CNS 4/2021

Opinion in relation to the consultation on the possibility of consulting the Municipal Register of Inhabitants and other administrative records to detect students with specific educational needs for socio-economic reasons by the competent administrations in the management of the student admission process

A letter is submitted to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the possibility of consulting the Municipal Register of Inhabitants and other administrative records (of the Department of Work, Social Affairs and Families , Education or Tax Administration) to detect students with specific educational needs for socio-economic reasons by the competent administrations in the management of the student admission process. In this sense, it is expressly indicated that the participation of local bodies in this process will have to be taken into account.

Specifically, the consultation raises the following questions:

"1. To what extent and under what conditions can nominal data from the Population Register be used for the detection of students with specific educational needs for socio-economic reasons by the competent administrations in the management of the student admission process (bearing in mind the participation of local administrations in this process)?

2. To what extent and under what conditions the nominal data from the administrative records of administrations not competent in the management of the student admission process (such as, for example, the Department of Labor, Social Affairs and Families or the Tax Agency) can be used to detect students with specific educational needs for socio-economic reasons?"

Having analyzed the query, which is not accompanied by any other documentation, and in accordance with the report issued by the Legal Advisory Board, I issue the following opinion:

I

(...)

II

The consultation states that within the framework of the Pact against school segregation, the approval of a new student admissions decree is expected to provide instruments to improve the detection of students with specific educational needs due to socio-economic reasons and their schooling balanced between centers. It must be said that this draft Decree is not attached to the consultation, nor could it be located in the Department's electronic headquarters at the time of making this opinion.

According to the new decree, students with specific educational needs arising from socio-economic or socio-cultural situations will be considered students who are in a situation of educational disadvantage in relation to the basic educational conditions that compromise their learning process or that hinders their school success, associated with one or some of the following situations:

a) The situation of poverty or the risk of suffering from it.
b) The lack of socio-cultural resources of the families.
c) The existence of recent migratory processes and the nature of newcomers to Catalonia.
d) The late incorporation into the educational system, associated with the lack of linguistic competence in the vehicular language of learning or a previous deficient schooling.
e) Low academic performance throughout schooling.
f) The experiences of non-schooling, absenteeism and school dropout.
g) Situations of helplessness or foster care.

The detection will therefore be accompanied by the allocation of financial aid, once the minors are enrolled and schooled in the centers.

The consultation states that the plan is to try to automate, whenever possible, the detection of students with specific educational needs based on the administrative records already available from the Administration (Municipal Register of inhabitants, beneficiaries of the Income Citizenship Guarantee, children under the care of the General Directorate of Child Care and Adolescence (DGAIA), beneficiaries of the Department of Education's school canteen grants and information on the income available to the Tax Agency).

In this context, it is clear that the detection of students with specific educational needs in accordance with the situations that have been described will involve the processing of personal information of the students and their families, which although in principle it does not seem that must include data that are part of the special categories of data provided for in Article 9 RGPD, can offer a lot of information about the affected persons and with a high degree of impact on their right to data protection that may end affecting other rights of the affected persons, given that it is particularly sensitive information. In any case, the processing of this information must be done in accordance with the principles and obligations provided for in the personal data protection regulations.

III

Regarding the first question raised in the consultation, that is, to what extent and under what conditions the nominal data of the Population Register can be used for the detection of students with specific educational needs for socio-economic reasons the competent administrations in the management of the student admission process, it must be said that, as this Authority has maintained on other occasions, and as will be explained below, the town councils can use the data contained in the Register municipality of inhabitants (hereafter, the Register) for the exercise of their powers when they have to identify or contact the people who reside in the municipality. Likewise, they can give the data of the Register to others

public administrations that require it for the exercise of their respective powers when the data relating to the address is relevant.

In the consultation, beyond explaining that the purpose of using the Register would be to detect students (rather it seems that it would be future students who have not yet started their schooling) with specific educational needs, it is not specified clearly neither the group affected (in other points of the query it seems that students who are already in school would also be included), nor the data from the Register that is intended to be treated (in fact, except for the data relating to the place of birth, the other data contained in the Register do not seem to be able to offer information on the specific circumstances that are detailed), nor what the treatment carried out would be, nor specifically what would be the administrations involved in the planned treatments.

Obviously in this opinion it is not possible to give an answer in the exact terms requested in the consultation *("to what extent ... can they be used ...?)* given that the analysis of the aspects linked to the guarantee of the right data protection cannot be carried out in an abstract way by analyzing all the eventual possibilities of using the Municipal Register of Inhabitants, nor of the other databases that are listed. Beyond making an exposition of the general conditions applicable to the use of the Register, it will only be possible to make the analysis that is requested in a precise manner if you have precise information about the treatment that you want to carry out, the specific data that are intended to be treated, the specification of the administration that should carry out the treatment and the other conditions in which the treatment is to be carried out.

The Register is an administrative register that is regulated in Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL). Article 16 of this law provides the following:

"The municipal register is the administrative register where the residents of a municipality are listed. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes".

Article 16.2 of the LRBRL establishes that the registration in the Register will contain the following data as mandatory: apart from the status of neighbor, it includes the first and last name, sex, usual address, nationality, date and place of birth, identity document number (or for foreigners, residence card or identity document number), certificate or school or academic degree, and finally any data that may be necessary for the preparation of electoral censuses, as long as fundamental rights are respected.

The LRBRL and, in the same sense, Legislative Decree 2/2003, of April 28, which approves the revised text of the municipal and local regime law (TRLMRL), establish the obligation of all residents to register in the Register of the municipality where he habitually resides, with a threefold purpose: to determine the population of a municipality, to be required to acquire the status of resident and to serve as proof of residence and habitual address (articles 15 and 16 LRBRL).

These purposes are clearly stated in the recent Judgment 17/2013 of the Court Constitutional, where it is defined as:

"the administrative register where the residents of a municipality are recorded, a register managed by the local councils by computerized means (art. 17.1 LBRL) in which the persons residing in a municipality must be registered with a triple purpose, according to the arts. 15 and 16 LBRL, determine the population of the municipality, acquire the status of neighbor and accredit residence and usual address. In addition to these functions, the electoral regime legislation provides for the preparation of the electoral census based on the data contained in the Register, which also serves to prepare official statistics subject to statistical secrecy. So, from the regulation of the LBRL itself we can conclude that the register contains an organized set of personal data referring to identified physical persons, the residents of a municipality, being therefore a personal data file to which the regulations provided for in the LOPD."

With regard to the possibility of using the Register by public administrations for the exercise of their powers, it is necessary to take into account paragraph 3 of article 16 of the LRBRL:

"3. The Municipal Register data will be transferred to other public administrations that request it without prior consent of the affected person only when they are necessary for the exercise of their respective powers, and exclusively for matters in which the residence or the domicile are relevant data. They can also be used to prepare official statistics subject to statistical secrecy, in the terms provided for in Law 12/1989, of May 9, of the Public Statistics Function and in the statistics laws of the autonomous communities with competence in the matter."

The data protection regulations, and specifically Regulation (EU) 2016/679, of April 27, general data protection (RGPD), establishes the authorization for public administrations to carry out the treatments necessary to carry out a mission in the public interest or a public authority assigned by law (art. 6). In this sense, articles 8 and 9 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) require that the rule that attributes this mission in the public interest or power is a norm with the rank of law.

However, compliance with this requirement derived from the principle of legality (art. 5.1.a) is not sufficient, but the treatment must respect the rest of the principles provided for in the data protection regulations, especially as regards now of interest, the principle of finality.

In accordance with the purpose principle (art. 5.1.b) RGPD) the data are collected for specific, explicit and legitimate purposes and cannot be subsequently treated in an incompatible manner for these purposes.

In this sense, and taking into account the purposes that the regulations expressly provide for the Register, it cannot be ruled out that the use of the data of the Register or, at least, the use of certain data of the Register, for the exercise of administrative powers, may constitute a use compatible with the initial purpose for which it was collected.

In this sense, for example, this Authority has already analyzed, and has admitted, in CNS Opinion 14/2014, available on the website of this Authority (https://www.apdcat.gencat.cat) the possibility of transferring data from the Register to a public school center to inform families of the municipality with children of school age about the pre-registration period.

With more reason, if it is the City Council itself that needs the data from the Register for the exercise of its own powers (different from the purposes expressly foreseen for the Register in the LRBRL), and the data relating to the address or residence results relevant, you can use them for this purpose (in this sense, e.g. opinion CNS 19/2008 was expressed).

In any case, it must be cases in which the data relating to the address or residence is relevant (it would be, for example, if data from the Register is used to identify families of school-age age who reside in the municipality and to contact them) and must be used for the exercise of the powers attributed to each administration.

Regarding this issue, Law 12/2009, of July 10, on education (hereinafter, Law 12/2009), in development of article 131.2 of the Statute of Autonomy of Catalonia which regulates the education system of Catalonia, establishes, in its article 156, the following:

> *"1. The Educational Administration is the Administration of the Generalitat and acts through the Department.*
> *2. Local bodies have the status of educational administration in the exercise of their own powers, in accordance with the Statute, and they also exercise the powers attributed to them in accordance with the provisions of this law."*

Article 158 of the Law establishes, in this sense, what are the powers attributed to the Administration of the Generalitat, among which, it should be noted: regulate, plan, order, supervise and evaluate the educational system; dictate the regulatory rules that govern the various aspects of the educational system; establish, with own and external funds, a system of grants and study aids; carry out, with the participation of local bodies, educational programming; evaluate the education system; or exercise the ownership of their own public centers, as well as manage them.

These competencies in the field of educational policy in the field of non-university education are attributed, in accordance with the 1/2018, of May 19, of creation, designation and determination of the scope of competence of the departments of the Administration of the Generalitat of Catalonia, in the Department of Education.

With regard to the powers that correspond to local bodies in this matter, it should be borne in mind that, according to article 66.3.o) of Legislative Decree 2/2003, of April 28, by which the revised text is approved of the Municipal and Local Regime Law of Catalonia (TRLMRLC), they are responsible for participation in teaching programming and cooperation with the educational administration in the creation, construction and maintenance of public teaching centers; intervention in the management bodies of teaching centers and participation in monitoring compliance with compulsory schooling.

More specifically, the competences of local bodies in educational matters are established in article 159 of Law 12/2009, according to which it is their responsibility, among others, to participate in the functions that correspond to the Administration of the Generalitat in the different aspects of the education system and, especially, in matters such as the determination of the educational offer, the admission process in the centers that provide the Catalan Education Service in their territory, the monitoring of compliance with the compulsory schooling or the determination of the school calendar;

organize and manage own centers; or manage the admission of students in the first cycle of early childhood education.

In accordance with this, the town councils, and also the Department of Education, could use the data from the Register to identify and contact families with children of school age. They can also use them to ensure compliance with compulsory schooling. Beyond this, data from the Register can also be used to find out the schooling needs in each municipality, although in this case, it does not seem necessary to communicate personal data, but simply aggregated data.

In any case, the use of data from the Register to identify families with minors of school pre-registration age and, where appropriate, to contact them can be considered compatible with the purposes of the Register. Beyond this, the use of other data from the Register would require a specific analysis of their compatibility (arts. 5.1.b) and 6.4 RGPD).

IV

In the second of the questions raised in the consultation, it is asked to what extent and under what conditions the nominal data from the administrative records of administrations not competent in the management of the student admission process (as they can be, for example, the Department of Work, Social Affairs and Families or the Tax Agency) can be used to detect students with specific educational needs for socio-economic reasons.

Regarding this matter, it must be said that the consultation does not identify in detail each and every one of the sources that would be consulted but only indicates, by way of example, some of the administrations to which data could be requested (Department of Labor, Social Affairs and Families, Department of Education or Tax Agency) and also some of the databases from which this information could be obtained (beneficiaries of the Guaranteed Citizenship Income, children under guardianship the General Directorate of Child and Adolescent Care, beneficiaries of the Department of Education's school canteen grants). It seems clear, however, that, given the diversity of the situations that are intended to be taken into account, it should not be ruled out that other information that is not included in these databases should also be analysed. In this sense, the consultation generally refers to the possibility of using *"administrative records of administrations not competent in the management of the student admission process".*

Beyond the analysis of the compatibility of the use of each of these sources of information with the intended purpose, which we will deal with later, it must be said that the compilation of all this information and others that may be necessary for to the detection of the concurrence or not of the specific circumstances that are listed in the consultation, prospectively, that is, as an analysis made with the purpose of exploring or predicting in an advanced way the decision of the families at the time of pre-registration, it would constitute an accumulation of highly intrusive information for the right to data protection of the affected persons and of retraction, for other rights of the affected persons.

And this even if data from special categories is not collected, given that the information necessary to evaluate each of the detailed specific situations constitutes clearly sensitive information considered in isolation. And with even more reason if all of it is combined. From

in fact, one of the purposes that emerges from the system described in the consultation is precisely to reduce existing inequalities given that, as indicated, the objective would be to achieve *"balanced schooling of students and promote equity in the social composition of the centers".* This is information that, considered in isolation, can have a clearly stigmatizing component, which is clearly increased by combining it with other information that can also have this component by itself.

On this matter, it should be borne in mind that the data protection regulations establish the principle of data minimization (art. 5.1.c RGPD), according to which the data processed must be adequate, relevant and limited to what that is necessary in relation to the purposes for which they are treated. This implies not only that, in terms of their number, the data processed must be the minimum necessary in relation to the purpose pursued, but also that the treatments of this data must be the minimum necessary. And that in the case of being able to opt for different alternatives, it will be necessary to opt, in accordance with the principle of proportionality, for the one that involves the least intrusion into the right to data protection.

From what can be seen from the consultation - although it is not clearly stated - it seems that this system would apply to children who have to start compulsory schooling. However, some of the specific situations that are described seem to be incompatible with this, given that it is identified as a specific situation to take into account *"Low academic performance throughout schooling"* or *"The experiences of not -schooling, absenteeism and school dropout".*
These circumstances would only be predicable with regard to children who had already been in school previously or, at the very least, had passed the starting age of schooling.
This is not a minor issue, which should also be clarified, given that the collection of all the information regarding all the students, or families of students, who are already in school, would still raise to a greater extent the problems that will be analyzed below .

In any case, and focusing on children who reach school age, once the families with children of school age have been identified through the Register, it seems that a prospective analysis of the information that the public administrations have on these children, and on their families, in order to detect the occurrence of one or some of the situations described.

The query does not explain what the specific use of this information would be.
It is not explained whether it would be to automatically assign a school center so that there is an equitable distribution of students with specific needs between all public and chartered schools, whether it would be to make a proposal to families that they could freely accept or reject, or if it would only be taken into account as a criterion of preference when assigning the school once the families had expressed their preferences.

In the first of these three cases, that is, if the information obtained is used to automatically assign a place in a school, the system could come into conflict with the right to choose a school (art. 4.1.b) of Organic Law 8/1985, of July 3, regulating the right to education (LODE) and art. 4.1 of Law 12/2009). Remember, in this sense, the instrumental nature that the right to data protection must have for the protection of the other rights of natural persons (STC 292/2000).

On the other hand, it must be borne in mind that there will be families who, whether they are in one of the situations described or not, may choose to attend a private center that has not been arranged. In this case, the prospective analysis of their personal situation with a view to schooling in a public or charter school would not be justified either, because they would not be interested in choosing one of these schools.

It does not seem that a measure of this type could be considered proportionate.

In the case of the other two cases (that the data is used to make an allocation proposal or to take it into account as a preference criterion), the system itself would not come into conflict with the right to choice of center But in this case, a prospective analysis would not be necessary to predict which students are in a certain specific situation.

In the event that these situations are to be taken into account as a criterion of preference for access to a center, it would be sufficient for the affected persons to state in their application what circumstances they consider to be relevant in their case . This single circumstance could already enable the competent administration in matters of pre-registration to be able to access the verification of the alleged circumstances in the event that the affected persons exercise their right not to provide the required supporting documentation in accordance with article 28 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC). On this we refer to our opinion CNS 26/2020, available on the Authority's website (https://www.apdcat.gencat.cat).

In the event that you want to use it only to make an assignment proposal that parents can freely accept or reject, the prospective analysis would be equally unnecessary: firstly because the proposal would not by itself guarantee that the final distribution of students is balanced, given that it would continue to depend on the decision of the parents (a decision that the parents could have adopted likewise without the prospective analysis); second, because the possibility of facilitating the decision to choose a center could be achieved to a greater extent if the administration provided parents with general information about the characteristics of the center, and statistical information for example on the history of enrollment and results of the center (always with the understanding that the information is offered at a level of aggregation that does not allow specific people to be identified).

Faced with this, and beyond the exposition of the purpose of the new system, the consultation does not specifically state what advantages the new system would offer over the current system, for the purposes of being able to accurately assess the compliance with the minimization principle.

In the last pre-registration process, the system used was the one regulated in Decree 75/2007, of March 27, which establishes the procedure for the admission of students to the centers in the courses, in the wording given by Decree 31/2019, of February 5, and by the Resolution EDU/576/2020, of February 28, which approves the rules for pre-registration and enrollment of students in the centers of the Catalan Education Service and other educational centers, in the various courses supported with public funds, by in the 2020-2021 academic year and the Resolution EDU/977/2020, of May 8. In accordance with this system, parents or guardians submit an application indicating the center they have chosen (and up to 9 other centers), and a place allocation process takes place based on the score obtained by applying a scale where several circumstances are taken into account:

- Siblings educated at the center or parents or legal guardians who work there.

- Proximity of the student's usual address to the center or proximity to the workplace of the father, mother, guardian or de facto guardian.
- Annual income of the family unit in the event that the father, mother, guardian or guardian are beneficiaries of the guaranteed citizenship income.
- Disability (equal to or greater than 33%) of the student, the father or mother, or the sibling or sister
- The student is part of a large or single-parent family (complementary criterion.

Based on the information declared by each of the families, the Department of Education can request the documentation required by the regulations and check its accuracy, without the families needing to provide all the supporting documentation.

From the point of view of the right to data protection, the system applied in the last pre-registration process implies clear advantages over the system described in the consultation:

- With the current system, verification operations only affect families who have submitted a pre-registration request in a center paid for with public funds. The system presented in the consultation, on the other hand, would initially affect the entire population, and once families with children of school age are detected through the Register, it would affect all of them, regardless of whether they want whether or not to apply for a place in a center paid for with public funds.

- The current system limits the data processed and verified to the data declared by the affected families: The system presented in the consultation, on the other hand, would analyze a whole series of information before the families have decided whether to allege certain circumstances or not
- The current system is perfectly compatible with the right not to provide the required documentation that is already in the possession of public administrations (art. 53.1.d) and 28.2 LPAC). The system presented in the consultation, on the other hand, displaces this right since it is the administration that anticipates the decision of the affected person by collecting various information about the affected persons.
- Finally, the current system allows the right to free choice of center to be effective. The system presented in the consultation would not contribute to the effectiveness of families' right to free choice of school.

Faced with this, the advantages that the system described in the consultation would bring, especially for the right to data protection, are not exposed nor can they be identified. The fact that the established criteria can be modified or that new ones can be added would be perfectly compatible with a system in which the collection of information occurs only based on the families' prior decision to participate in the process of pre-registration and to allege the situations they consider appropriate from among those provided for in the regulations.

For this reason, and with the information available, it does not seem that an initiative like the one described can be considered to conform to the principle of minimization.

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In addition to what has been set out in the previous legal basis, it should also be taken into account that the planned treatment would entail a massive processing of the data of the students and their families, which would predictably be carried out through automated means and which, in depending on how it is used, it may have legal effects or significant effects on the people affected.

This leads us to have to analyze this treatment also from the perspective of the regulation of profiling contained in the data protection regulations.

Article 22 RGPD recognizes the right not to be the subject of profiles in the following terms:

> *"1. All interested parties will have the right not to be subject to a decision based solely on automated processing, including profiling, that produces legal effects on them or significantly affects them in a similar way.*
>
> *2. Section 1 will not apply if the decision:*
> *a) is necessary for the celebration or execution of a contract between the interested party and a data controller;*
> *b) is authorized by the Law of the Union or of the Member States that applies to the person responsible for the treatment and that also establishes adequate measures to safeguard the rights and freedoms and the legitimate interests of the interested party, or*
> *c) is based on the explicit consent of the interested party.*
>
> *3. In the cases referred to in section 2, letters a) and c), the person responsible for the treatment will adopt the appropriate measures to safeguard the rights and freedoms and the legitimate interests of the interested party, at least the right to obtain human intervention on the part of the person in charge, to express his point of view and challenge the decision.*
>
> *4. The decisions referred to in section 2 will not be based on the special categories of personal data contemplated in article 9, section 1, unless article 9, section 2, letter a) og) applies, and there have been taken adequate measures to safeguard the rights and freedoms and legitimate interests of the interested party."*

Article 4.4 of the RGPD defines profiling as *"any form of automated processing of personal data consisting of using personal data to evaluate certain personal aspects of a natural person, in particular to analyze or predict aspects related to professional performance , economic situation, health, personal preferences, interests, reliability, behavior, location or movements of said natural person"*

According to this definition, it is clear that the collection of information that is intended to be carried out and the creation of groups of people based on the concurrence or not of previously established criteria (which include the economic situation, the origin, school performance or other personal aspects of future students and their families) in a way that allows them to be identified constitutes profiling.

On the other hand, and given the volume of information processing that should be carried out, it also seems very likely that it will be carried out by automated means.

Finally, and regardless of whether or not the elaborated profiles give rise to an automated decision that produces legal effects (this issue is not specified in the consultation), it also seems very likely that the inclusion of a certain person in one or another profile may have significant effects on the people affected. These effects would be evident in the case that the profile is used directly for the allocation of a position, but they can also be significant in the case that they are printed only to make a proposal.

This being so, the provisions of article 22 RGPD would come into play, which initially recognizes the right not to be the subject of this type of profiling. This means that the preparation of these profiles would require that one of the exceptions provided for in article 22 GDPR, specifically, consent explicit of the persons affected or that is authorized by the law of the Union or the Member States that applies to the person in charge of the treatment and that also establishes appropriate measures to safeguard the rights and legitimate interests of the persons concerned.

On the interpretation of the range of the rule that should provide for it, as this Authority has repeatedly maintained, and to the extent that it would be a measure that would lead to a relevant affectation of the fundamental right to data protection (STC 292/ 2000), it should be a norm with the status of law (art. 53.1 EC).

On this issue, STC 76/2019 is illustrative:

"Secondly, by express mandate of the Constitution, all state interference in the field of fundamental rights and public liberties, now affects directly its development (art. 81.1 CE), or limits or conditions its exercise (art. 53.1 CE), requires legal authorization (for all, STC 49/1999, of April 5 (RTC 1999, 49) , FJ 4). In STC 49/1999, FJ 4, we define the constitutional function of this reserve of law in the following terms:

"That reserve of law to which, with a general character, the Spanish Constitution subjects the regulation of the fundamental rights and public liberties recognized in its Title I, performs a double function, namely: on the one hand, ***it ensures that the rights that the Constitution attributes to the citizens are not affected by any state interference not authorized by their representatives;*** *and, on the other hand, in a legal system like ours in which the Judges and Magistrates are subject "solely to the rule of the Law" and not there is, in purity, the link to the precedent (SSTC 8/1981 (RTC 1981, 8) , 34/1995 (RTC 1995, 34) , 47/1995 (RTC 1995, 47) and 96/1996 (RTC 1996, 96)) guarantee legal security, is, in short, the only effective way of fundamental rights and public liberties. That's why, as far as our Ordenamiento is concerned, we have characterized legal certainty as a sum of legality and certainty of law (STC 27/1981 (RTC 1981, 27) , legal basis 10)."*

This double function of the reserve of law translates into a double requirement: on the one hand, the ***necessary intervention of the law to enable the interference;*** *and, por otro lado,* ***that legal norm "must meet all those indispensable characteristics as a guarantee of***

***legal security", that is, "has to express all and every one of the presuppositions and conditions of the intervention" (STC** 49/1999, FJ 4). In other words, "it does not only exclude powers of attorney in favor of regulatory norms [...], but also implies other requirements regarding the content of the Law that establishes such limits" (STC 292/2000, FJ 15).*

The second requirement mentioned constitutes the qualitative dimension of the reserve of law, and is specified in the requirements of predictability and certainty of restrictive measures in the field of fundamental rights. In STC 292/2000, FJ 15, we point out that, even if they have a constitutional foundation, the limitations of the fundamental right established by law "can violate the Constitution if they suffer from a lack of certainty and predictability in the limits they impose and their manner of application", then "the lack of precision of the Law in the material presuppositions of the limitation of a fundamental right is liable to generate an indeterminacy on the cases to which such restriction is applied"; "when this result is produced, beyond any reasonable interpretation, the Law no longer fulfills its function of guaranteeing the fundamental right that it restricts, as it simply leaves the will of the person who has to apply it to operate instead". In the same sentence and legal foundation we also need the type of violation that entails the lack of certainty and predictability in the limits itself: "it would not only injure the principle of legal security (art. 9.3 CE), conceived as certainty about the applicable order and reasonably founded expectation of the person about what should be the action of the power applying the Law (STC 104/2000, FJ 7, por todas), but at the same time said Law would be injuring the essential content of the fundamental right thus restricted, given that the way in which its limits have been set make it unrecognizable and, in practice, make its exercise impossible (SSTC 11/1981, FJ 15; 142/1993, of April 22 (RTC 1993, 142) , FJ 4, and 341/1993 , of November 18 (RTC 1993, 341) , FJ 7)".

The interference in the right to data protection is particularly serious if we take into account not only the nature of each of the information that would be collected and the profile that can be obtained from the analysis of all the information, but especially because it would affect directly to minors. In this sense, Recital 71 of the RGPD is particularly relevant, which expressly excludes the creation of profiles of minors *("Tal medida no debe afectare a un minor").*

In any case, the right of the affected persons to be informed (arts. 13.2.f), 14.2.g) RGPD) should also be guaranteed, to obtain human intervention, to present their point of view and to challenge the decision that, if applicable, it is adopted (art. 22.3 RGPD).

On the other hand, the case being analyzed would constitute a clear case in which an impact assessment relating to data protection would be required given the high risk situation it may entail (art. 35 RGPD). In this sense, in accordance with article 28 of the LOPDGDD, in order to assess whether it is necessary to carry out an impact assessment it is necessary to take into account, especially among others circumstances:

- If a treatment is carried out that involves an evaluation of personal aspects of the persons affected in order to create or use personal profiles of them (art. 28.2 d).

- If data processing is carried out for groups of those affected in a special situation of vulnerability and in particular for minors. In the case we are dealing with, both circumstances are concurring given that it is not only the data of minors (which by themselves carry a special risk), but also that the aim of the treatment is precisely to detect minors in a special situation vulnerability (art. 28.2.e).

- If a massive treatment is carried out that affects a large number of affected people or that involves a large amount of personal data (art. 28.2.f).

Similar conclusions can also be drawn from the Guidelines WP 248 of the Article 29 Working Group, on impact assessment related to data protection, approved by the European Data Protection Committee and from the *"List of types of operations of treatment that must be submitted to AIPD"* approved by this Authority and which can be consulted in the regulations section of the Authority's website.

This impact assessment must include, at least (art. 35.7RGPD):

a) A systematic description of the planned treatment operations and the purposes of the treatment.
b) An assessment of the necessity and proportionality of the processing operations, in relation to their purpose.
c) An assessment of the risks to the rights and freedoms of the persons concerned.
d) The measures planned to face the risks, including guarantees, security measures and the mechanisms that guarantee the protection of personal data and to demonstrate compliance with data protection regulations, taking into account the rights and legitimate interests of individuals interested parties and other affected persons.

On this issue, we refer to the APDCAT's Practical Guide on impact assessment relating to data protection in the RGPD and the application of Impact Assessment relating to data protection which can be consulted and download from the Authority's website https://apdcat.gencat.cat/ca/drets_i_obligacions/responsables/obligacions/valuacio-impacte relativa-proteccio-dades/ .

In the event that, once the data protection impact assessment has been carried out, it turns out that the planned treatment entails a high risk if the person in charge does not take measures to mitigate it, it will be necessary to make a prior consultation with this Authority (art. 36 GDPR).

VI

Without prejudice to the considerations that have just been made, which would apply to the administrative records that are expressly mentioned in the consultation and also to the information from other administrative records that are generally referred to in the consultation , it is appropriate to make some specific considerations regarding the administrative records mentioned therein.

First of all, and with regard to the possible use of data on the income of natural persons held by the tax administration, it is necessary to take into account the provisions of Law 58/2003, of December 17, general tax (in forward, LGT).

Article 95.1 of the LGT establishes the reserved nature of data with tax significance and expressly foresees the cases in which the tax administration can transfer them:

"1. The data, reports or antecedents obtained by the tax administration in the performance of its functions are reserved and may only be used for the effective application of the taxes or resources whose management is entrusted to it and for the imposition of the penalties that apply, ***without may be assigned or communicated to third parties, unless*** *the purpose of the assignment is:*

a) The collaboration with the jurisdictional bodies and the Prosecutor's Office in the investigation or prosecution of crimes that are not prosecutable solely at the instance of the aggrieved person.

b) The collaboration with other tax administrations for the purposes of compliance with fiscal obligations within the scope of their competences.

c) The collaboration with the Labor Inspection and Social Security and with the managing entities and common services of Social Security in the fight against fraud in the quotation and collection of Social Security system fees and against fraud in obtaining and enjoy the benefits provided by the system; as well as for the determination of the level of contribution of each user in the benefits of the National Health System.

d) The collaboration with public administrations to fight against fiscal crime and against fraud in obtaining or receiving aid or subsidies from public funds or from the European Union.

e) The collaboration with the parliamentary commissions of investigation in the legally established framework.

f) The protection of the rights and interests of minors and incapacitated persons by the jurisdictional bodies or the Prosecutor's Office.

g) The collaboration with the Court of Accounts in the exercise of its auditing functions of the State Tax Administration Agency.

h) Collaboration with judges and courts for the execution of firm judicial resolutions. The judicial request for information will require an express resolution in which, after weighing the public and private interests affected in the matter in question and because other means or sources of knowledge about the existence of the debtor's assets and rights have been exhausted, motivates the need to collect data from the Tax Administration.

i) The collaboration with the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Infractions, with the Commission for Vigilance of Terrorism Financing Activities and with the Secretariat of both commissions, in the exercise of their respective functions.

j) The collaboration with bodies or entities of public law responsible for the collection of non-tax public resources for the correct identification of those obliged to pay and with the General Directorate of Traffic for the practice of notifications to them, aimed at the collection of such resources.

k) The ***collaboration with*** *the Public Administrations for the development of their functions,* ***prior authorization of the tax payers*** *to whom the data supplied refer.*

l) The collaboration with the General Intervention of the State Administration in the exercise of its functions of control of economic and financial management, the monitoring of the public deficit, the control of public subsidies and aid and the fight against delinquency in operations commercial entities of the Public Sector.

m) The collaboration with the Asset Recovery and Management Office through the transfer of the data, reports or background information necessary for the location of seized or confiscated assets in a criminal proceeding, upon verification of this circumstance."

Of the cases provided for in this article, it is particularly relevant, for the purposes that concern us, that provided for in letter k).

This precept of the LGT conditions any communication of data with tax significance to other public administrations that require it for the exercise of their functions to have the authorization (consent) of the affected person, legal basis provided for in article 6.1.a) of the RGPD.

This has led to it being argued (e.g. Report 175/2018 AEPD) that the data held by the AEAT can only be consulted with the express consent of the person affected.

However, this Authority, making a broader interpretation of the possibilities of information exchange between the tax administration and the other administrations, has maintained (for all the opinion CNS 26/2020 which can be consulted on the web of this Authority) that article 28 of the LPAC, to which reference has been made before, can enable the consultation of tax data in the event that it is a procedure in which the interested person exercises his right not to provide the documentation required by the regulations that are already in place or have been drawn up by public administrations (art. 28.2 LPAC).

The treatment referred to in this article of the LPAC is lawful on the legal basis of article 6.1.e) of the RGPD, which would legitimize the treatment - without consent - of all those personal data that are necessary for the fulfillment of a mission in the public interest or the exercise of public powers, except for the special categories of data, in respect of which one of the enabling circumstances established in article 9.2 of the RGPD would also have to be met.

Data with tax significance, even if the special legislation foresees its reserved nature, are not part of the data considered deserving of special protection

in the terms of article 9 of the RGPD. Therefore, its treatment could be based on the legal basis of article 6.1.e) of the RGPD, without requiring at the same time the concurrence of any of the enabling circumstances established in article 9.2 of the RGPD .

It does not seem that the provisions of the LGT, or other laws that provide for the reserved nature of the information in question, should prevail over a law, the LPAC, later and of general scope, which allows the consultation direct by other administrations without consent. In this sense, we refer to the more extensive argumentation contained in that opinion CNS 26/2020.

In this sense, the prevalence of article 28.2 of the LPAC would be similar to that derived from the eighth additional provision of the LOPDGDD that allows administrations to verify the accuracy of the data that has been declared to them, including taxes

In any case, it should be noted that the provision of article 28.2 LPAC could operate as authorization for the communication of tax data in cases in which the interested person has made use of his right not to provide documents required by the regulations governing a certain procedure. However, in the case presented in the consultation, at the time when it seems that they would like to collect this data, the affected people would not have made use of their right not to provide documents required by the regulations. In fact, they wouldn't even have submitted an application, yet.

Therefore, in the case at hand, it does not seem that the aforementioned request for information from the AEAT can be based on article 28 of the LPAC or in the eighth additional provision of the LOPDGDD, nor, for the information available, in no other rule with the rank of law that displaces the provisions of the LGT.

For this reason, the consent of the affected persons would be necessary.

VII

Beyond these specific provisions of the tax regulations, which from the outset would prevent the direct consultation of tax information at the initial moment (that is, prior to the pre-registration request), the possibility of making the consultation it would go to other databases or administrative records in order to verify their compatibility under article 6.4 RGPD.

In accordance with this article, when the treatment for a purpose other than that for which the personal data were collected is not based on the consent of the interested party, or on the law of the Union or of the member states which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives mentioned in article 23.1 RGPD, the data controller must assess its compatibility with the initial purpose for which they were collected taking into account, others:

"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 why
respects the relationship between the interested parties and the person responsible for the treatment;

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."

With regard to the three databases listed in the query, that is, beneficiaries of the Guaranteed Citizen's Income, children under the care of the DGAIA and beneficiaries of the Department of Education's school lunch grants, it must be say that it cannot be ruled out that the use of the information contained in these databases can be considered compatible with the initial purpose for which the data were collected.

This is particularly evident in the case of the information contained in the database of children under the care of the DGAIA, given that to the extent that this body is in charge of the minors under care, it is the one who must inform the educational administration the information necessary for the schooling of the minor under guardianship, always in the interest of the minor.

However, and in general, it will be necessary to make a case-by-case assessment taking into account both the information to which it is intended to be accessed, and what will be the specific uses of the information and the other circumstances referred to in the article 6.4 GDPR. In any case, it is the responsibility of the person responsible for the treatment in the first place to carry out this compatibility assessment (art. 6.4 RGPD).

In the consultation, it is only made clear that the final objective is the detection of students with specific educational needs, but it does not explain at what point this would be done (and as we have seen, this can be relevant if the consultation is intended to cover families who have not yet made the pre-registration request), or what the consequences of the detection would be. These are essential elements to be able to identify and assess the risks that may arise from the treatment, both for people who are in one of these situations with specific needs and for people who are not but who are are also subjected to this massive processing of information.

In any case, and as already explained above, the collection of all this information and its joint treatment to obtain profiles at a time prior to the pre-registration request, it seems that entry should lead to discarding this compatibility, given the massive nature of the treatment, the nature of the information treated, the expectations that the affected persons may have had when they provided the information for the initial purpose, the group affected, the consequences that may arise from the treatment and the risks inherent in it.

For all of this, in accordance with the considerations made in these legal foundations in relation to the query raised about the possibility of consulting the Municipal Register of Inhabitants and other administrative records to detect students with specific educational needs for socio-economic reasons competent administrations in the management of the student admission process, the following are done,

Conclusions

Town councils can use the personal data contained in the Municipal Register of Inhabitants to identify minors of compulsory school age and contact their families to exercise the powers that correspond to them regarding the pre-registration process .

The tax regulations do not allow the consultation of tax information, in a generalized way and without the consent of the people affected, in order to be able to detect the existence of specific socio-economic situations prior to the application for pre-registration.

The compatibility of using other databases or administrative records such as those described in the conduct cannot be ruled out, especially with regard to minors under the guardianship of the DGAIA, although the terms in which this exchange of information is described information in the consultation (volume of information, people affected, time in which it would be carried out, etc.) raise serious problems from the point of view of the proportionality of the measure. In any case, the treatment in the terms described in the consultation would require compliance with the requirements established in article 22 RGPD for the elaboration of profiles and to carry out, in advance, an assessment of the impact relating to the protection of data

Barcelona, January 29, 2021