

File identification

Archive resolution of the previous information no. IP 500/2021, referring to Trambaix UTE

Background

1. On 10/12/2021, the Catalan Data Protection Authority received, through a transfer from the Spanish Data Protection Agency, a letter from a person for which he was making a complaint against the Trambaix UTE, due to an alleged breach of the regulations on personal data protection .

In particular, the complainant stated that during a journey made with the TRAM, a railway agent issued him a " *penalty proposal* " (literal from which it can be inferred that reference is made to a minimum perception ticket) , and that in doing so, he required the data appearing on his national identity document. Likewise, the complainant also complained that the agent was identified with a numeric personal identification number, and not with the first and last name. The person making the complaint attached with said letter, a copy of a minimum perception ticket which has as its date of issue 11/13/2021, and which identifies the stop where the alleged infringement is detected (Sant Feliu -Comarcal Council), the ID number of the person reported, and the minimum perception number.

Likewise, on the dates 29/12/2021 and 26/01/2021, the complainant presented as complementary documentation, two letters that he had addressed to the " *department de quejas del usuario Trambaix* ", as well as the response he received of the entity, in which they inform him of the infraction for which he was issued the minimum perception ticket (" *usted viajaba con una T4 sin ningún carnet acreditativo* "), and invoke the Railway Law 4/2006, of March 31, as the legal basis for which the railway inspector could require the DNI.

2. The Authority opened a preliminary information phase (no. IP 500/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure for application to 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 facts were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 11/16/2022 the reported entity was required to report, among others, on the legal basis that would legitimize that a Trambaix railway agent can require the national security document to a traveler, and can use it to extend a minimum perception, as well as the basis that legitimizes that railway agents can identify themselves to transport users with a numerical identification number.

4. On 05/12/2022, Trambaix UTE responded to the aforementioned request through a letter in which it stated, among others, the following:

- That " *The legal basis that would legitimize the fact that a Trambaix railway agent can require the national identity document from a traveler and can use it to extend a minimum perception is the one relating to the fulfillment of a legal obligation. Specifically, compliance with the provisions of articles 38 and 60 of Law 4/2006, of March 31, on railways.* "

- That " *Regarding the purpose for which the agents collect personal data is to manage this information with the aim of proposing, formulating and notifying the minimum perception and administrative complaint.* "
- That " *On November 13, 2021, Mr. (XXX) was traveling with a T4 without any credit card to be able to use this card. This is the reason why they withdrew his title and imposed the corresponding minimum charge, since he did not have a valid accreditation for the transport title he was using . The T4 is a social title that must always be accompanied by a current Reduced Rate Metropolitan Pink Card or the FGC (Generalitat de Catalunya Railways) Type B Pension Card.* "
- That " *the railway agents have the status of agents of the authority in accordance with the provisions of articles 38.3 and 60.2 of Law 4/2006, of March 31, railways.* "
- That " *in relation to the identification of the inspection personnel, this numbering is carried on the clothing and matches the number that appears on the ticket of the minimum perception. It should be noted that each identification code is unique for each individual inspector. Essentially, this coding is used to protect their identity since they are considered to be agents of the authority and to match this with the identification system of the rest of the agents of the authority, as is the case who is a member of the security forces and bodies .* "

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 Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.

On the other hand, the jurisdiction of the Authority to deal with the complaint made against Tambaix UTE (operating company of the Trambaix tram system), is determined by article 3.f) of Law 32/2010, as the Authority's scope of action includes the files and the treatments carried out by: " *f) Other private law entities that provide public services through any form of direct or indirect management, if it is files and treatments linked to the provision of these services.* "

2. Based on the antecedents, it is necessary to analyze the reported events that are the subject of this archive resolution, and specifically, if the collection of the ID number of the person reporting here by a railway agent, in order to be able to process the minimum perception ticket, is data processing in accordance with data protection regulations.

First of all, it is necessary to indicate that the object of this resolution focuses on the analysis of whether the referenced processing of personal data would be covered by any of the authorizations provided for in article 6 of Regulation (EU) 2016/679 of the European Parliament and the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter , RGPD). In this sense, it is necessary to indicate that it is not part of the study of this resolution, nor does it fall within the competence of this Authority, to enter into an analysis of whether the reporting

person complied with the requirements required to be able to use the transport ticket T4 with which he was traveling (current Reduced Rate Metropolitan Rosa Card or FGC Type B Pension Card).

Well, as already indicated, in order for a treatment to be lawful it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD that legitimizes this treatment, either the consent of the affected person, be it any of the other circumstances provided for in the same precept. In this sense, in the case at hand, it is appropriate to refer to the legal bases provided for in letters c) and e) of article 6.1 of the RGPD, according to which the treatment will be lawful when it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment (letter c), or when the treatment is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the person responsible for the treatment (letter e).

In this regard, as can be seen from article 6.3 of the RGPD, the legal basis for the treatment indicated in both cases must be established by European Union Law or by the law of the Member States that applies to the person responsible for treatment. The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 EC), as recognized in Article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD).

In relation to this, it is necessary to take into account Railway Law 4/2006, of March 31, which, in relation to the regime applicable to railway staff, establishes the following:

"3. The employees of the owner of the infrastructure, of the railway companies and of the operating companies that provide the service have, in the acts of service and in those motivated by them, the consideration of agents of the authority in exercise of their functions, especially those of immediate monitoring of the observance, by users and by third parties in general, of the rules established by laws and regulations and the general conditions of use. Said employees must perform the corresponding inspection functions and must report the detected violations to the competent administrative bodies, which must supervise, in all cases, the inspection, the processing of the complaints presented and the imposition of the corresponding sanctions, if applicable."

In relation to this, article 60.2 of Law 4/2006 provides the following:

"2. The officials of the department competent in matters of infrastructures and transport services and of the local entities responsible for the provision of railway services and the inspection staff expressly empowered by the administrative entity of the railway infrastructures are considered agents of the "authority, in accordance with what is established in article 38, in the acts of service or on the occasion of these, and they can request, if necessary, the support of the bodies and the security forces. "

In turn, the General Conditions of Use of the TRAM, in its 11th section, relating to the inspection function, determines:

"1 . In accordance with the provisions of articles 38 and 60 of Law 4/2006, of March 31, railways, the inspectors, drivers and other authorized workers of the companies operating

tram services are expressly authorized to perform the function of inspection and control in relation to: (...); b) Possession of a valid transport ticket.(...).

2. In the exercise of inspection and control functions, the inspectors and drivers of the operating companies may request users or third-party offenders to identify themselves, in order to be able to confirm the fulfillment of the present General conditions and, if they refuse to do so, they can request the help and support of the security personnel hired by the same company, as well as of the public order agents."

Likewise, it should be noted that in section 6 of said Conditions, in accordance with the provisions of article 52 of Law 7/2004, of July 16, on fiscal and administrative measures, the following is provided:

"In the event that you travel without a ticket, with an unvalidated transport ticket or with a transport ticket invalid for the characteristics of the journey or of the user, as a preliminary step to what is established in the regulations in force with respect to infringements and penalties in the field of transport, the following will apply:

- a) The staff of the operating company will require the user to pay a minimum fee, the amount of which will be duly indicated, issuing the corresponding supporting document . (...)*
- b) In the event that the user does not immediately pay the required minimum payment, the staff of the operating company must request that he or she identify himself or herself in order to manage the payment, if it has not been done with earlier in the inspection phase. In the event that the minimum charge is not paid during the thirty days following its imposition, the operating company will transfer the file to the administration holding the service to process the corresponding sanctioning procedure, if applicable. "*

For all the above, for the purposes of the provisions of article 6.1. c) and e) of the RGPD, it can be affirmed that the action of the railway inspector of Trambaix, in requiring the DNI of the reporting person to issue the minimum perception ticket, does not violate the principle of legality, as that the competence from which the processing of the complainant's data derives is provided for in regulations of the rank of law, and it was a processing necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers.

On the other hand, with regard to the complainant's complaint about the fact that the railway agent was not identified by first and last name, but by a numerical code, it should be noted that, as stated by the reported entity, in when the railway agent holds the status of agent of the authority, a coding is used for his identification to protect his identity and thus equate it with the identification system of the rest of the agents of the 'authority, as is the case of those who are members of the security forces and bodies.

3. In accordance with everything that has been set out in the 2nd legal basis, 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, any fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is necessary to agree to its archive.

Article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that "(...) *no charges will be drawn up and*

the dismissal of the file and the archive of actions when the proceedings and the tests carried out prove the non-existence of infringement or responsibility. This resolution will be notified to the interested parties" . And article 20.1) of the same Decree determines that the dismissal proceeds: " a) When the facts do not constitute an administrative infraction. "

Therefore, I resolve:

1. File the previous information proceedings number IP 500/2021, relating to Trambaix UTE.
2. Notify Trambaix UTE of this resolution and communicate it to the reporting person.
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,