

Limitations on the Use of Personal Data Obtained in the Exercise of Administrative Powers: Lessons for the Digital Environment*

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The Spanish Public Administration may not use tax data for a purpose other than that for which they were collected by the Tax Administration. In case Public Administration intended to use those tax data to sanction private citizens, that administrative procedure shall be annulled.

ABSTRACT The Spanish Supreme Court has interpreted Article 95.1 of Act 58/2003, December 17th, the General Tax Act, to mean that tax data may only be transferred to other Administrations for tax purposes. If these data are intended to be used for exercising other public powers, prior authorization from the concerned parties is required. Ultimately, this interpretation aligns with the Spanish Constitutional Court's doctrine on the inadmissibility of illegally obtained evidence.

KEYWORDS: Data protection - Fundamental rights - Sanctions

A Spanish municipality imposed a fine of €4,001 and revoked all licenses held by a taxi licensee due to a serious violation of road transport regulations. Notably, the municipality used information provided by the Spanish Tax Administration Agency for tax purposes to establish the basis for the administrative infraction

The legal issue before the Spanish Supreme Court was whether data provided by the tax authorities could serve as admissible evidence in sanctioning procedures and whether they could be used to prove an infringement. To address this, the Court interpreted article 95.1 of Act 58/2003, which states:

Article 95. Confidential nature of data with tax relevance.

1. Data, reports, or background information collected by the tax administration in the performance of its functions are confidential and may only be used for the effective application of the taxes or resources it is entrusted to manage and for imposing relevant sanctions. They may not be transferred or

disclosed to others, unless the transfer is for:

a) Cooperation with judicial bodies and the Public Prosecutor's Office in investigating or prosecuting crimes that are not prosecutable solely upon the complaint of an injured party.

(...)

k) Cooperation with public administrations in the performance of their functions, subject to prior authorization from the concerned parties regarding the provided data.

The provision highlights the legislature's intention to protect tax data, fulfilling the constitutional obligation to regulate data transfers between administrations through law (Spanish Constitutional Court in Judgment, Plenary, 292/2000, November 30) and reflecting the principles of Article 5.1 of the General Data Protection Regulation (GDPR) 2016/679.

One of the key guarantees in this provision concerns the principle of purpose limitation in processing personal data, stipulating that tax data collected for the purpose of revenue collection may only be shared with other administrations for the same purpose. This is supported by whereas 50 of the GDPR, which states, "The processing of personal data for purposes other than those for which the personal data were initially collected should be allowed only where the processing is

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compatible with the purposes for which the personal data were initially collected. In such a case, no legal basis separates from that which allowed the collection of the personal data is required”.

Whereas 50 establishes criteria to determine whether this principle is met: “In order to ascertain whether a purpose of further processing is compatible with the purpose for which the personal data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account, inter alia: any link between those purposes and the purposes of the intended further processing; the context in which the personal data have been collected, in particular the reasonable expectations of data subjects based on their relationship with the controller as to their further use; the nature of the personal data; the consequences of the intended further processing for data subjects; and the existence of appropriate safeguards in both the original and intended further processing operations”.

According to the Spanish Supreme Court, these requirements were not complied in the municipality’s use of the transferred tax data. The tax data had been collected by the Spanish Tax Administration Agency in the context of a tax declaration, creating a reasonable expectation on the part of the data subject that subsequent use of their data would be limited to tax-related matters under the applicable tax laws. The data subject could not reasonably foresee that such data would be used to enforce regional transport regulations.

Failure to comply with this principle results in a violation of the principle of lawfulness in data processing, as Whereas 39 of the GDPR emphasizes that “Any processing of personal data should be lawful and fair.” Accordingly, this provision requires the subject’s consent to transfer data to other administrations for the exercise of other powers. As Whereas 40 of the Regulation specifies: “In order for processing to be lawful, personal data should be processed on the basis of the consent of the data subject concerned or some other legitimate basis, laid down by law”. Furthermore, Article 58.2 of the General Regulation on Tax Management and Inspection, approved by Royal Decree 1065/2007, July 27th, requires express authorization from the data subject when data are transferred to other administrations for non-tax purposes.

Consequently, the Spanish Supreme Court annulled the ruling of the Superior Court of Justice of the Autonomous Community of the Canary Islands, finding that the municipality had used tax data not for tax purposes but to apply taxi regulations.

From the perspective of administrative sanctioning procedures, it would have been relevant for the judgment under study to analyse the use of illegally obtained evidence, as this case appears to present an example of such evidence.

Illegally obtained evidence is regulated by Article 24.2 of the Spanish Constitution, Article 11 of Organic Act 6/1985, July 1st, on the Judiciary, and the doctrine established by the Spanish Constitutional Court in Judgment 97/2019, July 16th. The doctrine requires two steps to determine a possible violation of Article 24.2 Spanish Constitution due to the admission of unlawfully obtained evidence: (a) first, to assess whether the original illegality constitutes an infringement of a substantive fundamental right or freedom, and (b) if such a fundamental right is indeed compromised, to ascertain whether there is a connection between the original violation and the integrity of procedural guarantees provided by Article 24.2 Spanish Constitution, justifying the exclusion of unlawfully obtained evidence from the evidentiary record. This doctrine is particularly applicable when evidence is unlawfully obtained by a state agent exercising *ius puniendi*

Following this doctrine, the first step is to determine whether the municipal administration violated the fundamental right to personal data protection, enshrined in Article 18.4 of the Spanish Constitution, which guarantees “an individual’s control over their personal data,” as stated in Spanish Constitutional Court in Judgment, plenary, 292/2000, November 30th. Given that the municipality obtained the personal data of the alleged offender without strictly adhering to the governing regulations, it violated the right to data protection by imposing constitutionally illegitimate limits on this right, either in terms of content or its exercise, as established by Spanish Constitutional Court in Judgment, plenary, 292/2000, 30 November.

Having established the infringement of the fundamental right to data protection, the next step is to determine “whether there is a connection between the original violation and the integrity of the guarantees of a fair trial

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under Article 24.2 Spanish Constitution that justifies the need to exclude unlawfully obtained evidence.” This connection exists in the case at hand, as the municipality was able to initiate the sanctioning procedure and subsequently impose a sanction on the alleged offender using tax data provided by the Spanish Tax Administration Agency.

As a result, excluding the tax data provided by the Tax Administration invalidates the only admissible evidence for imposing the sanction. According to Spanish Constitutional Court in Judgment 29/2013, February 11th, “sanctions imposed based on this sole piece of evidence, which violates that fundamental right (data protection), must be annulled. When an individual is deprived of their rights to control and manage their personal data, they are also deprived of their fundamental right to data protection.” In Spanish Constitutional Court in Judgment 11/1981, April 8th, the Court ruled that “the core content of the right is violated when it is subjected to limitations that render it impracticable, unreasonably burdensome, or stripped of necessary protection.”

In conclusion, the transfer of tax data to other public administrations should only occur to support the exercise of the same power or, at least, within the same material scope; otherwise, without the subject’s consent, the administrative act may be rendered null, and the evidence deemed inadmissible. This principle has substantial implications in the context of technological modernization within public administrations, where interconnections between different entities are common to facilitate automated actions. Additionally, this limitation is essential when processing large datasets, posing practical consequences for the development of Artificial Intelligence systems

