

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

#### File identification

Resolution of sanctioning procedure no. PS 72/2020, referring to the Institute (...) dependent on the Department of Education of the Generalitat de Catalunya.

#### Background

1. On 18/11/2019, the Authority became aware through different means of communication that the University of Lleida (hereinafter, UdL) was carrying out a research project called "Acculturation and linguistic acculturation of the descendants of migrated Challenges and potential for language learning and linguistic and socio-educational inclusion" (hereafter, the project). According to the media, as part of this project, a survey was carried out among compulsory secondary education (ESO) students. In this survey, students would be asked about their ideology, among other issues.
2. The Authority opened a preliminary information phase (no. IP 309/2019), 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 facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.
3. In this information phase, on 26/11/2019, the UdL was required to inform, among others, which ESO courses the survey was aimed at; the reasons why it was necessary to identify the person answering the survey, taking into account that according to the media, the answers were subsequently made anonymous; how the anonymization of the data of the surveyed students was carried out; what would be the legal basis that would legitimize this data processing and in the event that special categories of data were collected, that it be specified which of the circumstances provided for in article 9.2 of Regulation (EU) 2016/679 of the European Parliament and Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of these (hereafter, RGPD) would allow their processing; as well as whether the students were required to answer the survey. In turn, the UdL was also required to provide copies of 3 surveys answered by students.

4. On 10/12/2019, the Authority received, by referral from the Spanish Data Protection Agency, a letter from the Asociación Hablamos Español in which it filed a complaint against the UdL and the Department of Education of the Generalitat de Catalunya, due to an alleged breach of the regulations on personal data protection.

Specifically, the reporting entity explained that a survey had been carried out to the 3rd and 4th year students of a certain institute in which data was collected on the ethnic or racial origin, political opinions, religious or philosophical convictions of the students and their families, without the consent of the minors affected or their legal representatives. The reporting entity added that the survey was carried out in schools at the behest of the Department of Education, which sent the questionnaire drawn up by a UdL research group to several schools, the recipient of the data collected being UdL.

The reporting entity provided various documentation.

This complaint was assigned the number IP 331/2019.

5. On 11/12/2019, the UdL responded to the request made on 26/11/2019, through a letter in which it set out, among others, the following:

- Que l'objectiu del projecte d'investigació era afavorir la incorporació, en condicions d'igualtat, en la societat espanyola en general, i en la catalana en particular, dels descendents de persones immigrades.
- That the participation in the project of both students and teachers was voluntary, and this was expressly stated in the "informed consent" contained in the first page of the survey form.
- That the Department of Education was not only informed by the research group about the scope of the project, and not only did it authorize its activities in the educational centers, but that there are signs of co-responsibility as an active collaborator and essential in this process of collecting and processing personal data.  
As stated in the project report, the coordinator, in the Territorial Services in Lleida, of the Plan for Language and Cohesion is an active part of the working group Social Department of Education.
- That the Department provided the group with the dissociated data of all the students of the ESO degrees of all secondary schools in Catalonia, classified according to their nationality and the centers in which they were enrolled, with the aim that the group could identify suitable centers for the purpose of the research.
- That once the centers were chosen, the research group asked the Department to address an email to the chosen centers requesting their collaboration in the project based on an informative text that the research group wrote at the request of the Department.
- That the members of the research group contacted, by telephone and/or e-mail, the different institutes chosen to verify the receipt of the information sent by the Department; and to offer them the possibility of expanding the information in writing and, even if the centers considered it appropriate, to provide them with an informative letter addressed specifically to the parents of the students in the centers. Of the ten centers where they go

carry out the surveys, only three agreed to make use of the additional information provided by the group.

- That participated in the project, among other educational centers, the Institute (...) (Santa Coloma de Gramenet), where the survey was carried out for 2nd, 3rd and 4th ESO students on 04/05/2019.
- That the IP (the main researcher) also communicated that, following an urgent meeting with representatives of the Department of Education, it was decided to provisionally suspend the survey campaign in the educational centers.

The UdL attached various documentation to the letter.

6. On 20/01/2020 the Authority received 15 letters by which several parents of students from a certain institute and the Assembly for a Bilingual School in Catalonia (entity which also represented the rest of complainants), filed a complaint against the UdL and the Department of Education.

The complainants stated that since the beginning of 2019, the UdL had been carrying out the controversial project, in which the Department of Education collaborated. The complainants added that 2nd, 3rd and 4th grade ESO students from 10 schools had already participated in the said project. In turn, they stated that the surveys answered by the students asked about identity, ideology and religious beliefs. They also indicated that in certain cases the survey had not been voluntary, that the parents had not been informed beforehand and that consent had not been properly obtained to treat special categories of data. The complainants provided various documentation.

IP numbers 15 to 29/2020 were assigned to these complaints.

7. On 02/13/2020 and still within the framework of this preliminary information phase, the Department of Education was required to inform, among others, whether it was co-responsible (together with the UdL) in relation to the treatments linked to the aforementioned project; what was the legal basis that would legitimize the communication of students' personal data to researchers. In turn, the Department was required to provide a copy of the "relationship of secondary schools, with the distribution of 3rd and 4th ESO students by nationality" that was provided to the researchers and of the lists that they would have sent the addresses of the educational centers; and the "additional" information that the research group offered to certain educational centers.

This requirement will be repeated on 03/12/2020.

8. On 03/13/2020, the Department of Education complied with this request by means of a letter stating, among others, the following:

- That the Department of Education is not co-responsible, in relation to the treatments linked to the study carried out by the UdL, since it does not participate, nor has it participated in the definition of the objectives or purposes of the research projects.
- That the Department of Education considers that the UdL is solely responsible for reviewing and approving the objectives and purposes of the project proposals it develops, and which includes the aspects derived from the analysis of the procedures and means involved and the legal foundations that enable its development, including the legal, technical and organizational analysis that must guarantee compliance with the set of principles and guarantees that apply in matters of data protection, among others.
- That given the sociolinguistic study proposed by the UdL, personal data of the students was provided, in accordance with the legal basis provided for in article 9.2.j) of the RGPD, to consider the processing of the data necessary for statistical purposes, based on Law 1/2003, of 19 February, on Universities of Catalonia and Law 14/2011.

The Department of Education provided various documentation. From the documentation provided it appears that, prior to the survey, the Institute (...) provided the research group with the personal data of its students which is listed below: name and surname, Registration number of 'Students (hereafter RALC) and country of birth of 2nd, 3rd and 4th ESO students in the 2018/2019 academic year.

9. In this information phase, on 04/06/2020, the Department of Education was again required in order that in relation to all the educational centers that provided personal data of their students to the research team, prior to the survey, certify how the right to information was made effective for the people affected.

10. On 20/06/2020, the Department of Education responded to the aforementioned request through a letter in which it stated that the Institute (...) of Santa Coloma de Gramenet stated that it had informed the families by email on the participation of 2nd, 3rd and 4th year ESO students (the latter was not accredited).

11. On 02/12/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the institute (...) (hereafter, the institute) for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.c); all of them from the RGPD. This initiation agreement was notified to the Department of Education on 07/12/2020.

12. Also on 02/12/2020, the director of the Authority issued an archive resolution, on the one hand, regarding the communication of student data by the institute (and other institutes) to the research group, prior to the completion of the survey. And this, to consider that the subsequent treatment (communication to the UdL) of the students' data by the institute for the purposes of scientific research, was compatible with the purpose for which the institute initially collected the data in accordance with article 5.1.b) of the RGPD.

On the other hand, in the same resolution was also archived the matter relating to the obligation to give effect to the right of information to the affected persons regarding the subsequent processing of their data for another purpose, given that it corresponded to the UdL exercise the right to information.

13. On 12/21/2020, the institute made objections to the initiation agreement.

14. On 01/21/2021, the person instructing this procedure formulated a proposed resolution, by which it was proposed that the director of the Catalan Data Protection Authority admonish the institute as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c) ; all of them from the RGPD.

This resolution proposal was notified on 28/01/2021 and a period of 10 days was granted to formulate allegations.

15. On 08/02/2021, the accused entity submitted a statement of objections to the proposed resolution.

proven facts

The Institute (...) participated in the research project called "Acculturation and linguistic acculturation of the descendants of migrants. Challenges and potential for language learning and linguistic and socio-educational inclusion" carried out by a UdL research group.

As part of this project, and before the UdL research group carried out the student surveys in the institute's premises (which were carried out on 04/05/2019), the center provided the research group mentioned the data of all its 2nd, 3rd and 4th ESO students, referring to first and last name, country of birth and RALC.

To achieve the intended purpose (scientific research) it was not necessary to provide the students' data prior to the completion of the survey.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. The accused entity has made allegations both in the initiation agreement and in the resolution proposal. The first ones were already analyzed in the proposed resolution, but even so it is considered appropriate to mention them here, given that they are partly reproduced in the second ones. The set of allegations made by the accused entity are then analysed.

In its statement of objections to the proposed resolution, the institute states that, although the institute is considered to be responsible for the treatment, the two institutions that presented themselves as responsible for the treatment were simply trusted study (the UdL and the Department of Education, according to the institute). He adds that the institute's management did not have access to the questionnaire. In turn, it reiterates that the UdL research group reported that it had the necessary legitimacy to process the essential data for the project's objectives, without the need for explicit consent or authorization from their parents or guardians; as well as that he was also informed that the study would later be done with anonymized data.

As explained by the instructor in the proposed resolution, it is the institute that is considered responsible for the treatment of its students' data (those responsible for the study are another matter) and, therefore, who must guarantee that its treatment (which includes the communication or transfer of data) conforms to the principles established in article 5 of the RGPD.

Among these principles, the one of data minimization (art. 5.1.c RGPD) is particularly relevant, which means that the data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In other words, only those personal data that are necessary to achieve the intended purpose can be processed.

For its part, recital 39 of the RGPD determines that personal data must only be processed if the purpose of the processing cannot reasonably be achieved by other means. Therefore, if the purpose pursued can reasonably be achieved without processing personal data, this route will have to be chosen.

That being the case, it is up to the person in charge of the treatment (the institute) to assess, prior to the communication of data, whether or not the request for personal data complies with the principle of minimization, taking into account the terms in which is formulated And, if necessary, request additional information from the assignee (in this case, the UdL) in order to carry out this assessment.

At this point, it must be emphasized that the legality of the treatment (principle that is not considered violated) does not exempt the person in charge of the treatment from complying with the rest of the principles provided for by the RGPD, among which, that of data minimization.

As it has been explained in the background, the motivation given by the research group to the institutes in order to communicate certain data of the students was to be able to organize to carry out the survey (specifically, to know the number of questionnaires of each type - there were two depending on whether the students were indigenous or of immigrant origin - which they had to bring on the day the survey was carried out), a goal that could have been achieved

reporting only the number of students who had to participate in the study and how many of these were of native or immigrant origin.

To all this, it must be added that according to the UdL research group, the data would be treated anonymously, so that this circumstance allowed us to infer that it was not necessary to provide any personal data of the students who could potentially participate in the study.

On the other hand, it was also not necessary to provide the students' data for the second phase of the project (interviews with certain students) prior to the survey, since the students could express their refusal (the day on which the the survey) to participate in the aforementioned project.

In short, as stated by the instructor in the resolution proposal, the communication of data to the UdL research group before the face-to-face survey was carried out in the institute's premises was not necessary to achieve the purpose of purported research and was therefore contrary to the principle of data minimization.

In accordance with what has been explained, the allegations made against the proposed resolution must be rejected.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5.1.c) of the RGPD, which regulates the principle of data minimization determining that the personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".

As indicated by the instructing person, during the processing of this procedure the fact described in the proven facts section, which is constitutive of the infringement provided for in article 83.5.a) of the RGPD, has been duly proven. which typifies the violation of the "basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which the principle of minimization is contemplated.

The conduct addressed here has been included as a very serious infringement in article 72.1.a) of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter , LOPDGDD), in the following form:

"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679."

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.

The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects. In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

However, as the instructing person explained in the resolution proposal, the adoption of any corrective measures should not be required to correct the effects of the infringement, since it is an isolated and already consummated event.

For all this, I resolve:

1. Admonish the institute (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), both of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify the institute of this resolution.

3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. Order that this resolution be published 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 articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal of



replacement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with what they foresee article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal 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, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,