Autoritat Catalana de Protecció de Dades

Opinion in relation to the query made by a municipal society, regarding the legitimacy for the treatment of the name heard in relation to certain groups

A query is presented to the Catalan Data Protection Authority by the data protection delegate of a municipal company in which he asks, in relation to certain groups of people, *"if we can call them by the "common name" with which they are identified and guarantee the change of name in the "administrative" documentation, with the exception of the documentation relating to formalities of an official nature, where the entity must use the name that appears in the official documentation of the person , to transsexual and transgender people , as well as intersex people ."*

Having analyzed the consultation, in view of the current applicable regulations, and in accordance with the report of the Legal Counsel, the following is ruled:

I

(...)

II

The municipal society formulating the query refers to the SOC's "Work and Training Program - Línia Trans *, DLLD and Women in Vulnerable Situations", which provides for subsidies (among others, to local bodies), to lead to carry out actions in relation to the employment of the following groups:

"- Trans : trans people registered as unemployed job seekers (DONO);

- DLLD: people in a situation of long-term unemployment registered as unemployed jobseekers (DONO);

- Women: women in a situation of unemployment who are in a situation of violence, single parents or in a situation of vulnerability, registered as unemployed job applicants (DONO)."

The consultation explains that the municipal society, as in charge of promoting employment in its municipality, could request this subsidy from the SOC, so it asks *" if we can call it by the "real name" with which identify and guarantee the change of name in the "administrative" documentation, with the exception of documentation related to official procedures, where the entity must use the name that appears in the person's official documentation, for transsexual people and transgender , as well as intersex people ."*

Specifically, the consultation asks the following questions:

" - To comply with article 23 of Law 11/2014, of October 10, to guarantee the rights of lesbians, gays, bisexuals, transgenders and intersexuals and to eradicate homophobia, biphobia and transphobia , is it enough to ask people belonging to these groups what their real name is and the gender they identify with? Could it be considered an excessive data or, on the contrary, could we consider that it is a necessary data in view of the Program and the non-discrimination of these people?

- Does requesting the name heard from the people of these groups require a specific consent? What would be the legitimation for the processing of this data? Does knowing this data involve the processing of a special category of data? (...).

- Some specific procedure must be established as the City Council has done (...) with the approval of the "Mayor's Decree guaranteeing the right of transsexual and transgender people and intersex people to be treated and called in accordance with the name and gender with which they identify" (https: (...)) or the Catalan Employment Service (https: (...)) to process this data? Or, it is necessary that, within the power of self-organization that the City Council has recognized in article 4.1.a) of Law 7/1985, of April 2, regulating the bases of the local regime, issue a decree of an organizational nature to be able to comply with article 23 of Law 11/2014, as well as articles 9.2 and 14 of the Constitution and articles 4.2 and 40.8 of the Statute of Autonomy of Catalonia?

- What are the recommendations of this authority regarding these data treatments? If we can collect this data, do they have to prove the situation to us by showing the health card or, for example, signing a responsible declaration?. "

Based on the query in these terms, it is necessary to start from the basis that according to article 4.1 of Regulation (EU) 2016/679, of April 27, general data protection (RGPD), personal data is *"all information about a identified natural person or identifiable ("the interested party"); every person will be considered an identifiable natural person whose identity can be determined, directly or indirectly, in particular by means of a identifier, como por ejemplo a number, an identification number, data from location, an online identifier or one or more elements of identity physical, physiological, genetic, psychological, economic, cultural or social of said person;*

The processing of data of physical persons, specifically, persons from the groups mentioned, as a result of their participation in employment programs, among others, the data of the "real name" of these persons, is subject to to the principles and guarantees of the personal data protection regulations (RGPD, and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD)).

III

Regarding the regulatory framework in which the consultation is framed, it is necessary to take into account article 23 of Law 11/2014, of October 10, to guarantee the rights of lesbians, gays, bisexuals, transgenders and intersex and to eradicate homophobia, biphobia and transphobia (hereinafter, Law 11/2014), to which the consultation refers:

*"1. In the field of public administrations in Catalonia, especially in the educational and university field, the conditions **must be established by regulation** so that **transgender people and intersex people be treated and named according to the name of the genus with which they are identified** , even if they are minors.*

2. The public administrations of Catalonia must ensure, in any of their procedures, that they respect the confidentiality of the data relating to the gender identity of the beneficiaries of this law.

3. The right to consultation and specific information must be guaranteed for transgender and intersex people in areas such as access to the labor market, hormonal treatments and surgical interventions or sexual health and reproductive

(...)."

Likewise, according to article 22.6 of Law 11/2014: *"The public administrations of Catalonia must establish the necessary mechanisms so that the **administrative documentation** is adapted to the emotional relationships of LGBTI people and the heterogeneity of the family fact ."*

It should be noted that, at the time of issuing this opinion, it is not known that the regulatory development has been carried out (art. 23.1 Law 11/2014) which should specify the conditions under which the heard name should be used, is that is to say, the name with which a trans person is identified , corresponding to a gender different from the gender assigned at birth, in the field of Catalan Public Administrations.

According to the ninth additional provision of Law 19/2020, of December 30, on equal treatment and non-discrimination, referring to the name change and the recognition of the sex of transgender people :

"The Government must approve within twelve months a draft law on the change of name and the recognition of the sex of transgender people , based on international recommendations such as Resolution 2018 (2015) of the Parliamentary Assembly of the Council of Europe."

There is also no record that this regulatory development provided for in Law 19/2020 has taken place.

At state level, reference must be made to Law 3/2007, of March 15, regulating the registration rectification of the mention relating to sex, according to which (article 1):

"1. Any person of Spanish nationality, of legal age and with sufficient capacity to do so, may request the rectification of the sex registration.

*The rectification of the sex will lead to the **change** of the person's own number, so that it is not discordant with his registered sex.*

(…)."

According to article 2 of the same Law:

"1. (...). The request for registration rectification must include the choice of a new own number, except when the person wants to keep the one he has and this is not contrary to the requirements established in the Civil Registry Law."

The same Law 3/2007 provides that the change of gender and name obliges the person who obtains it to request the issuance of a new DNI adjusted to the rectified registry entry, keeping the same DNI number (article 6.2).

Given these forecasts, we start from the basis that the current regulations provide for a specific procedure for the change of registered sex which, if the person concerned so wishes, can also include the change of name, in order to incorporate the "real name" in identification documents of the affected person, mainly the DNI and, from there, in the corresponding documents and administrative procedures.

However, unless the interested persons follow this registration procedure - or in those cases where it is not followed and, therefore, there is no change of registered name and ID card -, the regulations studied provide that the affected persons will be treated and named in accordance with the name of the genre with which they are identified in their relations with the Administration.

In this context, it is necessary to examine the legality of the treatment of the name heard in the case raised, for the purposes of the data protection regulations.

IV

The processing of personal data, in this case, of natural persons benefiting from certain job placement programs, must comply with the principles and guarantees established by the RGPD and the LOPDGDD, among others, the principle of legality of the treatment (art. 5.1.a RGPD).

Article 6 of the RGPD provides the following:

"1. The treatment will only be lawful if at least one of the following conditions is met:

*a) **the interested party gives his consent** for the treatment of his personal data for one or several specific purposes;*
b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;
c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;
d) the treatment is necessary to protect the vital interests of the interested party or another natural person;
*e) the treatment is necessary for the **fulfillment of a mission** carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;*
(…)."

Order EMT/176/2021, of September 9, which approves the regulatory bases for the granting of subsidies for the Work and Training Program (SOC - Work and Training), aims to " *regulate the subsidies of Work and Training Program for the realization of projects to improve the employability of unemployed workers who are particularly vulnerable and who have difficulties accessing the labor market, promoted by the Public Employment Service of Catalonia* " (base 1). Beneficiary entities can be, among others, the local administrations of Catalonia, or their autonomous bodies or entities with competence in the field of active employment policies (base 3.1.a)), as it could be, where appropriate, the municipal society formulating the query.

In the case at hand, and in view of the information available (bases 13, 14 and 15.4 of Order EMT/176/2021), we are faced with a subsidized activity of competitive competition (art. 22.1 Law 38/ 2003, of November 17, general subsidies (LGS)).

According to base 6 of the same Order, the planned actions are aimed at people, unemployed or inactive, with difficulties accessing the labor market or in a particularly vulnerable situation.

The Resolution EMT/2340/2022, of July 19, which opens the call for the year 2022 of the Work and Training program for the Trans * Line, DLLD and Women in Vulnerable Situations (SOC - TRFO TRANSDLLD-DONA), establishes how it is necessary to accredit the information that should be provided in each case (unemployment or long-term unemployment, accreditation of a single-parent family, accreditation of different situations of social vulnerability, etc.).

For the purposes of interest, and with regard to the group of trans people , apart from the information that may be presented to prove the status of unemployed people, Resolution EMT/2340/2022 specifies the following (article 5):

> *"5.1 The **recipients of the subsidies** provided for in this Resolution are those included in base 6 of Annex 1 of Order EMT/176/2021, of September 9.*
>
> *5.2 For this Resolution, the recipient groups and their specific requirements are as follows:*
>
> *a) TRANS (Trans people *): People who do not identify with the gender they were assigned at birth according to their biological characteristics, either because they feel of the opposite gender or because their identity does not fit to traditionally established gender categories. These people must be unemployed and registered with the Public Employment Service of Catalonia as unemployed jobseekers (I GIVE).*
>
> ***Accreditation of the status of a trans person** * must be done through the presentation of a **Responsible Declaration** of the participating person.*
>
> *(...)."*

According to article 69.1 of Law 39/2015, of October 1, on common administrative procedure of public administrations (hereinafter, LPAC):

"1. For the purposes of this Law, the document will be understood as a responsible declaration
signed by an interested party in which he declares, under his responsibility, that he meets the requirements established in the current regulations to obtain the recognition of a
derecho or faculty or para su ejercicio, who has the documentation that accredits it, that it will be made available to the Administration when required, and that undertakes to maintain the fulfillment of the previous obligations during the period of time inherent in said recognition or exercise.

(...)."

In relation to the legitimacy of the processing of personal data to which the query refers, initially, **the legal basis provided for in article 6.1.e), may enable the processing of information of beneficiaries** of the Work and Training program, if applicable, on the part of the municipal society, which is necessary, appropriate and relevant for the fulfillment of the program's work placement actions, for example, the accreditation as unemployed persons, or other requirements required to qualify for the aids Specifically, this legitimate basis would legitimize the provision of a responsible declaration provided for in article 5.1.a) of the aforementioned Resolution, declaring the status of a trans person , which is a requirement for taking part in the Program.

In this regard, we note that, according to the information available on the website www.serveiocupaci.gencat.cat , which mentions the consultation itself: *"The Employment Offices of the SOC serve people with the name and gender with which they identify in the procedures linked to your employment request. The incorporation of the felt name makes it possible for trans * people to identify themselves with the felt name that appears on their health card. It also allows the heard name to appear in place of the name on your DNI/NIE in certain documents that are provided to trans * people, as is the case with the Registration and Renewal of the Employment Demand Document."*

In any case, since the intended model or form of the aforementioned responsible declaration is unknown, we note that it should not contain other unnecessary personal information (such as health information) of the affected persons, which is not relevant to be able to participate in the Program (the effects of the principle of minimization, according to which the processed data must be adequate, relevant and limited to what is necessary for the purposes of the treatment (5.1.c) RGPD)).

Having said that, the inquiry specifically refers to the **legitimacy (and, where applicable, the need for consent)** to be able to request the "sent name" from the affected persons, and to process this data, and whether this data could considered excessive.

As we have seen, the use of the "real name" is configured in the applicable regulations as an option for the interested person, and not as an obligation. This is not only clear from the provisions of article 23 of Law 11/2014, but, as we have seen, even when there is a change of sex at registry level (with subsequent change of the DNI), the person affected can also urge the change to the name felt, or can keep the original name (art. 2 Law 3/2007).

Also the *" Ley Project for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people"* which is in the parliamentary processing phase, provides for

the procedure for the registration rectification of the relative mention to sex, which includes the choice of a new proper name ("realized name") or the possibility that the person affected wants to keep the name he has (art. 39.4).

For the purposes of interest, the use of the given name is optional, for the purposes of being able to participate in the labor insertion actions carried out by the municipal society.

Although the use of the given name is not strictly necessary for the purpose of managing job placement aid for trans people , attending to the will of these people to be able to use the given name allows compliance with the provision of article 23.1 of Law 11/2014 and the objectives of this regulation, that is, that the affected people can relate to the public administration in a manner consistent with their identity or gender expression, if they so wish .

Therefore, the affected persons must be able to provide this data, for the purposes of processing the aid subject to consultation. In this way, and on the legal basis of the consent of the affected person (art. 6.1.a) RGPD), the treatment of the heard name can be considered lawful.

Taking this into account, from the perspective of data protection, it cannot be considered that the heard name is "excessive data", but that its treatment allows compliance with a legal provision (art. 23.1 Law 11/ 2014) and, therefore, it would conform to the aforementioned minimization principle, provided that the consent of the affected persons is available.

In conclusion, for the purposes of legality, the collection and processing by the municipal society of the identification data relating to the given name, on the legal basis of the consent of the affected person, is not contrary to the data protection regulations, by to the processing of the Work Aid Program (art. 6.1.a) RGPD). The treatment of this personal information, in the terms indicated, is also not excessive, but adjusted to the principle of minimization (art. 5.1.c) RGPD).

v

Having said that, the query also asks if it is possible to guarantee *"the change of name in the "administrative" documentation, with the exception of documentation relating to official procedures, where the entity must use the name that appears in the documentation official of the person (...)."*

According to the **principle of accuracy** : *"The personal data will be : accurate and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed "* (art. 5.1.d) RGPD).

It is necessary to guarantee the principle of legal security, in the sense that the personal information that may be contained in a file or documentation referring to a natural person,

and that may affect the rights and interests of this person. For this reason, the information processed must be truthful and up-to-date.

At this point it must be said that the administrative procedure regulations (LPAC) do not establish this distinction between "official documentation and administrative documentation", to which the query seems to refer.

As we have said, the consent of the affected person can be a sufficient legal basis for dealing with the assumed name even if the registry change has not occurred, given that the affected person must be able to use the assumed name in his relations with the Administration (art. 23.1 Law 11/2014 and art. 6.1.a) RGPD).

However, in order to comply with the aforementioned principle of accuracy, and the principle of legal security, the person in charge must **collect and process not only the name heard** (and process this data to address the affected person, if this requests, in compliance with Law 11/2014), **but also the identity contained in official identification documents** , such as the DNI/NIE or other documentation accepted as an identification mechanism, such as the passport.

In this sense, the regulations regulate the identification systems of those interested in an administrative procedure. Specifically, and according to article 9.1 of the LPAC:

> *"1. The Public Administrations are obliged to verify the identity of those interested in the administrative procedure, by means of the verification of their number and surnames or denomination or company name, as appropriate, which are contained in the* ***National Document of Identity or equivalent identification document*** *."*

Therefore, on the one hand, the affected people must be able to relate to the heard name if they wish, and on the other hand, the Administration must facilitate this right and, at the same time, must use the identification systems which provides for the LPAC.

Otherwise, if certain procedures are issued on the basis of the heard name, and others on the basis of the identity contained in official documents, the traceability of the information could be lost and, in short, put the accuracy of the information at risk staff of the affected person.

In other words, from the perspective of data protection there would be no disadvantage in dealing with the heard name, as long as the identification information of the affected person that may be contained in official documents (art. 9.1 LPAC) is also included, for in order to ensure identification and, among others, the principle of accuracy of information and traceability and, ultimately, the correct management of the file.

In particular, the person in charge should be able to have the ID number of the person affected, and treat this data together with the name heard, if applicable, in the data forms that are used. The DNI number (which, as we have seen, does not change and is always preserved, even if there has been a change in the data register, *ex. art.* 6.2 Law 3/2007), is what will allow the person in charge to check and credit the identity of the affected person, and the link with the name heard.

Having, therefore, the DNI, would make it possible to comply with the provisions of article 9.1 LPAC in terms of the truthful identification of the person, and also to comply with the latter's right to use the given name.

In this regard, we note that the need to be able to properly identify the affected person is also included in article 6.4 of Law 3/2007, mentioned, when a registry rectification occurs, in the following terms:

> "3. *The new issue of documents dated prior to the registration rectification se will perform at the request of the interested party, his legal representative or person authorized by him,*
> *in any case, the authorities, organizations and institutions that issued them at the time must guarantee the adequate identification of the person in whose favor the referred documents are issued, by means of the appropriate printing on the duplicate of the document of the same national identity document number or the same registration key that appears in the original."*

VI

In the **second question** asked, the query also refers to whether knowing the heard name would entail the processing of information of a **special category of data.**

According to article 9.1 RGPD *: " 1. The processing of personal data that reveals ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation, and the processing of genetic data, targeted biometric data are prohibited to uniquely identify a natural person, data relating to health or data relating to the sexual life or sexual orientation of a natural person. "*

We understand that the query is referring, on the one hand, to whether it is data relating to people's health, or, on the other hand, whether it can be considered data relating to their sex life or sexual orientation.

According to article 4 of Law 3/2007, mentioned:

> *"The registration rectification of the mention of sex will be agreed upon once the applicant proves:*
>
> *a) That he has been diagnosed with gender dysphoria.*
>
> *Accreditation of compliance with this requirement will be made through a medical report (...).*
>
> *b) That it has been treated medically for at least two years (…)."*

Based on article 4 of Law 3/2007, the registration procedure to incorporate the heard name in official documents requires the prior provision of medical data of the affected person (diagnosis of dysphoria or existence of medical treatment for two years) .

However, for the relevant purposes, the fact that the heard name is included in the documentation related to the Aid Program referred to in the consultation, does not provide any specific information about the state of physical or mental health of the people, rather, it is only data relating to the gender identity of that person.

In the same vein, we note that, according to article 23.4 of Law 11/2014: *" Transgender people and intersex people must be able to take advantage of the provisions of this law without the need for any diagnosis of gender dysphoria or any medical treatment."*

In addition, the Instruction of October 23, 2018, of the General Directorate of Registries and Notaries, on name change in the Civil Registry of transsexual persons provides that the possibility of making a change of registered name without the contribution of health information Thus, section 1 provides the following:

"1. In the event that an adult or an emancipated minor requests the change of number, for the assignment of one corresponding to the sex different from the one resulting from the birth registration, ***such request will be attended*** *to, provided that before the person in charge of the Registry Civil, or in a public document,* ***the applicant declares*** *that he is of the sex corresponding to the requested number,* ***and that it is not possible for him to obtain the change of the registration of his sex in the Civil Registry,*** *because he does not fulfill the requirements of art. 4 of Law 3/2007, of March 15, regulating the registration rectification of the mention relative to the sex of the persons."*

In the same Instruction it is recalled that: *"Also, the Jurisprudence of our Court Supremo has been constant in the line of making the interpretation and requirements for it more flexible authorization to change gender and number. Thus, the Sentence of September 17 2007, from the Civil Chamber, later followed by several others (28 February and 6 March 2008, June 22, 2009, etc.) point to the prevalence of the factors psychosocial on the morphological for the determination of sex, and the faculty of individual to shape his sexual identity according to his deep feelings (…)."*

Also of interest is Resolution 2048 (2015) of the Parliamentary Assembly of the Council of Europe (22.05.2015), which emphasizes the regulations in European countries, based on the principle of gender self-determination, which do not require long and complex procedures or the need to have medical or psychiatric reports, and also the recognition of a right to gender identity (sections 4 and 5).

The Council of Europe urges States to develop fast, transparent and accessible procedures, based on self-determination, to change the registered name and sex of transgender people on birth certificates, identity cards, passports, educational certificates and other similar documents; to make these procedures available to all people who want to use them, regardless, among others, of medical or health status (section 6.2.1).

Likewise, the Council of Europe urges States to abolish the requirement of "mandatory medical treatments, as well as a mental health diagnosis, as a legal requirement necessary to recognize a person's gender identity in the laws that regulate the procedure to change the registered name and gender" (section 6.2.2).

Likewise, article 39.3 of the aforementioned State Bill, currently in the parliamentary processing phase, provides that: *"The exercise of the right to the registration rectification of the mention relative to sex in no case may be conditioned on the previous exhibition of medical or psychological report related to the discrepancy with the sex mentioned in the birth registration, nor to the previous modification of the person's appearance or bodily function through medical, surgical or other procedures."*

In other words, the relevant regulations (art. 23.4 Law 11/2014, Instruction of 23 October 2018, Resolution 2048 (2015) of the Council of Europe, or the aforementioned Draft Law), provide that it is necessary to unlink the identity of gender, as a concept, of the medical condition of those affected.

In this context, for the purposes of interest, it seems clear that the "felt name", as identifying data referring exclusively to the gender identity of trans people , does not provide information about their physical and mental health conditions people

In the same way, the name felt, as data relating to the expression of gender or the identification with a gender by the person who asks to be identified with this name, does not involve revealing any specific information about the life sexual or about that person's sexual orientation.

For all that has been said, the name felt, as identifying data that specifically refers to the identity or gender expression of a person, does not seem to be considered as information of special categories of data (9.1 of l 'RGPD').

A different issue is that this information, together with the rest of the personal information that the entity formulating the inquiry could deal with, not only of people from the trans group , but also of other groups (people in a situation of vulnerability , in a situation of long-term unemployment, women in a situation of gender-based violence, single-parent women...) may involve the processing of data of people with personal situations of particular vulnerability or at risk of discrimination.

In this sense, as this Authority has pointed out extensively, the information of people in a particularly vulnerable situation must be treated with particular care, with regard to the application of the principles and guarantees of the data protection regulations, given the impact on the rights and interests of these people.

VII

The **third question** posed asks if it is necessary that, within the City Council's power of self-organization, recognized in article 4.1.a) of Law 7/1985, of April 2, regulating the bases of local regime (LBRL), an organizational decree is issued to comply with article 23 of Law 11/2014. The consultation cites some examples, such as a Mayor's Decree from another City Council in relation to the recognition of the heard name.

The local regime legislation attributes to local territorial bodies, within the scope of their powers, the power of self-organization (LBRL) and article 8.1.a) of the Consolidated Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28, (hereinafter, TRLMRLC). In this sense, article 246 of the TRLMRLC establishes

that local bodies have full power to establish, organize, modify and delete the services under their jurisdiction, in accordance with what is established by local regime legislation and other applicable provisions.

We also add that, according to article 129.1 of the LPAC: *"In the exercise of legislative initiative and regulatory power, Public Administrations will act in accordance with the principles of necessity, effectiveness, proportionality, legal certainty, transparency, and efficiency. (...)."*

It should be added that, according to article 1.2 LPAC:

> *"2. Only by law, when it is effective, proportionate and necessary for the achievement of the purposes of the procedure, and in a motivated manner, additional or different procedures may be included to those contemplated in this Law. Regulations may establish procedural specialties referred to the competent bodies, specific deadlines for the specific procedure due to the matter, forms of initiation and termination, publication and reports to be collected.*

Thus, the administrative procedure regulations limit the way of regulatory development to certain aspects, and conditioned to the principles of necessity and effectiveness, without it having to be a generalized option or necessary in all cases.

Thus, without prejudice to the fact that in other cases a City Council may consider it appropriate to specify, by way of the regulatory authority granted by the regulations, the conditions of a certain processing of personal data when these elements are present, it means that this concreteness - in this case, issuing a mayoral decree - would not in principle be a requirement of the data protection regulations (RGPD and LOPDGDD), nor does it seem necessary in the case at hand.

What is required of the person responsible for the treatment is the correct application of the principles and guarantees of the data protection regulations (art. 5 RGPD), as well as the application of the appropriate technical and organizational measures that guarantee that, by default, only the personal data necessary for the purposes of each treatment are processed (art. 32 RGPD).

In conclusion, the data protection regulations do not establish a specific regulatory mechanism that must be used to apply these regulations. At least, not in terms of being required, in the case at hand, to issue a mayoral decree on the processing of the data in question.

VIII

The **fourth question** posed asks if those affected *"must prove the situation by showing the health card or, for example, signing a responsible declaration?".*

As has been said, the regulations governing the Program referred to in the consultation (art. 5 Resolution EMT/2340/2022) already establish that trans people who could receive aid or request to participate in the Program must certify the condition of a trans person (which

would be what would allow participation in this line of aid, apart from certifying the unemployment situation), by means of a "responsible declaration" (art. 69.1 LPAC, mentioned).

Taking into account, therefore, that the interested persons will have to submit a responsible declaration, there does not seem to be any obstacle, from the data protection regulations, to state in the same responsible declaration provided for in said Resolution, what is the name meaning that the affected person wants to be used by the Administration.

Apart from this, it is also considered whether the TSI could be used to accredit the situation of the trans person.

In line with the provisions of article 23.1 of the aforementioned Law 11/2014, several administrations have implemented the possibility of providing a responsible declaration in order to record the name heard, in relation to the processing of various issues.

As an example, according to the information available (https://web.gencat.cat/ca/tramits/tramits-temes/Targeta_amb_nom_sentit), the Government of the Generalitat has enabled the possibility of issuing a certificate, as document that allows you to certify that the DNI/NIE, or the passport, and the family book, correspond to the trans person.

In any case, and as has been explained above, it is necessary to take into account the requirements derived from article 9.1 LPAC in relation to the identification of citizens in administrative procedures. Thus, it does not seem that the contribution of the TSI that incorporates the felt name (and which can be a valid mechanism for the relationship of the affected person with the administration in other contexts), can replace the contribution of the DNI as document certifying the identity of the person, for the purposes of the query formulated. Not only that, but, as has been said, the DNI is what will allow you to check the identity of the person who wants to use the given name, and maintain the traceability of the information.

Therefore, for the purposes we are now dealing with, it is necessary for the person in charge to collect not only the person's real name, but at least the ID number (and be able to verify that this corresponds to the affected person), in order to comply with both the requirements of the LCAP and article 23.1 of Law 11/2014.

Bearing this in mind, in those cases in which the gender and/or name change procedure provided for in Law 3/2007 has not yet taken place (in which case the affected person would already have their DNI with the name incorporated sense), the provision of an official document (art. 9.1 LPAC), is necessary, from the perspective of data protection, to accredit the identity of the affected person and, from there, to be able to use the name heard in the case at hand.

Therefore, if, as the query points out, a responsible statement is used, it should incorporate the person's real name and, at least, the DNI number, in order to confirm the person's identity for administrative purposes (art. 9.1 LCAP).

Regarding the recommendations (fourth question), let's remember what the municipal society, as responsible for the treatment (art. 4.7 RGPD) has the duty to comply with the

principles and guarantees provided for in the data protection regulations in relation to this treatment, in application of the principle of proactive responsibility (art. 5.2 RGPD).

As has been pointed out, the data processing we deal with may affect people in a vulnerable situation, as explained, among others, in point 6 of Annex 1 of Order EMT/176/2021, of September 9, and in the same Resolution EMT/2340/2022, cited.

As this Authority has decided (CNS 56/2021, CNS 28/2021, 16/2021, or CNS 45/2020, among others), the processing of data from vulnerable groups, beyond some of the data treated whether data of specially protected categories (art. 9.1 RGPD) or whether they belong to other categories, requires special attention and care on the part of those responsible and the rest of the participants, in relation to the application of the different principles and obligations, such as now comply with the duty to inform those affected, among others (art. 12 RGPD).

On the other hand, we have already referred to the need to have the identification data (registration data) of the affected person, which may appear in the official documents, and not only the name heard, for the purposes of complying with the principle of accuracy of the data.

In addition, according to the principle of integrity and confidentiality: *"Personal data will be: treated in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal processing and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures"* (art. 5.1.f) RGPD)).

As has been said, the processing of data that concerns us - and not only, or in isolation, the information relating to the gender identity of the users of the municipal society - involves processing personal information of people who may be in situations of special vulnerability.

In addition, we recall that the same article 23.2 of Law 11/2014 provides that: *"The public administrations of Catalonia must ensure, in any of their procedures, respect for the confidentiality of data relating to the gender identity of beneficiaries of this law."*

Therefore, it is necessary to take into account the nature of the information processed, and to carry out the corresponding risk analysis in order to establish the security measures that must be applied with respect to this information (art. 32 RGPD).

Finally, we make a reminder regarding the special care that is required of those responsible for the processing of data of people in a situation of vulnerability, as could be the case at hand, in relation to subsidized activity under a competitive competition regime (articles 94 TRLFPC and 22 LGS)

Thus article 20.8 letter b) of the LGS provides that the regulations governing the call may restrict the publication when this may be contrary to the respect and safeguarding of the honor, personal or family privacy of natural persons (Organic Law 1/1982).

Likewise, according to article 15 of Law 19/2014, of December 29, on transparency, access to information and good governance: *"In the case of subsidies and public aid granted for reasons of social vulnerability, it has to preserve the identity of the beneficiaries".*

Let us therefore remember that this limitation must be applied in any case, since the dissemination of data of people in different situations of vulnerability, as may be the case of people served by the Work and Training Program, entails, from the point of in view of data protection, a very direct impact on the right to privacy of these people.

conclusion

1.- Given that the regulations urge the public administration to facilitate the use of the "real name" by trans people (art. 23.1 Law 11/2014), the processing of this data is not excessive for the purposes of principle of minimization (art. 5.1.c) RGPD), and may be lawful if it is carried out on the legal basis of the consent of the affected person (art. 6.1.a) RGPD).

This without prejudice to the fact that the identification information of the affected person contained in official documents (DNI/NIE or passport) must also be processed, in order to ensure identification and, among others, the principle of accuracy of information and its traceability.

2.- The treatment of the "real name", as identifying data relating to the identity or gender expression of a natural person, does not, in principle, involve the treatment of data of special categories (art. 9.1 RGPD).

3.- It is not apparent from the applicable regulations (art. 1.2 LCAP) and the data protection regulations that a mayoral decree is required on the processing of data subject to consultation.

4.- It is necessary to comply with the principles and obligations of the data protection regulations, especially the principles of accuracy, integrity and confidentiality of the data.

In the event that the contribution of the heard name is articulated through a responsible declaration, it would be necessary to state the heard name, as well as the contribution of the DNI/NIE or passport as a document certifying the identity of the person .

Barcelona, November 10, 2022