of Personal Data. (valid until January 14, 2000), rule that directly excluded in its First Additional Provision the application of the Titles dedicated to the Data Protection Agency and the Infractions and Sanctions with respect to the automated files of which the Courts were holders Generales, the Defensor del Pueblo, the Court of Accounts, the General Council of the Judicial Power and the Constitutional Court, an exclusion that was justified not only by the fact that it is a matter of constitutional bodies differentiated from the Government and the Administration but also because, as powers of the State, they enjoy a constitutional guarantee of independence with respect to executive power, public power in which, as we have already said, the Spanish Agency for Data Protection is organically and functionally framed, even if it is with a statute of independence from its Director regarding the Government.

In addition, for what specifically refers to the General Council of the Judicial Power and its sphere of government, the exclusion of the Agency's decision-making power was justified then - and now - by a reason added to the one already stated, although nothing is said in the current LOPD, and it is that it has a singularly recognized tutelary function in the matter of personal data protection in relation to judicial files because it forms part of its scope of internal government, a function that is justified by the need to preserve the principles of unity and independence of the judicial organization referred to in art. 104 of the LOPJ and which prevents any type of interference or interference by an administrative authority.

The existence of these limitations to the powers of the Spanish Data Protection Agency due to the specific nature of an organ susceptible to supervision is not incompatible with the European system of protection contained in Directive 95/46/CE, of the Parliament and of the Council, of October 24, 1995, relating to the protection of natural persons with regard to the treatment of personal data and the free circulation of these data, since none of its precepts requires the existence in each Member State of a single Control Authority that monopolizes or concentrates this function, in charge of the LOPD itself, which transposes the Directive, to deny any alleged monopoly of the Agency by providing in its text (art. 41) the coexistence of several of them in national territory (the state and autonomous) to supervise the Public Administrations themselves.

It serves as an argumentative complement to what we have said so far about the European system of supervision regarding the protection of personal data in community institutions. The Regulation (EC) n° 45/2001, of the European Parliament and of the Council by which the European Data Protection Supervisor is created, in regulating its functions, establishes in art. 46 which is responsible for supervising and ensuring the application of the Regulation and any other community act related to the protection of natural persons with regard to the treatment of personal data by a community institution or organism, with the exception of the Court of Justice of the European Communities when it acts in the exercise of its jurisdictional functions.

The General Council of the Judicial Power itself, after the LOPD, has ratified its competence in this matter by virtue of the empowerment of art. 230 LOPJ when approving Regulation 1/2005, of September 15, of the Aspects Accesorios de las Actuaciones Judiciales. This Regulation dedicates its Title V, in development of art. 230 of the LOPJ, to regulate the establishment and management of automated files under the responsibility of the judicial bodies, including both the automated data files of a personal nature dependent on the Courts and Tribunals and those of the General Council of the Judicial Power, and including in its scope both jurisdictional files (those that incorporate personal data that derive from jurisdictional proceedings), as well as non-jurisdictional or governmental files (those that incorporate personal data that derive from governmental procedures as well as those that, in accordance to the applicable administrative rules, are defining the official or labor relationship of the persons assigned to such bodies and the situations and incidences that occur in it) and todos ellos placed under the control of the General Council of the Judicial Power subject to a regime specific for protection before the governing bodies not internal, through the articulation of the corresponding system of claims and resources, regarding the exercise of the rights of access, rectification and cancellation.

Protection regime from which the Spanish Data Protection Agency is excluded, which is not recognized as having powers of intervention, corresponding to the bodies of judicial government.”

Therefore, with regard to the communication of information about lawyers and attorneys who have intervened in judicial proceedings during the years 2014, 2015 and 2016 to the AEAT, it will be necessary to adhere to what the CGPJ provides.

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

It is up to the jurisdictional bodies, as responsible for the information required by the AEAT on the interventions of lawyers and solicitors in judicial proceedings in the years 2014, 2015 and 2016, to decide on the communication of this data to the Tax Administration.

In the case of information contained in jurisdictional files, the competence regarding the adequacy of its communication to the data protection regulations corresponds to the CGPJ.

Barcelona, February 8, 2018