

Opinion in relation to a consultation on the identification of people who hold the status of victim of gender violence in the various publications of the systems of provision of jobs in the Administration

A letter from (...) is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the identification of people who have the status of victim of gender violence in the different publications of the Generalitat Administration's job provision systems, such as in a general competition of merits and abilities.

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

I

(...)

II

To point out that this Authority has had the opportunity to examine in previous opinions (for example, in opinions CNS 7/2021, CNS 45/2020, CNS 5/2019 or CNS 4/2019, available on the web <https://apdc.cat/gencat.cat/ca/inici>) the way to proceed, from the point of view of personal data protection, in the identification of those interested in notifications by means of announcements and publications of administrative acts.

In particular, it is necessary to highlight the considerations made in the opinion CNS 7/2021, to which this consultation refers, in which this problem is examined with respect to personnel selection procedures when the people who participate in them prove that they are victims of violence of gender

As stated in this opinion (FJ III), the dissemination of data of the people who participate in a selection procedure as a result of the various publications that it is necessary to carry out, in accordance with the applicable regulations, a lawful data processing on the basis of articles 6.1.c) and e) of Regulation (EU) 2016/679, of the Parliament and of the European Council, of 27 April 2016, Data Protection General (hereafter, RGPD), in attention to the provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC), and of the regulations in force in the field of civil service, which impose the obligation on the public administration acting to term these publications.

This conclusion can be extended to the processes of provision of jobs for civil servants of the Government of the Generalitat, as is the case of the general contests of merits and capacities to which this inquiry expressly refers.

Article 45 of the LPAC provides:

"1. The administrative acts will be subject to publication when the regulatory rules of each procedure establish it or when it is recommended for reasons of public interest appreciated by the competent body.

In any case, the administrative acts will be subject to publication, this being the effect of the notification, in the following cases: a) (...)

b) When it comes to acts that are part of a selective or competitive procedure of any kind. In this case, the call for the procedure must indicate the medium where the successive publications will be made, lacking validity if they are carried out in different places. 2. (...)

3. The acts will be published in the corresponding official newspaper, according to the Administration of which the act to be notified is proceeding.

4. Without prejudice to the provisions of article 44, the publication of acts and communications that, by legal or regulatory provision must be carried out on notice boards or edicts, will be understood as completed by their publication in the corresponding Official Journal."

In the systems for the provision of vacant positions reserved for civil servants, as competitive competition procedures, the acts that make it up must be the subject of publication and this will have the effect of notification, in accordance with the provisions of article 45.1. b) of the LPAC, bearing in mind that the call for the procedure must indicate "the medium in which successive publications will be made".

It should be noted that this type of provisioning system is governed by the principles of advertising and transparency.

In this sense, the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee (EBEP) (applicable as established by article 2.1.b) to the civil servants of the Administration of the Generalitat), establishes in article 78.1 that "the Public Administrations will provide jobs through procedures based on the principles of equality, merit, capacity and **publicity**."

This same article regulates the competition of merits and abilities, together with the free appointment, as ordinary provision systems (article 78.2), and allows the laws on Public Service to establish other procedures or systems in cases where the provision of the position of work is the result of an administrative action that results in the employee's mobility (article 78.3).

Legislative Decree 1/1997, of 31 October, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in matters of public service, regulates in Title 5 (articles 61 to 70) the provision of jobs, stipulating, for the relevant purposes, that "the **resolutions** of the calls, both those of merit competition and those of free appointment, **are published in the DOGC**" (article 64.d)).

This regulation has been developed by regulation. Thus, Decree 123/1997, of 13 May, which approves the General Regulations for the provision of jobs and professional promotion of officials of the Administration of the Generalitat de Catalunya, subjects the different systems of provision of posts of work "to the principles of legality, objectivity, merit and capacity of applicants, equality, **publicity**, effectiveness and efficiency" (article 2.4).

As part of the procedure for the final provision through the ordinary system of the competition of merits and capacities, article 67 of Decree 123/1997 provides that "the board of merits and capacities or the evaluation commission, as the case may be of specific or general competition, draw up a **list of admitted and excluded** with indication of the corresponding reasons for exclusion" (paragraph 1). too

that *"this list **will be published** immediately and once the deadline for submission of applications has passed in the place specified in the rules of the call" (section 2).*

In accordance with Decree 123/1997 *"after the evaluation of merits and capacities, and where appropriate of the accreditation systems in accordance with what is established in the bases of the respective call, the board of merits and capacities or the corresponding evaluation committee will make the proposal for the resolution of the competition" (article 69), it being possible that the bases of the corresponding calls foresee **"the publication of the provisional proposal for the resolution of the competition on the notice board of the department convener" (article 71).** And, in any case, **"the final resolutions of the calls must be made public in the Official Journal of the Generalitat of Catalonia" (article 72).***

On the other hand, it is also necessary to take into account the transparency regulations which, among other aspects, provide that *"the Administration **must make public** (...) the calls for proposals and the **results** of the selective processes for the provision and promotion of personnel " (article 9.1.e) LTC). In the same sense, article 21.1.c) of Decree 8/2021, of February 9, on transparency and the right of access to public information.*

In short, the principle of publicity in job provision systems, in accordance with these forecasts, imposes on the body in charge of its implementation the obligation to publicize the process and its regulatory bases (in this case, of the competition of merits and abilities), of the lists of admitted and excluded persons, and of the provisional and final resolutions of the competition, the publication of data of the persons participating is therefore lawful (article 6.1.c) ie) RGPD).

III

Having said that, as made clear in the aforementioned opinion CNS 7/2021 (FJ IV), it must be taken into account that this publication (or publications) must be carried out in accordance with the rest of the principles established in the legislation of data protection and, in particular, with the principle of minimization (Article 5.1.c) RGPD).

Remember that, in order to determine which are the identification data of those affected that are considered appropriate and relevant in the publication of administrative acts and in the notifications by means of announcements, it is necessary to bear in mind what is established in the seventh Additional Provision of the LOPDGDD, which establishes the following criteria:

"Seventh additional provision. Identification of those interested in notifications by through announcements and publications of administrative acts.

*1. When it is necessary to **publish an administrative act** that contains personal data of the affected person, he will identify himself by means of his name and surname, adding four random numerical digits from the national identity document, foreigner's identity number, passport or equivalent document. When the publication refers to a plurality of those affected, these random figures must be alternated.*

*When it comes to **notification through advertisements**, particularly in cases referred to in article 44 of Law 39/2015, of October 1, of Common Administrative Procedure of the Public Administrations, will be identified in affected exclusively by means of the full number of your national document of identity, foreigner's identity number, passport or equivalent document.*

When the affected person lacks any of the documents mentioned in both previous paragraphs, the affected person will be identified only by their number and last name. In no case should the number and surname be published together with

the full number of the national identity document, foreign identity number, passport or equivalent document.

*2. In order to prevent risks for **victims of gender-based violence**, the Government will promote the development of a collaboration protocol that defines secure procedures publication and notification of administrative acts, with the participation of bodies with competence in the matter."*

In competitions for merits and abilities, the publication of the identification data of the participants in the competition, through their inclusion in the different acts that make it up (the different lists referred to in the query), is necessary for the 'achieving the objective of advertising as a guarantee that the selected candidate is the most suitable to perform the functions of the job to be filled, but, at the same time, the publication has a purpose of notification of the act to the interested parties who participate in said competition (article 45.1.b) LPAC).

Therefore, in general, in these cases, the identification criterion must be that established in the first paragraph of the first section of the seventh Additional Provision of the LOPDGDD, according to which the identification of the participants in the different publications within a competition of merits and capacities that must be carried out will be carried out by means of the name and surname of the affected person adding four random numerical figures of the number of the national identity document, the foreigner's identity number, the passport or an equivalent document, in accordance with the Guidance approved by this Authority together with the other data protection authorities, which can be consulted at the following link: <https://apdcat.gencat.cat/ca/authority/regulations/provisions/recommendations/>.

in

This is unless this publication may harm the rights or legitimate interests of the participants, as is the case in the present case, in which mention is made of the assumption that female career officials participating in a general competition of merits and abilities have the status of victim of gender violence.

At this point, it is appropriate to reproduce, given its importance, the considerations made in the FJ V of CNS opinion 7/2021:

"(...) it is necessary to examine which criterion should be followed in the identification of these people in the publication of the different acts that make up the selection process.

*In this regard, reference must again be made to the seventh Additional Provision of the LOPDGDD, which, in its second section, provides that "in order to prevent risks for victims of gender-based violence, the Government will promote the development of a **protocol** of collaboration **that defines safe procedures for the publication and notification of administrative acts**, with the participation of the bodies with competence in the matter."*

At the date of issuance of this opinion, there is no evidence that the protocol referred to in this provision has been drawn up.

Even so, it must be taken into account that the application of the principle of data minimization, in its aspect of proportionality (Article 5.1.c) RGPD), would in any case oblige the body that publishes the administrative act to have present the special needs to protect the data of some groups, as is the case of victims of gender violence, and consequently to avoid its dissemination.

*Point out that Organic Law 1/2004, of December 28, on comprehensive protection measures against gender-based violence, provides that "in actions and procedures related to gender- **based** violence, the privacy of the victims will be protected; **in particular, his personal data**, those of his descendants and those of any other person who is under his care or custody" (article 63.1).*

This same provision is included in article 82.1 of the EBEP, relating to the mobility due to gender violence and due to terrorist violence of public employees.

*At the same time, Law 5/2008, of April 24, on the right of women to eradicate gender-based violence, establishes, as a guiding principle in the interventions of the public authorities, "the active commitment to **guarantee the protection of the data of personal character of women in situations of violence** (...)" (article 7.1).*

Given this, (...), it can be said that it is necessary to preserve the confidentiality of the personal data of the participants who are victims of gender violence at all times, that is to say, from the first publication that is carried out in the selection procedure. This implies avoiding both the publication of data that allows the identification of the affected person, either directly or indirectly, and that could generate a risk for their personal security, as well as other unnecessary data (for example, the fact that the person is victim of gender violence).

Point out that the mere fact of disclosing the participation of a person who is a victim of gender-based violence in a certain selection procedure - which would occur with the mere publication of the list of people admitted to the process, to the extent that this person appears identified by their first and last name together with the last 4 digits of the DNI or equivalent document - it would generate a risk for that person. And that because it would allow know or deduce their participation in the tests that follow, or in the case of the appointment, the assigned destination.

At this point, it is appropriate to mention article 46 of the LPAC, according to which:

"If the competent body appreciates that the notification by means of announcements or the publication of an act infringes rights or legitimate interests, it will limit itself to publishing in the corresponding Official Journal a brief indication of the content of the act and the place where the interested parties can appear , in the time that is established, for knowledge of the full content of the aforementioned act and proof of such knowledge. Additionally and on an optional basis, the Administrations may establish other forms of complementary notification through the rest of the media that will not exclude the obligation to publish in the corresponding Official Journal."

This precept of the LPAC highlights the need, on the part of the acting administration, to adopt the appropriate measures so that when the publication of an act may affect the legitimate rights and interests of the interested party - as happens in this case with the participants who are victims of gender violence - this publication is carried out effectively without infringing these rights.

(...)."

These considerations can be extended to the case now examined. Although, as we have seen, the acting administration has the obligation to publish the various integral acts of the competition, when the information refers to participants who are victims of gender violence, it is also obliged to adopt the appropriate measures to minimize the risks to your safety in carrying out these postings.

In the consultation, it is considered whether, for the purpose of guaranteeing the adequate protection of the data of the participants who are victims of gender violence in the different publications that are carried out in the context of a general competition of merits and capacities, it could be used an identification code.

Although no information is provided about this "identification code", in view of the explicit reference to CNS opinion 7/2021, it is understood that reference is being made to the use of an identification code (ID code) in place of the first and last names of the female employees who are recognized as victims of gender-based violence.

As agreed in the aforementioned opinion (FJ V), we would be faced with the use of pseudonymized data (Article 4.5) RGPD). A technique with which it is intended to guarantee greater respect for the privacy of the affected persons, given that its application to personal data allows to reduce the risks associated with its treatment for the affected persons (Article 28 RGPD).

The use of pseudonymised data is an appropriate solution to guarantee compliance with the principle of data minimization (Article 5.1.c) RGPD) in the different publications of the acts of the general contests of merits and abilities (lists of admitted and excluded, result of the provisional award and result of the final award) when the information they contain affects a group that requires special protection such as the case of victims of gender violence.

Using identification systems other than first and last names, such as the mentioned ID code or any other code that allows the identification of participants without revealing their identity to anyone who accesses the publication in question, would minimize the risks to the safety of the people affected, so proceeding in this way would not raise problems from the point of view of data protection, although it must be pointed out that, in a case like the one examined, it might not be sufficient.

In the consultation, doubts are raised about the advisability of using this ID code to identify the civil servant victim of gender violence in the different publications of a general competition when the description of the awarded position is recorded, especially if it is about processes with few jobs to provide, given that this would allow deducting the specialty of their condition and even facilitate its localization.

The aforementioned circumstances highlight, from the point of view of the principle of data minimization, the obligation on the part of the acting administration to take extreme guarantees of the confidentiality of the data of participants who are victims of gender violence that allow your identification, either directly or indirectly, and which may generate, in case of disclosure, a risk to your personal safety.

In the consultation it is pointed out that in the lists of provisional and final destinations, as well as in the resolution of the competition in the DOGC, together with the identification data of the participants (the ID code for the case of victims of gender violence, and the first and last name together with the last 4 digits of the DNI or equivalent document for the rest of the participants), the description of the awarded position is recorded, which includes the following information: Department, Management Unit, Position Code, Contest Code , Level, Specific Add-on, Location, Work Center, Working Day and Hours.

Publishing this information together can sometimes allow, with some ease, not only the knowledge that a person is in a situation of gender-based violence, but even the location of participants who are victims of gender-based violence, all and that their identity is preserved through the ID code, given that it can be relatively easy, at least for some, to end up associating an identifiable person with a specific position in a management unit and locality.

Although the risks of re-identification may be greater than in the case of selective processes, since in this case the data on the identification of the site just mentioned can be published, it does not seem that, unless the ordering legal establishes something else, this may justify completely disregarding the advertising requirements to which reference has been made.

Given this, from the point of view of data protection, it would be necessary to assess, among other options, the possibility of extending the use of pseudonymized data to information relating to the workplace, which would imply rethinking certain aspects of the current way of proceeding in the provision processes. For example, and without ruling out others, one possible course of action could be the one set out below:

First of all, it would be necessary to modify the information on the jobs called for that is indicated in the bases of the call that are published in the DOGC, so that they can be identified by the contestants.

In accordance with article 51 of Decree 123/1997, *"calls and their specific bases must contain, at least, the following data and circumstances: a) Number, denomination, level, specific complement when any have, and the location of the places subject to the call."*

Taking, by way of illustration, as reference Resolution PDA/2886/2020, of November 12, calling for a general competition of merits and abilities to provide jobs in the subordinate body of administration of the Generalitat of Catalonia (provision call number FP/004/2020), referred to in the query, it can be verified that, in compliance with this article, the bases indicate, as a description of each job to be provided, the following data: Department, Management Unit, Position Code, Contest Code, Level, Specific Add-on, Location, Work Center, Working Day and Hours.

In order for the aforementioned pseudonymization to be effective, it would be necessary for the basis of the call for tenders to be carried out not to include the data relating to the "Location Code" in this information that is provided on the description of the invited places.

In the second place, it should be foreseen that the contestants can identify the jobs they choose by stating in their application for participation the data relating to the "Competition Code".

From the point of view of the principle of data minimization, it is considered that this information would be sufficient for the purposes of identifying unequivocally the jobs for which each contestant applies, a purpose to which the dissemination of information about the position in this phase of the provisioning process.

Thirdly, the publication of the results (the lists of provisional and final destinations, as well as the resolution of the competition) should be carried out identifying with first and last name (and four digits of the DNI number in the terms set out) of each person who has been awarded a job, except for the person who is a victim of gender violence, who would appear with the ID Code. For each of the contestants who have obtained a job, it would be necessary to indicate the awarded position by identifying it only with the "Job Code". For the purposes of being able to verify that this "Place Code" corresponds to the "Competition Code" indicated in your application for participation (or with one of the "Competition Codes" indicated, in the event that you have opted for several positions in work), it could be enabled, for example through the portal of the public employee, a restricted and personal access so that each contestant can check this correlation and access the rest of the information regarding the position that has been awarded to him.

This way of proceeding could make it difficult, although not absolutely, to identify the status of a victim of gender violence of a woman who happens to occupy a certain position.

Point out that, in the event that any of the contestants requires more information about other places they applied for (and which have been awarded to other contestants for having obtained a higher score than him), for example, for the purposes of raising an eventual appeal or claim, it would be possible to obtain it from its status as an interested party in the procedure, by virtue of which it would have the right to "access and obtain a copy of the documents contained in the aforementioned procedures" (article 53.1 .a) LPAC), with the limitations that, if applicable, could derive from the right to the protection of personal data of the rest of the contestants affected, especially in the case that it is a job awarded to a person who is a victim of gender violence.

Fourthly, it would be convenient if, in the basis of the call and/or in another means of information about the procurement process (such as the public employee's portal), it should be reported that the publication in the terms indicated (publication of the ID code to identify certain participants and of the "Place code" to identify the place awarded as a result of the competition) is carried out for security reasons or for the concurrence of other qualified reasons.

Warning that, although this way of carrying out the various publications is completely justified in those cases where there is evidence of the participation of female employees who are victims of gender violence, it could also be relevant, from the point of view of protection of data, make it extensible to any job provision process. This would minimize the risk of revealing compromised information within the provisioning processes.

Using this system in a generalized way would make it possible to give an adequate response to the specific case referred to in the query, that is, when a contestant becomes a victim of gender-based violence during the contest, having carried out the publication of the lists without the ID code, that is to say, with name, surname and the last 4 digits of the DNI or equivalent document.

All this, without prejudice to what may be established in the protocol referred to in section 2 of the seventh Additional Provision of the LOPDGDD, which remains pending approval.

On the other hand, the consultation also points out that the use of the ID code in the aforementioned publications (lists of provisional and final destinations, and resolution of the competition in the DOGC) it would not prevent the rest of the workers in the unit or work center where the employee who is a victim of gender violence is to be incorporated once the contest has been resolved from knowing the circumstance of having been a victim of gender violence.

Although the inclusion of this code can certainly reveal the existence of a situation of special vulnerability that has entailed preserving the identity of a person in the publication of the act, given the legal obligation to advertise, and as long as the aforementioned protocol is not approved, this would be an inevitable consequence if the safety of these people is to be guaranteed during the procurement process.

In accordance with the considerations made so far in relation to the proposed query, they are made next,

Conclusions

Female civil servants who are victims of gender violence have the right to the protection of their personal data in the various publications of the general merit and capacity competitions in which they participate.

In order to minimize the risks to their safety that may arise as a result of these publications and while the protocol referred to in section 2 of the seventh Additional Provision of the LOPDGDD is not approved, they could use- se pseudonymized data both for the

identification of the contestants who have this condition, as for the identification of the place awarded to each of the contestants, in the terms set out in Legal Basis IV of this opinion.

Barcelona, March 23, 2021

Machine Translated