CNS 43/2019

Opinion in relation to the consultation on the delivery of data to a notary to locate the heirs in a procedure of voluntary jurisdiction of "interpellatio in iure"

A letter is presented to the Catalan Data Protection Authority (...) in which it requests that this Authority issue a report on the provenance, in accordance with what is established in the data protection regulations, to facilitate personal data contained in the police files (...) when the notaries request it in order to locate the heirs in the files of voluntary jurisdiction of "interpellatio in iure".

In the consultation letter, it is explained, as antecedents, that a letter (...) was entered in the register (...), through which a Barcelona Notary requested assistance (.. .)police so that, under the provisions of article 3 of the Notary Regulations, article 8 of Law 15/2015, of July 2, on voluntary jurisdiction (LJV) and, by referral of the latter in what is provided in article 156.1 of Law 1/2000, of January 7, on civil proceedings (LEC), any information or data on the death and/or on the address or location is facilitated of a certain person in the framework of a file of voluntary jurisdiction of "interpellatio in iure".

(...) considers, as stated in his letter, that the LJV "is solely aimed at the regulation of voluntary jurisdiction files that are processed before the jurisdictional bodies (..) consequently, the referral that the article 8 of the LJV refers to the LEC as a rule of supplementary application to files of voluntary jurisdiction in everything that is not regulated in the LJV would not apply to those processed before a notary", and that the regulations notarial does not contain any reference as a general rule of supplementary application to the LEC.

Apart from these considerations, it is made clear that "the possibility of transferring data to a notary is not expressly provided for in Order IRP/453/2009, which regulates data files of personnel managed by the Secretary of Security and by the General Directorate of the Police of the Department of the Interior, Institutional Relations and Participation, nor generally in Organic Law 15/1999, of December 13, on the protection of personal data , (in force in accordance with the provisions of transitional provision 4a of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights, with regard to the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences)".

Based on the legal considerations embodied in his writing, he concludes that in his opinion "the provision of article 11.2.d) of the LOPD would not apply under which the personal data subject to the treatment may be communicated without the need for the consent of the person concerned when the communication to be made is addressed to judges or courts".

Having analyzed the query, which is not accompanied by other documentation, in accordance with the report of the Legal Counsel I issue the following report:

I

(...)

II

In order to respond to the query made about the origin, from the point of view of data protection regulations, of providing personal data contained in police files for purposes related to "interpellatio" files in iure", it is necessary to analyze, first of all, what the applicable data protection regulations would be.

Regulation (EU) 2016/679, of April 27, general data protection (RGPD), is not applicable to the treatments that are carried out in the police and criminal justice field, as can be seen from the article 2.2.d) of the RGPD, which provides the following:

"2. This Regulation does not apply to the processing of personal data:

(...)

d) by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences, or the execution of criminal sanctions, including protection against threats to public security and their prevention."

In this area it is necessary to take into consideration Directive (EU) 2016/680 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data by the authorities competent for the purposes of prevention, research, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of this data and by which the Framework Decision 2008/977/

The member states of the European Union had to transpose this directive before May 6, 2018. Given the lack of transposition of Directive 2016/680 by Spain, in the case at hand we must take into account the forecasts of organic law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights, which establishes in its transitional provision 4a, that the treatments subject to Directive 2016/680 of the European Parliament and of the Council, regarding to the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, arrest or prosecution of criminal offenses or the execution of criminal sanctions and the free circulation of these data continue to be governed by Organic Law 15/1999, of December 13, and specifically by article 22 and its development provisions, which aim to regulate the files of the forces and security forces

However, in the case at hand, although the query refers to access to information that may be contained in police files, the purpose of the access would not be the prevention, investigation, arrest or prosecution of infractions criminal or enforcement of criminal sanctions. Consequently, the applicable regulation would be Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD

III

In accordance with article 4.1) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), any processing of personal data , understood as "any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction"
(4.2 RGPD), must be subject to the principles and guarantees of the RGPD.

Article 5 of the RGPD lists the principles relating to the processing of personal data. Among these principles, and for the purposes of focusing the response to the query raised, it is necessary to take into consideration the principle of lawfulness (Article 5.1.a) RGPD) which requires that personal data be treated in a lawful, fair and transparent manner in relation to the interested party, the principle of purpose limitation (article 5.1.b) according to which the data must be collected for specific, explicit and legitimate purposes, and cannot be processed subsequently for purposes incompatible with the purposes for which have been collected, the principle of minimization (article 5.1.c) which requires that the data be adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated, and the principle of accuracy (article 5.1.d) so that the data is accurate and up-to-date.

In order for a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the following RGPD:

"a) The interested party has given consent for the processing of their personal data, for one or several specific purposes.

b) The treatment is necessary to execute a contract in which the interested party is a party or to apply pre-contractual measures at their request.

c) The treatment is necessary to fulfill a legal obligation applicable to the person responsible for the treatment.

d) The treatment is necessary to protect the vital interests of the person concerned or of another natural person.

e) The treatment is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment.

f) The treatment is necessary to satisfy legitimate interests pursued by the person in charge of the treatment or by a third party, as long as the interests or fundamental rights and freedoms of the interested party that require the protection of personal data do not prevail, especially if the interested is a child."

As can be seen from article 6.3 of the RGPD, the legal basis for the treatment indicated in letters c) and e) must be established by European Union Law or by the law of the Member States that applies to the controller of the treatment.

The referral to the legitimate basis established in accordance with the internal law of the member states requires, in the case of the Spanish State, in accordance with article 53 of the Spanish Constitution, that the rule of development, to be about a fundamental right, has the status of law.

In this sense, Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD) refers to the legal range of the enabling rule:

"Article 8. Treatment of data covered by legal obligation, public interest or exercise of public powers."

1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when so provided by a law of the European Union or a rule with the rank of law, which may determine the general conditions of the treatment and the types of data subject to it as well as the assignments that proceed as a consequence of the fulfillment of the legal obligation. Said rule may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679.

2. The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016/679 , when it derives from a competence attributed by a rule with the rank of law."

It is therefore appropriate to analyze whether the treatment that is the subject of the consultation has a legitimate basis that underpins it and whether it complies with the rest of the principles established by the RGPD.

IV

The issue raised arises as a result of a request for assistance made to a police force by a notary in Barcelona in order to be provided with any information or data about the death and/or about the address or location of a person determined in the framework of a file of voluntary jurisdiction of "interpellatio in iure".

The "interpellatio in iure" is regulated in article 1005 of the Royal Decree of July 24, 1889, by which the Civil Code is published, in the wording given by section seventy-nine of the first final provision of the Law 15/2015, of July 2, of the Voluntary Jurisdiction (LJV), which establishes:

"Any interested party who proves his interest in the heir accepting or repudiating the inheritance may go to the Notary so that he informs the caller that he has a period of thirty calendar days to accept purely or simply, or for the benefit of inventory, or repudiate the inheritance.

The Notary will also inform him that if he does not express his will within that time frame, the inheritance will be deemed accepted purely and simply."

Section V of the statement of reasons of the LJV, mentions that "(...) seeking to give a suitable answer to the previous questions, the Voluntary Jurisdiction Law, in accordance with the experience of other countries, but also attending to our concrete needs, and in the search for the optimization of the available public resources, chooses to attribute the knowledge of a significant number of the matters that were traditionally included under the rubric of the voluntary jurisdiction to legal operators not invested in jurisdictional authority, such as Court Secretaries, Notaries and Property and Mercantile Registrars, sharing the general competence for their knowledge. These professionals, who combine the status of lawyers and holders of the public faith, gather plenty of capacity to act, with full effectiveness and without loss of guarantees, in some of the acts of voluntary jurisdiction that until now were entrusted to the Judges. Although the maximum guarantee of citizenship rights is given by the intervention of a Judge, the dejudicialization of certain cases of voluntary jurisdiction without jurisdictional content, in which the elements of an administrative nature predominate, does not put at risk the fulfillment of the essential guarantees of protection of the rights and interests affected. The legal solution given is in accordance with the postulates of our Magna Carta and, in addition, timely in attention to different factors. The prestige acquired over the years by these bodies of officials among citizens is an element that helps clear up any unknowns about their ability to intervene in the administrative protection of certain private rights, as the main protagonists of our faith system public and guarantors of legal security, without forgetting the fact that many of the acts of voluntary jurisdiction aim to obtain certainty about the state or way of being of certain businesses, situations or legal relationships that these professionals are in an unbeatable condition for appreciate them properly".

It is, therefore, a type of procedure that falls within the sphere of action of notaries in their capacity as public officials in accordance with what is established for that purpose in the Notary Law of May 28 1862

In the area of Catalonia, "interperllatio in iure" is regulated in article 461-12 of Law 10/2008, of July 10, of the fourth book of the Civil Code of Catalonia (CCC), relating to successions , which establishes:

"Denunciation and interpellation of
the called 1. The right of the called to accept or repudiate the inheritance is not subject to time limit.

2. The persons interested in the succession, including the creditors of the inheritance or the defendant, may request the notary, once a month has passed from the denunciation, to personally require the defendant to, within two months, tell him whether he accepts or rejects the inheritance, with an express warning that, if he does not accept it, it is understood that he repudiates it.

3. The personal request to the person called must be made, at least, twice on different days. If this request is unsuccessful, the notary must make the request by certified mail

and, in case it cannot be notified, it must be done by means of edicts published in the two newspapers with the largest circulation.

4. Once the term of two months has passed without the person called having accepted the inheritance in a public deed, it is understood that he repudiates it, unless he is a minor or a person with judicially modified capacity, case in which is understood to accept it for the benefit of inventory."

This precept establishes a procedure by which anyone interested in the succession can urge the notary to personally require the person called to that end to state within two months whether he accepts or repudiates the inheritance, with an express warning that, if he does not 'accept, it is understood that he repudiates her.

Catalan regulations regulate the procedure applicable to the request, establishing that it is a personal request to the "called" that must be made, at least, twice on different days.
If this personal request becomes unsuccessful, the notary must make the request by certified mail and, in the event that notification cannot be made, it must be made by means of edicts published in the two newspapers with the largest circulation.

The effects provided for by the aforementioned precept, in the event that after the two-month period has passed the person called has not accepted the inheritance in a public deed, it is understood that he repudiates it, unless he is a minor or a person with the judicially modified capacity.

It is not foreseen, in article 461-12 of the CCC, what should be the action and what are the prerogatives of the notary in cases in which the person requesting the file does not provide, due to lack of knowledge, the domicile of the person called to the inheritance to whom the request is addressed.

The Notary Law of May 28, 1862 (with the modifications incorporated by the LJV), dedicates its Chapter III to notarial files in the matter of successions, but does not include any precept relating to "interperllatio in iure" or the form like this must be processed.

For its part, the Notary Regulation approved by the Decree of June 2, 1944 also does not contain an express reference to these files and only regulates in a general manner the acts of notification and request, in its articles 202 to 206, without containing any specific regulation on the way in which the notary must come to know the domicile of the person to whom he must carry out the acts of notification and request.

As stated by the DGP in its consultation, the request made by the notary is based on the criterion that Voluntary Jurisdiction procedures processed by Notaries are subject to Law 15/2015, of July 2, on Voluntary Jurisdiction and , by reference to article 8 of this rule, additionally, article 156 of Law 1/2000, of January 7, on civil proceedings (LEC), according to which:

"Article 156. Investigations of the court on the domicile.
1. In cases where the plaintiff states that it is impossible for him to designate a domicile or residence of the defendant, for the purposes of his personation, the Attorney of the Administration of Justice will use the appropriate means to ascertain those circumstances, being able

address, as the case may be, the Registries, organisms, professional associations, entities and companies referred to in section 3 of article 155.
Upon receiving these communications, the Registries and public bodies will proceed in accordance with the provisions that regulate their activity.
2. In no case will it be considered impossible to designate a domicile for the purposes of acts of communication if said domicile is contained in public files or records, to which access may be had.
3. If the investigations referred to in section 1 result in the knowledge of a domicile or place of residence, the communication will be carried out in the second way established in section 2 of article 152, being applicable, in its case, the provided for in article 158.

4. If these investigations are unsuccessful, the Attorney General of the Administration of Justice will order that the communication be carried out by means of edicts".

However, as the DGP points out in its letter, the LJV in accordance with its article 1 applies to voluntary jurisdiction procedures that are processed before the jurisdictional bodies and therefore the referral provided for in article 8 in supplementary application of the LEC, must be understood in relation to the voluntary jurisdiction procedures regulated in that law.

However, the modification introduced by the LJV in the CC and subsequently with the adaptation of the CCC, obeys "the will to rationalize our procedural system, avoiding the need to initiate a judicial process" and that "the materialization through the modification of the Civil Code does not avoid the procedural character of the procedure (..) with full effectiveness and without loss (Resolution of January 29 of the Directorate General of Records and the Notary).

Thus, regardless of the fact that the LJV does not apply to procedures that are not the jurisdiction of the jurisdictional bodies, given the procedural nature of the aforementioned procedure, the supplementary application of article 156 of the LEC cannot be ruled out, for make up for the lack of specific regulation of these cases in the notarial regulations.

Consequently, the Notaries, in the exercise of the functions that have been entrusted to them in the field of voluntary jurisdiction procedures are legitimized, by application of article 156 of the LEC to request that information that they find necessary and that is recorded in public archives and records, provided that, in terms of data protection regulations, the consultation complies with the principles of the RGPD.

v

The management by the Notary of the personal information of the people who may have the status of "called" in the succession procedure regulated in article 461-12 of the CCC, including the consultation and use of this data, is a treatment of personal data that must be subject to the provisions of the RGPD.

According to the aforementioned article 461-12 of the CCC, the notary has a legal obligation to, at the request of anyone interested in the succession process, personally require the person called to accept or reject the inheritance . The fulfillment of this legal obligation requires the processing of the personal data of the person or persons who have the condition of "called"

in the procedure, and, consequently, the processing of the data necessary for this purpose will be lawful in accordance with article 6.1.c) of the RGPD.

However, in the event that the person who requests the Notary to start the procedure does not know the residence details of the person to be requested, the Notary must request the necessary information to make the personal request to public registers where this data is recorded, this will also be lawful treatment in accordance with article 6.1.c) of the RGPD enabled by article 156 of the LEC.

But, in addition, there is also a legitimate interest of the people interested in the succession so that whoever has the condition of being called to declare whether they accept or reject the inheritance in order to unblock the succession procedure. The processing of data carried out by the notary may be based, in this case, on the legitimate interest of a third party in accordance with the provisions of article 6.1.f) of the RGPD, as long as these interests do not prevail over interests or rights and the fundamental freedoms of the interested party, in this case "the called", which require protection, especially when the interested party is a child.

In this case, it is necessary to take into consideration, in addition, the principle of limitation of the purpose of article 5.1.b) of the RGPD according to which the personal data will be "collected for specific, explicit and legitimate purposes, and will not be subsequently treated in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose") , in such a way that there must be a compatibility of purposes between the records consulted and the treatment carried out, in this case, by the notary.

In the event that the treatment has a different purpose to that for which it has been collected, it will be necessary to comply with the provisions of article 6.4 of the RGPD, according to which:

> **"4. When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives indicated in article 23, paragraph 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data was initially collected, will take into account, among other things: a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided; b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller; c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10; d) the possible consequences for the interested parties of the planned subsequent treatment; e) the existence of adequate guarantees, which may include encryption or pseudonymization."**

Regarding this, recital 50 of the RGPD provides that:

> **"The legal basis established in the Law of the Union or of the Member States for the treatment of personal data can also serve as a legal basis for further treatment. In order to determine whether the purpose of the subsequent treatment is compatible with the purpose of the initial collection of personal data, the person responsible for the treatment, after having fulfilled all the requirements for the authorization of the original treatment, must take into account, among other things , any relationship between these purposes and the purposes of the intended subsequent treatment, the context in which the data were collected, in particular the reasonable expectations of the interested party based on their relationship with the person responsible for their subsequent use, the nature of the data personal, the consequences for the interested parties of the planned subsequent treatment and the existence of adequate guarantees both in the original treatment operation and in the planned subsequent treatment operation. (…).”**

In this sense, despite the fact that Order IRP/435/2009, of October 2, which regulates the files containing personal data managed by the Secretary of Security and the General Directorate of the Police (. ..), does not provide for the transfer of these data to notaries, this is not an obstacle, in principle, for their communication. It must also be taken into account that, except for files that have the purpose of "prevention, investigation, detection or prosecution of criminal offenses, or the execution of criminal sanctions, including protection against threats to public security and its prevention ”, (to which the old LOPD will apply), the rest of the treatments, under the protection of the RGPD, must be recorded in the corresponding Register of Processing activities (article 31 of the LOPDGDD), as would the data that have administrative purposes.

In the case at hand, the joint analysis of the criteria established in article 6.4 of the RGPD in order to determine whether the purpose of further processing is compatible with the purpose for which the data have been collected may lead us to conclude that, in the case of police databases, this compatibility can also be predicted.

Thus, the application of the weighting criterion provided for in letter b) of article 6.4 of the RGPD "the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the responsible for the treatment", regarding the data for the identification of people through their identity document, there is a reasonable expectation that these data will be used for their identification in the administrative or procedural procedures in which be part

In addition, the data that must be the object of treatment are only identification and residence data, therefore, in no case would it be special categories of personal data, in the sense provided for in letter c) of article 6.4 of the RGPD "c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10;".

On the other hand, from the analysis of letter d) of article 6.4 of the RGPD "d) the possible consequences for the interested parties of the planned ulterior treatment;", no harmful consequences are for

to the interested parties as a result of this further processing of the data, but, as has been explained, with the corresponding assistance to the notary, a benefit is being produced to the owner of the data, given the consequences that the lack of knowledge of the file may lead to the called person, which in accordance with the procedure provided for in the CCC, could be understood to be required through the publication of edicts, with the effects that it is understood that he rer

Therefore, when access is necessary for the exercise of the functions that the CCC attributes to notaries, it could be considered a purpose compatible with that provided for in the police files.

It should be borne in mind that, in application of the principle of data minimization (Article 5.1.c) RGPD), the personal data to which you have access must be limited to those that are appropriate, relevant, and limited to those that are strictly necessary to comply with the purpose for which they have been requested.

However, the application of article 156 of the LEC enables the notary to "address, as the case may be, the Registries, organizations, professional associations, entities and companies referred to in section 3 of article 155" , and in this sense it would be more respectful of the data protection regulations to carry out the consultation, in the first place, to other registers with purposes coinciding with that of the treatment carried out by the notary.

Analogous to what is provided for in article 41.4 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, which enables Public Administrations to "collect, by consulting the Institute's databases National Statistics Office, the data on the domicile of the interested party collected in the Municipal Register, sent by the Local Entities in application of the provisions of Law 7/1985, of April 2, regulating the Basics of the Local Regime", the consultation to the National Institute of Statistics (henceforth INE) of the information strictly necessary to carry out the request to the person called in the procedure object of the consultation, appears as a possible suitable option to achieve the intended purpose.

The INE, in accordance with the functions attributed by Law 7/1985, of April 2, Regulating the Local Regime Bases in its article 17, from the submission by the municipalities of the data of the its municipal registers, carries out the coordination functions of the municipal registers in order to avoid errors and duplications. Likewise, article 78 of the Population and Demarcation Regulations Territorial de les Entitats Locales (RPDT), attributes to the INE the carrying out of control operations of the accuracy of the municipal registers and article 79 attributes to it the exclusive competence for the formation of population censuses.

In the procedure for updating and revising the registry information, it is planned to send through the INE the information "made by the Civil Registry Offices regarding births, deaths and changes in name, surname, sex and of nationality, with the limitations imposed by its specific legislation, by the Ministry of the Interior regarding the issuance of national identity documents and residence cards and by the Ministry of Education and Culture regarding the school and academic qualifications it issues or recognizes ” (article 63 and 64 RPDT).

In short, the INE has up-to-date information on the data contained in all the municipal registers (which aim to certify residence and habitual address), and in the

in the case at hand, it could provide information on the residence details of the person to be requested, or, in his case, if that person has already died.

It must be taken into account that the same RPDT provides in its article 83 that the INE will send to the Autonomous Communities and other Public Administrations that request it "the data of the distinct padrones without prior consent of the affected only when they are necessary for the exercise of their respective powers, and exclusively for matters in which the residence or domicile are relevant data" (article 83).

Consequently, the consultation of the register information available to the INE, would guarantee the principles of purpose and accuracy of the data (Article 5.1.d) RGPD), in such a way that it is considered suitable for the purpose of the consultation . This is without prejudice to the fact that in the event that this route has not allowed the "called" to be located, the notary can contact the DGP to requ

In accordance with the considerations made in this report in relation to the query raised, the following are made,

Conclusions

The use by Notaries of the data contained in the General Directorate of Police, to carry out the requirement provided for in article 461-12 of the CCC can be adapted to the data protection regulations.

However, from the point of view of data protection, it would be convenient for the consultation of the police files to be carried out once other possibilities of consultation of other publicly owned databases that have a purpose that is more suitable with the treatment object of the query, such as the INE database.

Barcelona, September 27, 2019