

PD 14/2019

Report in relation to the Draft Order of the Official Register of Professionals in Leisure Education in Catalonia

A letter from the Minister of Work, Social Affairs and Families is presented to the Catalan Data Protection Authority, requesting that the Authority issue the mandatory report on the Draft Order of the Official Register of Professionals of the Education in the Leisure of Catalonia.

The draft order consists of a statement of reasons, thirteen articles, three additional provisions and a final provision.

Having analyzed the draft order, taking into account the current applicable regulations, having seen the report of the Legal Counsel, I issue the following report.

Background

The second final provision of Decree 267/2016, of July 5, establishes that the Official Register of Leisure Education Professionals must be regulated by an order from the head of the department responsible for youth.

In the statement of reasons for the Project, it is made clear that with the creation of the Official Register of Professionals in Leisure Education in Catalonia, up-to-date and truthful information will be available on the leisure education professionals there register registered

In accordance with the aforementioned Decree, leisure education activities in which more than four children under the age of 18 participate and which take place in Catalonia must have a team of leaders (article 4.1), understood as the 'team formed by the person responsible for the activity and by the persons leading it, all of them of legal age (article 3.c).

The Register that is now being created is structured in two sections, one for people qualified to exercise as a monitor of education activities in children's and youth leisure, and another for people qualified to exercise as director of educational activities in children's and youth leisure.

Legal foundations

I

(...)

II

Article 2 of the Project states that the Official Register of Leisure Education Professionals of Catalonia aims to identify people who have an official qualification that qualifies them to work as education professionals in the leisure, both voluntary and paid.

Article 3 of the Project establishes the purposes of this Register: to have up-to-date information on professionals in leisure education who have the appropriate qualification to exercise as such by virtue of being registered; allow reliable access, both by citizens and by the administration responsible for monitoring these activities; and facilitate the design and implementation of policies aimed at the training of leisure education professionals in Catalonia.

Article 5.1 of the Project establishes that this Register is structured in two sections, one for persons qualified to exercise as a monitor of educational activities in children's and youth leisure; and the other, for people qualified to work as director of educational activities in children's and youth leisure.

Article 5.2 of the Project foresees that the Register contains the following data:

"a) Registration number; b) Date of registration; c) Identification data of the interested person which, at a minimum, will be: first and last name, ID, date of birth and gender. d) Section or sections in which the interested person is registered. e) Title that entitles you to exercise the profession or, in its absence, qualification, accreditation, validation or recognition document, as appropriate. f) In the case of qualifications issued by the competent body in youth matters, the center where the corresponding official training was completed. g) Convictions that entail temporary disqualification from exercising professional activity. h) Cancellation of registration."

Article 4.2) of Regulation 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 of such data and which repeals Directive 95/46/CE (hereafter, RGPD), provides that "treatment" is any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction.

Given that the provisions of the above-mentioned draft order show that a set of personal information will be processed, the principles and obligations established in the RGPD and Organic Law 3/2018, of December 5, will apply. of protection of personal data and guarantee of digital rights (LOPDGDD).

III

Article 5.2.g) of the Project establishes that the register must include, among other information, "Convictions that entail temporary disqualification from exercising professional activity".

This information may include criminal convictions that in themselves consist of a disqualification for the exercise of the profession or, where applicable, for the exercise of

public functions, but also those other convictions which, despite not being a disqualification, may have an impact on the possibility of practicing the profession, as would be the case of people who have been convicted of some crime against sexual freedom and indemnity, which includes sexual assault and abuse, sexual harassment, exhibitionism and sexual provocation, prostitution and sexual exploitation and corruption of minors, as well as human trafficking, when it comes to professionals that they must be in contact with minors.

In this sense, article 13.5 of Organic Law 1/1996, of January 15, on Protection Juvenile Law, in the wording given by the first article of Law 26/2015 establishes the following:

"It will be a requirement for access and exercise to the professions, official and activities that involve regular contact with minors, not having been convicted by a firm sentence for some crime against sexual freedom and indemnity, which includes sexual assault and abuse, sexual harassment, sexual exposure and provocation, prostitution and sexual exploitation and corruption of minors, as well as human trafficking. To that end, whoever seeks access to such professions, trades or activities must prove this circumstance by providing a negative certification from the Central Register of Sex Offenders".

However, it should be borne in mind that article 7.3 of the Project provides that "Inscription in this Register does not exempt or presuppose compliance with the obligation established by article 13.5 of Law 26/2015, of July 28, amending of the child and adolescent protection system of not having been convicted by a final sentence for any crime against sexual freedom and indemnity, which includes sexual assault and abuse, sexual harassment, exhibitionism and sexual provocation, prostitution and sexual exploitation and corruption of minors, as well as human trafficking." In other words, this other article seems to exclude information about this type of conviction from the Register.

Therefore, it would be good to clarify this issue.

In any case, it should be borne in mind that Royal Decree 1110/2015, of December 11, which regulates the Central Register of Sex Offenders, and which regulates the system of registration, consultation, certification and cancellation of the data of this register establishes in its article 9 that the person in charge of the Central Registry of Sex Offenders, unless it is information reserved for Judges and Courts, and with the prior consent of the person concerned or his representative, will report the data relating to the same contained in this Register, at the request of any body of the Public Administrations before which a procedure is processed to access professions, trades or activities that involve regular contact with minors, as well as for their exercise.

In the absence of consent, the certificate will be issued at the request of the interested party.

IV

Article 7.2 of the Project establishes the documentation that must be provided for registration in the Register in the two sections: that of monitor and that of director of educational activities in children's and youth leisure. This documentation includes a declaration

responsible that "implies that the applicant authorizes the Administration to compare or check the data declared with the data available to other public or private entities or bodies, whenever and wherever necessary to carry out the procedure".

In relation to this aspect, it should be noted that in Recital 32 of the RGPD, it is made clear that the consent of the affected person cannot be understood as having been given through their silence, or through boxes already marked or by their inaction, but must consist of a clear affirmative statement or action (article 4.11 RGPD).

In this case, however, the possibility of checking the declared data with the data available to other public administrations would not derive from the consent of the affected persons, but from the possibility provided for in article 35.3 of Law 26/2010, of 3 d August, of the legal and procedural regime of the public administrations of Catalonia and of what is provided for in the eighth additional provision of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD).

Accordingly, it is suggested that article 7.2. c) of the Project is drafted as follows:

"Responsible declaration that the digitized copies correspond to the original and that the applicant meets the requirements to be registered in the Register. The administration will be able to verify the conformity of the data contained therein."

v

Articles 12.1 and 12.3 of the Project state that the Register is public and that its publicity includes the following data: name and surname; IDENTITY CARD; registration number in the Register; and the section in which it is registered, while providing for public access subject to "article 13 of Law 39/2015, of October 1, and in accordance with the provisions of the transparency and access regulations to current public information".

In accordance with the principle of minimization, the data that is processed must be adequate, relevant and limited to what is necessary to achieve the purposes that justify its treatment (Article 5.1.c) RGPD).

In this sense, it is positively valued that not all the information recorded in the Register is publicly accessible, but only that which is strictly necessary to be able to know whether a certain professional is registered in the said register and is therefore fit to practice the profession

For this reason, and in accordance with the principle of accuracy of the data (art. 5.1.d) RGPD), it would be necessary that only those professionals who are really in a position to practice appear among the list of professionals open to public consultation the profession (excluding, therefore, those whose registration has been canceled or those who are affected by a conviction that prevents them from practicing the profession)

On the other hand, it should be noted that in relation to the DNI data, the seventh additional provision of the LOPDGDD establishes some criteria at the same time as identifying those interested in notifications through announcements and publications of administrative

with the name, surname and four random numerical digits of the DNI, foreigner's identity number, passport or equivalent document.

De forma provisional, fins el moment en què els òrgans de govern i les administracions públiques competents aprovin disposicions per a l'aplicació de l'esmentada disposició adicional setena, l'Autoritat Catalana de Protecció de Dades, l'Agència Espanyola de Protecció de Dades, the Basque Agency for Data Protection and the Council for Transparency and Data Protection of Andalusia, have jointly proposed guidance for the provisional application of protection guarantees for the disclosure of the national identity document, number foreigner's identity card, passport or equivalent document of the interested parties and, for this purpose, a group of four numerical figures was randomly selected to be published for the identification of the interested parties in the publications of administrative acts.

The procedure used for the random determination of these four numerical figures can be found published on the Authority's website <http://apdiba.gencat.cat/web/continguts/191-autoridad/guidance-additional-disposition-7-cat.pdf>

In accordance with what has been explained, it is proposed to modify the wording of article 12.3 in the following sense:

"12.3 The publicity of the Register covers only the following data: Registration number in the Register, section in which it is registered, first and last name and four digits of the number of the National Identity Document or equivalent, in accordance with the established criteria in matters of personal data protection."

Article 12.4 includes the possibility that the owner of the data may choose in the application form for registration in the Registry not to allow their registration data to be made public. While this provision is positively valued, it should be borne in mind that in accordance with article 21 of the RGPD, the owner of the data can object, not only at the initial moment of filling in the form but also at any moment, to the processing of your data in accordance with what is established in that article.

Accordingly, it is suggested that Article 12.4 of the Project be drafted as follows:

"The people registered in the Official Register of Professionals of Education in the Leisure of Catalonia, in the application form for registration or at any other time may object to their registration data being made public. In this case, they will only be public by certification requested by the registered person".

VI

Article 13 of the Project provides that personal data will be treated in accordance with the security and confidentiality principles established by the data protection regulations.

In relation to this aspect, it should be noted that article 5.f) of the RGPD establishes that personal data will be treated in such a way as to guarantee adequate security of personal data, including protection against unauthorized processing

authorized or illegal and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures (integrity and confidentiality).

Article 24.1 of the RGPD imposes on the controller the obligation to adopt the technical and organizational measures necessary to guarantee the security of the personal data that will be processed. The RGPD sets up a security system that is not based on the basic, medium and high security levels provided for in the Implementing Regulation of Organic Law 15/1999, of December 13, on the protection of personal data, approved by Royal Decree 1720/2007, of December 21 (RLOPD), but by determining, following a prior assessment of the risks (taking into account the state of the art, the costs, the nature, the scope, the context and the purposes of the treatment), which security measures are necessary in each case (Recital 83 and Article 32).

In some cases, however, these same measures may continue to be applied if it is concluded from the previous risk analysis that the measures are really the most suitable to offer a level of security suitable for the specific case, but in others it may be necessary to complete - them with additional measures.

This new model is based on the principle of proactive accountability, so that not only must the rule be met, but must also be able to demonstrate it, and data protection by design and by default, so that both when defining the different processing operations, and when determining and applying the means that will be used to process personal data, the principles, rights and obligations will be taken into account which includes the regulations that apply to the treatments that are intended to be carried out.

In the case of public administrations, the application of security measures will also be marked by the criteria established in the National Security Scheme, approved by Royal Decree 3/2010, of January 8.

In this sense, the first additional provision of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, establishes:

"1. The National Security Scheme will include the measures that must be implemented in the case of personal data processing, to avoid its loss, alteration or unauthorized access, adapting the criteria for determining the risk in the data processing to what is established in the article 32 of Regulation (EU) 2016/679.

2. The responsible persons listed in article 77.1 of this organic law must apply to the processing of personal data the security measures that correspond to those provided for in the National Security Scheme, as well as promote a degree of implementation of equivalent measures in the companies or foundations linked to them subject to private law.

In cases where a third party provides a service under a concession, management assignment or contract, the security measures will correspond to those of the public administration of origin and will be adjusted to the National Security Scheme.

It should be noted that among the data controllers included in article 77.1 of the LOPDGDD, to which this additional provision expressly refers, there

we find the administrations of the autonomous communities, the local bodies, as well as their public bodies and entities under public law, among others. Therefore, it must be borne in mind that, in the present case, the application of the security measures established in the National Security Scheme will be mandatory.

For all this the following are done,

Conclusions

Having examined the draft order for the Official Registry of Professionals in Leisure Education in Catalonia, it complies with the personal data protection regulations, as long as the observations made in this report are taken into account.

Barcelona, November 12, 2019

Machine Translated