

Opinion in relation to a consultation on the responsibility for the processing of data relating to the access tests for higher artistic education and professional music and dance education

A letter from a Department is presented to the Catalan Data Protection Authority in which it raises who is responsible for the processing of personal data relating to the access tests for higher artistic education and professional music and dance education .

Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

The Department begins its consultation letter by referring, separately, to the regulations applicable to higher artistic education adapted to the European Higher Education Area and to professional education in music and dance.

In particular, it highlights those precepts that regulate the requirements for access to these courses, that is:

A. For the case of higher artistic studies:

- Have a bachelor's degree or equivalent education or prove that you have passed the university entrance test for over 25-year-olds, and - Pass a specific access test (unless you have a higher technical degree 'plastic arts and design, for the higher artistic studies of conservation and restoration of cultural goods or design).

If the academic requirement is not met, there is the possibility, for those over 18, of being able to access it by passing another test.

B. For the case of professional music and dance courses:

- Pass a specific access test.

Having said that, the Department maintains that the administration of the test for applicants over the age of 18 who do not meet the academic requirement to access higher artistic education is carried out by the Department itself, so it maintains that is responsible for the treatment.

Now, with regard to the specific access test, he points out that its management corresponds to the educational centers, being both centers supported by public funds and privately owned centers. It maintains, below, that in these cases it only receives aggregated information from the applicants (number of applicants, number of approved candidates, etc.), without carrying out any processing of personal data.

Given this, it asks this Authority whether it can be understood that educational centers are responsible for the treatments that derive from the management and performance of these specific access tests or whether, in the case of the Department, the educational centers would hold the status of those in charge of the treatment. At the same time, it considers whether it is necessary to treat it differently depending on the ownership of each educational center.

It reiterates these same questions regarding the management and performance of the specific tests for access to professional music and dance courses.

We refer to these issues in the following sections of this opinion.

III

The Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereafter, RGPD), provides that the person responsible for the treatment is understood as "the natural person or legal, public authority, service or other body that, alone or together with others, determines the ends and means of the treatment; if the Law of the Union or of the Member States determines the purposes and means of the treatment, the person responsible for the treatment or the specific criteria for its appointment may be established by the Law of the Union or of the Member States" (Article 4.7)).

As can be seen from this definition, the key element to be considered responsible for the treatment in terms of personal data protection is the ability to decide or determine the purpose, content, use or means of the treatment, is to say, to make decisions about what to do and how to treat personal data from the moment it is collected until its destruction.

Organic Law 2/2003, of 3 May, on education (LOE) establishes that, in order to be able to access professional artistic courses in dance and music (article 49), and to higher artistic courses in music, dance, dramatic art, conservation and restoration of cultural assets and design (article 54), it is necessary, in any case, to pass a specific access test regulated by the Education Administration.

In the case of higher artistic education in Catalonia, the regulation of this test has been carried out through Decree 85/2014, of 10 June, on higher artistic education.

Article 16.4 of this Decree provides that, although the competent general management must convene, through a resolution published in the Official Journal of the Generalitat of Catalonia, the specific tests for access to said courses, it is up to the educational centers that teach them carry them out

In this sense, and taking as a reference the resolution by which the access tests for higher artistic education are called for the current academic year 2018-2019 (Resolution ENS/501/2018, of March 14), it can be verified that the centers carry out, among other actions:

- The reception of the registrations for the specific access tests (article 3), therefore, the collection of the personal data of the applicants that are necessary for the development of the test.
- The publication of the list of admitted and excluded persons, both provisional and definitive, for the completion of the test (article 5).
- The preparation, execution and evaluation of the test, through the committee appraiser appointed for that purpose (article 7).

- The publication of the list of qualifications, both provisional and final, of the proof
- The preservation of the documentation related to the performance of the test (article 14).
- Issuing the certificate of passing the test (annex 3).

At the same time, it can also be verified that, as the Department maintains, the information that the educational centers must send to the competent general management regarding the completion of the access test by applicants is aggregated information (number of registered applicants, approved, suspended and not submitted). Therefore, information that cannot qualify as personal data (Article 4.1) RGPD).

From the set of these forecasts, therefore, it could be understood, for the purposes concerned, that the responsibility for the processing of personal data relating to the completion of the specific test for access to higher artistic education would fall on the educational centers that teach this type of teaching.

This conclusion seems that it could also be extended with regard to professional music and dance courses, in view of the provisions of the regulations that regulate them, in particular, Order EDU/31/2009, of February 4, which establishes the organization of the specific tests for access to professional music courses, and Order EDU/484/2008, of November 12, which organizes the specific tests for access to professional dance courses, which also provide (articles 5 and 6, respectively) that it is up to the educational centers that teach these courses to carry out the specific access test required by education legislation.

Having examined these provisions, it can also be verified that educational centers carry out, among other actions:

- The reception of registrations for the specific access tests (article 4 Order EDU/39/2009 and Order EDU/484/2008), therefore, the collection of the personal data of applicants that are necessary for the development of the proof
- The establishment of the test development process, the calendar, timetables and spaces, the material that the applicant must provide, the dates of publication of results, the deadlines for complaints, the dates of publication of final results and enrollment deadlines (article 11 Order EDU/31/2009 and article 13 Order EDU/484/2008).
- The preservation of the documentation related to the performance of the test (article 19 Order EDU/31/2009 and article 22 Order EDU/484/2008).
- Issuance of the certificate of completion of the test (article 14 Order EDU/31/2009 and article 17 Order EDU/484/2008).

With regard to the information that the educational centers must send to the Department regarding the performance of these entrance tests, it has been planned, in both cases, that the data that the competent general management determines for the monitoring of the results of the specific access tests, without further details (article 15 Order EDU/39/2009 and article 18 Order EDU/484/2008).

Despite not knowing what these data are, given that we are facing a phase prior to the student's enrollment process at the center in question, it cannot be ruled out that, following the same line as that foreseen for higher artistic education, we were also faced with a communication of aggregated data about the applicants.

So, in these cases it could also be understood, as has been pointed out, that the responsibility for the processing of personal data relating to the performance of the specific test for access to professional music and dance courses would correspond to the educational centers that teach these types of education.

IV

Having said that, the Department considers what impact the fact that the educational centers that carry out the specific tests for access to artistic education may have, in the determination of the data controller, may be publicly or privately owned.

Article 65.4 of Law 12/2009, of July 10, on Education (LEC), provides that artistic education is given in artistic schools, specialized centers, higher education centers and other public or private centers authorized by the Educational administration, as well as integrated educational centers (centers that allow students to study professional artistic education and secondary education simultaneously).

In the case of public educational centers, these are centers whose ownership corresponds to a public administration (Generalitat, Diputació or local administration), in principle the person responsible for the treatment should be the same administration (for example, in the case of the 'Administration of the Generalitat, the department competent in educational matters).

Now, bearing in mind that establishing who is the body responsible for the treatment is an organizational decision that must be adapted to the needs, rules and criteria by which each organization is governed and that educational centers are assigned a certain autonomy in its management, it is also possible that the administration decides to establish that the person responsible for this treatment is an organ of the educational center (for example, its director), instead of an organ of its central structure (continuing with the previous example, a general direction of the department).

Therefore, the fact that the educational center is publicly owned would not alter its status as responsible for the processing of the data relating to the completion of the specific tests for access to artistic education, as long as the public administration on which it depends so has established it.

With regard to privately owned educational centers, these are centers whose ownership corresponds to a private natural or legal person, including those whose education is supported by public funds (concerted private centers), it is clear that the data controller of this data will be the educational center itself.

V

On the other hand, the Department is also considering whether in the call for specific tests for access to higher artistic and professional music and dance courses it should be indicated that the educational centers that carry out these tests are responsible for the processing .

Regarding this, agree that, without prejudice to the fact that this information can be included in the corresponding call, the information about the person in charge of the treatment and about the rest of the circumstances relating to the treatment of the data should be made available to the affected persons (the applicants) when their personal data is requested to register for the entrance exams, in accordance with article 13 of the RGPD.

So, according to this article:

"1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below: "a) the identity and contact details of the person in charge and, in his case, of his representative; b) the contact details of the data protection officer, if applicable; c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment; d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party; e) the recipients or the categories of recipients of the personal data, as the case may be;

f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, refers to the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will provide the interested party, at the time when the personal data is obtained, the following information necessary to guarantee a fair and transparent data treatment: a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period; b) the existence of the right to request from the person responsible for the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data ; c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal; d) the right to present a claim before a control authority; e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data; f) the existence of automated decisions, including the creation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the interested party. (...)"

For more information on this matter, it may be of interest to consult the Guide for the fulfillment of the duty to inform in the RGPD prepared by the data protection authorities to help those in charge and those in charge in adapting to the requirements of the RGPD, available on the Authority's website <http://apdcat.gencat.cat>.

In accordance with the considerations made so far in relation to the query raised, the following are made,

Conclusions

From the information available, it could be understood that the responsibility for the processing of personal data relating to the completion of the specific tests for access to artistic education would fall to the educational centers that teach this type of education, regardless of their ownership

The information to those affected about the person responsible and the rest of the circumstances relating to the treatment should be carried out at the time when the centers request the data, in the terms established in article 13 of the RGPD.

Barcelona, September 28, 2018

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