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In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, since in case of revealing the name of the population affected, the physical persons affected could also be identified.

#### File identification

Archive resolution of the previous information no. IP 209/2019, referring to the University (...).

#### Background

1. On 07/15/2019, the Catalan Data Protection Authority received two letters by which a person, professor (...) of the Department of (...) of the University (...) (...), filed a complaint against this University and against one of its students, on the grounds of an alleged breach of the regulations on the protection of personal data.

With regard to the complaint filed against (...), the complainant stated that the coordinator of the Degree of (...) of the Faculty of (...) (hereafter, coordinator) had misused of your data without your consent. In particular, it pointed out that the coordinator had accessed some private WhatsApp messages that the complaining teacher had sent to one of his students - and she had shown the coordinator through screenshots of the messages - and had subsequently communicated them to others people from this University without their consent, making what they considered an inappropriate use of their personal data.

In order to prove this, he provided a copy of a document with the mention "Annex II", and the title *"Communication of the facts that motivate the request for intervention by the Technical Advisory Commission"* (in hereinafter, CTA), signed on 9/04/2019 by this student, which was accompanied by the aforementioned screenshots. In the body of this request for intervention by the CTA, which was the section referring to the facts communicated, the participation of the coordinator was highlighted when the following was pointed out:

*"The coordination of the Degree of (...), and the Dean's Office of the Faculty of (...), at the request of the student of the Degree of (...), XXX, bring to your attention the following facts (. ..)"*

Following the facts, and related to them, Law 5/2008, of April 24, of (...) of women to eradicate male violence was invoked. And in the last paragraph of the letter it was requested: *"carry out the necessary actions and diligences in order to investigate and sanction, if necessary, the conduct that may constitute harassment, as well as provide cover and protection in the situation described"*.

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In summary, this request for intervention contained a list of facts that the coordinator brought to the attention of the CTA, which coincides with the response made by (...) to the Authority's request for information, and which is transcribed in the 3rd heading of these antecedents.

2. The Authority opened a preliminary information phase (no. IP 209/2019), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the action of the coordinator of the (...) was capable of motivating the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances that were involved. Another number was assigned to the complaint filed against the student. IP 210/2019, and therefore does not form part of the subject of this resolution.

3. In this information phase, on 07/19/2019, the (...) was required to identify the position or responsibility assigned to the coordinator, to report on the reasons that in his opinion would justify the access and treatment of the personal data subject of the complaint; also to detail the actions carried out by the coordinator in relation to the events reported, and in particular, report on how she became aware of the conversations, bodies and/or people who intervened, whether from the Technical Advisory Commission or from any other organ, etc.

He was also required to report on the action protocol of the (...) in the face of the complaint or the knowledge of facts of a similar nature to those relating to the messages that gave rise to the intervention by bodies of the (...). Finally, he was required to identify the positions and/or people of the (...) who had access to the screenshots referred to by the person making the complaint, as well as the legal basis that would justify these treatments .

4. On 07/23/2019, the (...) responded to the aforementioned request through a letter in which stated the following:

*"Mr. XXX (hereinafter, professor), professor (...) of the Department of (...) of the University (...), requested the intervention of the Data Protection Delegate of the (...) for the possible violation of your right to data protection (...).*

*As a result of the file processed for that purpose, the following facts and conclusions were established: Ms. XXX (hereinafter, student), student of the Degree of (...) of the (...) of the University (...), studied, among others, the subject of (...), for which the professor (...) was responsible.*

*During the regular tutoring held by Mrs. XXX (hereafter, coordinator), vice dean of (...) of (...) and coordinator of Studies of (...) of the Faculty of (...), with the students of the subject, they made him aware of behaviors and attitudes of the teacher that they considered inappropriate and vexatious towards the student, mainly via WhatsApp.*

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*These facts were confirmed to the coordinator by the affected student herself, initially through a telephone conversation, also via e-mail and, finally, in individual tutoring.*

*In compliance with the functions and obligations assigned to her by the Statutes of the (...) and the regulations of the Faculty of (...), the coordinator brought the facts related to the affected student to the knowledge of the dean of the Faculty of (...), and both agreed to communicate the facts to the director of the department of (...), who was summoned to a meeting in the Dean's Office of the Faculty.*

*Likewise, and as a result of the student's confirmation of the behaviors of the professor, the Coordinator of Studies urged the intervention of the Technical Advisory Commission of the (...) (CTA), permanent body in charge of the application of the technical and specialized action procedure included in the Protocol for (...), approved by the Governing Council of (...) on (...).*

*As provided for in article 10.1 of the aforementioned Protocol, the procedure is initiated by a complaint from the affected person or any member of the university community who has had direct or indirect knowledge of the facts that motivate the complaint.*

*In this case, and in compliance with what is stipulated in article 10.2 of the Protocol, in relation to the previously quoted paragraph, the coordinator presented in the General Registry of the (...) the request for the chancellor to convene the CTA.*

*This request, as required by Article 10.2 of the Protocol itself, was accompanied by a sealed envelope with a detailed account of the facts that motivated the complaint. This sealed envelope is opened at a specific closed-door meeting of the CTA.*

*The letter with the detailed account of the facts was signed by the affected student, accompanied by the printout of some conversations held via WhatsApp with the teacher, provided voluntarily by the student as a means of proof of her complaint.*

*The study coordinator is a one-person territorial body of the University, provided for in the article 47.d) of the Statutes of the (...), to whom article 105 of the same Statutes assigns, among others, the functions of directing, organizing and coordinating the teaching of each of the degrees that are taught in the faculties or schools, by delegation of the dean.*

*On the other hand, article 25.2 of the Regulations of the Faculty of (...), approved by the Governing Council of (...) in session of (...), establishes that study coordinators have the duty to inform the departments and the dean's team of incidents that occur in any aspect related to teaching.*

*Therefore, the processing of personal data carried out by Ms. XXX (coordinator)*

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*were protected in the exercise of public powers, according to art. 6.1.e of Regulation (EU) 2016/679, of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof data (RGPD), and in compliance with a legal obligation (art. 6.1.c RGPD), both with regard to the information transferred to the dean of the Faculty of (...) and that which was made known to the director of the department.*

*The same can be said regarding the request submitted by the Coordinator of Studies at the CTA, in compliance with the Protocol approved by the Governing Council of the (...).*

*Compliance with the legal obligation would also derive from the inalienable nature of the powers of the administrative bodies, established in article 6.1 of Law 26/2010, of 3 of August, of the legal regime and procedure of the public administrations of Catalonia; like this as in article 8.1 of Law 40/2015, of October 1, on the legal regime of the public sector.*

*The information transferred by Mrs. XXX (coordinator) to the department and the dean of the Faculty of (...), as well as the contribution to the Technical Advisory Commission of (...), has also been the appropriate, relevant and not excessive in relation to the purposes of the treatment, therefore the treatment principles of Article 5 of the RGPD have also been met, especially those purpose and minimization principles.*

*Regarding the printed images of WhatsApp conversations between the teacher and the affected student, the coordinator has limited herself to including them in the complaint by will and explicit consent of Ms. XXX (student). In any case, it appears only once in this documentation the teacher's name, without any reference to phone numbers or any other information identifier Ms. XXX (coordinator) has not disclosed the existence of the WhatsApp conversations provided to the CTA or their content.*

*Regarding the procedure followed by the Technical Advisory Commission, article 8.3 of the Protocol approved by the Governing Council of the (...) includes confidentiality as one of the basic principles of its action, and its article 10, as previously noted, establishes the obligation to present the details of the facts reported in a closed envelope, the contents of which only have CTA members access.*

*In this sense, neither Ms. XXX (coordinator) nor any other person or body of the (...) outsiders in the procedure they did not have access to any information regarding the content of the actions that has carried out the CTA; and, in the file processed by the Data Protection Delegate of (...) no it has been proven that no member of the CTA has disseminated either the processing of the procedure or of the content of the file (...)."*

5.- On 3/01/2019 the Authority received a second letter from the complainant, complementary to the first letter of complaint, stating the following:

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*"1-manipulation of the chronological order of the catches*

*September 19 is the first date that appears.*

*The course (...) started on the 12th... I have classes on Mondays and Tuesdays... 17th and 18th... the content is that I ask a student to pick something up for me... before I met her y siendo días in which I was in the (...)*

*Which is when I'm the least bit strange... a otros ojos ... in mine it's false.*

*(...)*

*2-I know that it is the student because I say so ... but there is nothing in those screenshots that identifies her ... I could say that it is another person and even that it is me since the only number that appears is mine*

*3- my consent has not been requested for a third person to use it and give it to an investigation commission that does not have any legal category that enables it ... it is not the police or the prosecutor's office.*

*4-I think it violates article 197 of the Penal Code and article 18 of the Constitution.*

*5- there is a sentence of the Supreme Court of 2015 that establishes the requirements that the use of screenshots as evidence must have.*

*6- have been used with the purpose of starting a disciplinary case for vexatious behavior that has not been carried out because the investigation by the body in charge of the valuation has resulted in the fact that there is no evidence, mainly because there has been none and it is of a false complaint.*

*(...)*

*I think there are reasonable indications to consider bad faith in the use of those captures manipulated screen."*

Fundamentals of law (...)

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

First of all, it is necessary to point out that below only the facts that are relevant from the point of view of the data protection regulations will be analyzed, because any other exceeds the object of these research actions, and the powers of the Authority. Therefore, the veracity of the facts reported by the student - including the veracity of the WhatsApp messages brought before the CTA - will not be analyzed, nor the validity of the screenshots of these messages as evidence of alleged harassment

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Likewise, it should be noted that the considerations made here refer only to the reported data processing carried out by (...) - and in particular by the aforementioned study coordinator -, and not to those carried out by the affected student, given that the scope of action of this Authority is circumscribed to the treatments carried out by the administrations and entities included in article 3 of Law 32/2010, which does not cover data treatments carried out by individuals. Therefore, the communication of data made by the student to the studies coordinator and the CTA will not be analyzed either.

The complainant complains that the coordinator of the Degree of (...) of the Faculty of (...) communicated to the members of the CTA, without their consent, her WhatsApp messages that she had sent privately to one of her students, a complaint that needs to be extended to the communication of data that the coordinator previously made to the dean of the University of (...), and to the director of the Department of (...). The complainant considers that with this action articles 5, 7 and 8 of the LOPDGDD would have been violated.

Given that the information communicated by the coordinator contained personal data of the reporting person, it is then necessary to analyze whether the communication of this personal data conformed to the data protection regulations, and in particular whether there was a legal basis of those foreseen in article 6.1 of the RGPD, taking into account the facts and reasons put forward by the (...) and the reporting person, as well as the content of the request for intervention by the Technical Advisory Commission, dated 9 /04/2019.

2.1. About the communications made by the studies coordinator to the Dean of the Faculty of (...) and the Director of the Department of (...).

With regard to these two communications of data, the Authority is not aware that the coordinator had disclosed the exact content of the WhatsApp messages to the Dean of the Faculty of (...) and the Director of the Department of (...). In any case, from the facts reported by the (...) and from the CTA's request for intervention, it is clear that the coordinator met with these two people to inform them of what she considered the teacher's irregular behavior here denouncing, based on the statements first made to her by the affected student's classmates, and then by the student herself, and therefore, it must be understood that the coordinator communicated personal data of the denouncing person about the events reported, which is the relevant element.

With regard to the concurrence of a legal basis that protects the communications made by the coordinator, the (...) has pointed out that these communications are protected *"in the exercise of public powers, according to art. 6.1.e of Regulation (EU) 2016/679, of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof data (RGPD), and in compliance with a legal obligation (art. 6.1.c RGPD)"*.



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Article 6.1.c) RGPD establishes that the treatment will be lawful if it: *"is necessary to fulfill a legal obligation applicable to the person responsible for the treatment"*.

On the other hand, article 8.1 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital (...)'s (hereafter, LOPDGDD) establishes in section 1 that : *"The processing of personal data can only be considered based on the fulfillment of a legal obligation payable to the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when so provided by a norm of (...) of the European Union or a norm with the status of law, which can determine the general conditions of the treatment and the types of data subject to it as well as the transfers that are appropriate as a result of compliance with the legal obligation This rule may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679"*.

In this regard, article 2.2 of Organic Law 6/2001, of December 21, on universities (LOU) establishes that the autonomy of universities includes: *"a) The preparation of their statutes (...), as as of the other rules of the internal regime"*. On the other hand, article 46.2.e) LOU establishes that students have (...) to: *"advice and assistance from teachers and tutors in the form in which it is determined"*.

With regard to the functions of study coordinators, article 105.1 of Decree 237/2003, of 8 October, which approves the Statutes of the University (...), establishes that: *"The study coordinators are the people in charge of directing, organizing and coordinating the teaching of each of the degrees taught in the faculties or schools, by delegation of the deans or directors, and with autonomy"*. On the other hand, with regard to the obligations of the teaching staff, article 129 of the same rule establishes that it is the duty of the academic staff of the (...): *"f) to respect the other members of the community university, particularly their physical and moral integrity and the exercise of their rights (...)"*.

With regard specifically to the communication of data carried out by the coordinator to the Dean and the head of the Department, article 25.2.a) of the Regulations of the Faculty of (...) of the (...), approved by Agreement of the Governing Council of (...), establishes that the coordinating persons have the duty to : *"periodically inform the departments and the dean's team of incidents that occur in any aspect related to teaching."*

Finally, article 28.3 of Law 17/2015, of July 21, on the effective equality of women and men, establishes that universities must: *"c) Provide information and advice to prevent any type of discrimination, sexual harassment or harassment due to sex and other forms of gender-based violence"*.

From the regulations presented and the facts analyzed, it is clear that it was the legal obligation of the coordinator to attend to and advise the affected student, as well as to communicate the facts to the Dean of the Faculty and the head of the Department.

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Indeed, the coordinator became aware of the facts in the context of a class tutorial, in which the students of the subject studied on (...) taught by the complaining teacher referred to alleged vexatious treatment towards a student, which would occur through WhatsApp messages. Given that the subject taught by the complaining professor was part of the studies coordinated by the Vice Dean of (...) of (...), and the students referred to the teacher's behavior contrary to the behavior due to the academic staff, the coordinator was obliged to assist and advise the student, and to communicate the facts to the Dean of the Faculty and the head of the Department. This apart from what is indicated in the following heading (2.2.).

Therefore, the communication of personal data derived from the meetings held by the study coordinator with the Dean and the Head of Department, was protected by the legal basis provided for in article 6.1.c) of the RGPD.

Despite the prevalence of this legal basis, to the extent that the coordinator communicated the personal data in the exercise of the management and control functions of an education that she coordinated, it is considered that the aforementioned treatment would also be protected by the legal basis provided for in article 6.1.e) of the RGPD, which determines that the treatment is lawful when *"it is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge of the treatment"*.

## 2.2. About the communications made by the studies coordinator at the CTA.

In the written response to the Authority's request for information, the (...) has acknowledged that the coordinator incorporated the WhatsApp messages in the complaint or request for intervention that was presented to the CTA, while specifying that he did it *"by will and explicit consent"* of the affected student.

With regard to the concurrence of a legal basis that protects the communication made, and in particular that provided for in article 6.1.c) of the RGPD, the following provisions must be taken into account.

Article 28.3 of Law 17/2015, of July 21, establishes in section f) that universities must : *"Apply positive action measures (...) that contribute to preventing sexual harassment and harassment on the basis of sex – the greatest expression of inequality between the sexes –, which guarantee this prevention and which allow an adequate response to complaints or claims that can be made in this regard to any member of the university community"*.

As a result of this forecast, the (...) approved by Government Council Agreement dated (...) the Protocol for (...), of which the following precepts should be highlighted:



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- Article 10.1 provides in point 1 that: *"The procedure is initiated by the complaint of the affected person or any person from the university community who has had direct or indirect knowledge of the facts that motivate the complaint (...)"*. And point 2 provides that: *"The action procedure begins by submitting to the General Registry of the University (...) the request to the rector to convene the CTA. This request must be accompanied by a sealed envelope with a list of the facts that motivate it and the request to convene the CTA (...)"*.
- Article 4 provides in point 1 that the protocol applies: *"to any of the behaviors defined in article 3 that occur by verbal, face-to-face or electronic means (mail messages, social networks, WhatsApp, etc.)"*. And point 2 provides that the following applies: *"a) All staff who have a work or statutory link with the (...) and all the students of the (...)"*.
- Article 3 defines the behaviors of sexual harassment and harassment due to sex and others, as well as the behaviors of male violence.
- Article 5 provides that the: *"Technical Advisory Commission (CTA): has a permanent nature and is responsible for the application of the technical and specialized action procedure contained in this protocol, as well as the monitoring of the measures"*.

From the regulations set out and the statements of the (...) it follows that the study coordinator acted in accordance with the aforementioned Protocol when she became aware of the facts that motivated the CTA's request for intervention, while taking into account account of the obligation derived from (...) of the affected student to receive assistance from teachers and tutors (art. 42.e LOU).

In particular, the (...) has stated that the WhatsApp messages were delivered together with the request to the CTA in a sealed envelope, which was accessed only by members of the CTA behind closed doors. In this regard, the Authority does not have any element that would lead to question such manifestations.

It is worth noting that the Protocol does not establish an obligation to provide documentation for evidentiary purposes, although the application form, which is in Annex II, contains a section entitled "Attached documentation", with the phrase in italics *"Attach, if applicable, documentation that grounds the request"*, and in the disputed request the following was noted: *"WhatsApp conversations are attached"*. But this would be an irrelevant question, since the contribution of the elements of evidence of some reported facts are part of the (...) of defense provided for in Article 24 EC. And apart from that, in this case it seems that the contribution of the messages was indispensable to assess the facts reported.

Thus, the contribution and subsequent access to the messages by the members of this commission was legitimized by the regulation contained in the aforementioned Protocol. And therefore, the communication of the personal data of the complaining teacher that the coordinator of studies carried out when

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incorporated the screenshots of the WhatsApp messages in the request for intervention by the CTA, it was protected by the legal basis provided for in art. 6.1.c) of the RGPD.

As indicated in the treatment analyzed in the previous heading, despite the prevalence of this legal basis, it is considered that the aforementioned treatment would also be protected by the legal basis provided for in article 6.1.e) of the RGPD, taking into account that the coordinator communicated the personal data following a protocol established by the university in compliance with the legal mandate provided for in article 28.3 of Law 17/2015, and therefore in the exercise of the functions of prevention of sexual harassment in its scope of action.

3. In accordance with everything that has been set out in the legal basis (...) 2nd, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is appropriate to agree to its archive.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 209/2019, relating to the University (...).
2. Notify this resolution to the University (...) and to the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,