

CNS 32/2021

Opinion in relation to a query on the delivery to the demarcation in Catalonia of a state-level professional association of various documentation from another defunct professional association

A letter from the data protection delegate of the Department of Justice is presented to the Catalan Data Protection Authority in which it is requested that the Authority issue an opinion on the possibility of handing over to the demarcation in Catalonia a col- statewide professional law various documentation, which contains personal data, from another already dissolved professional association.

A background note on the dissolved professional college is attached to the inquiry.

Having analyzed the request and the documentation that accompanies it, and having seen the report of the Legal Counsel, the following is ruled.

I

(...)

II

In order to place the context of the case examined, it is necessary, at the outset, to refer to the Judgment of the Superior Court of Justice of Catalonia (...), which is mentioned in the same query.

This STSJC, ratified by the Judgment of the Supreme Court (...), declares the nullity of the Decree (...), creating the professional association.

The Decree (...), mentioned, created the professional association as a public law corporation with its own legal personality and full capacity to fulfill its purposes, governed by the regulations in force regarding professional associations (article 2.1), in the territorial scope of Catalonia (article 3).

According to the same Decree (...) (article 4), the professional association "groups people who are in possession of the official university degree that, in accordance with current legislation, is necessary for the exercise of the profession of "technical telecommunications engineer or recognized or declared equivalent degree (...)."

The Decree (...) was issued in accordance with the fifth transitional provision of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations, according to which:

"Professionals integrated into a single state-level college, incorporated into it through any of its branches located in Catalonia, without prejudice to being able to maintain the current membership, can form a single professional college of Catalan area in accordance with the provisions of this law. (...)."

Given that the Sentence of the Constitutional Court 201/2013, of December 5, declares (FJ 10) the unconstitutionality of the paragraph "in accordance with the provisions of this law" of the aforementioned fifth transitional provision of Law 7/2006 , the STSJC (...), quoted, sets out the following in it

"The expressed sentence clearly establishes that the constitution of a professional College of (...) in Catalonia required the prior segregation of this territorial area of the previously existing unique College, and that this had to be carried out in accordance with the provisions of the State Law on Colleges professionals (...).

The above considerations necessarily lead to the estimation of the present appeal, given that the contested Decree was issued under the transitional provision 5 of Law 7/2006, in its initial wording, and the segregation procedure established by the state regulations regarding the only existing school until then."

Thus, the STSJC (...) declares the nullity of the rule for the creation of the professional college for not having followed the legally provided segregation procedure.

Consequently and, according to the information attached to the consultation, after several judicial pronouncements, (...) started in 2019 the liquidation process of the professional association, following, for that purpose, by analogy the provisions of article 56 of Law 7/2006.

According to this article 56 "the dissolution of a professional association requires a Government decree, which must establish the procedure for the liquidation of the assets, the appointment of the persons or the commission in charge of - the term and the destination of the remainder, in accordance with the statutes of the dissolved professional association and the law" (para

In this context of the liquidation of the professional college, according to the information provided, the people in charge of carrying it out (four former members of the Board of the College) stated (by means of a certificate dated 17 of June 2020) that in the building that, until its dissolution, housed the headquarters of the professional college, various documentation of the college remained deposited.

As stated in the query, another professional association, which would be the accidental depository of the aforementioned documentation, has formulated a query (...) about the destination that should be given to said documentation and, specifically , on the possibility of delivering it to the Catalan territorial demarcation of a state-level professional college.

Given the doubts that are raised about the possibility of handing over that documentation that contains personal data (reference is made to data of former members or workers of the professional association), the (...) requests the pronouncement of 'this Authority in this regard.

III

Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), defines data processing as "any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction" (article 4.2).

The delivery of documentation or information from the former professional association to the Catalan territorial demarcation of the state-wide professional association, to the extent that it contains data

personal data of people who joined the professional association and/or of employees of the association, constitutes a treatment (a communication of data) that remains subject to data protection legislation.

The RGPD establishes that all processing of personal data must be lawful, fair and transparent (Article 5.1.a)).

In order for the treatment to be lawful, the data must be treated "with the consent of the interested party or on some other legitimate basis established in accordance with the Law, either in the present Regulation or in virtue of another Law of the Union or of the States members referred to in this Regulation, including the need to fulfill the legal obligation applicable to the person responsible for the treatment or the need to execute a contract to which the interested party is a party or in order to take measures at the request of the interested party prior to the conclusion of a contract" (consideration 40 RGPD).

Article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based in the following terms:

"1. The treatment will only be lawful if at least one of the following conditions is met: a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes; b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures; c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment; d) the treatment is necessary to protect the vital interests of the interested party or another natural person; e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment; f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child."

It must be taken into account that, as is apparent from article 6.3 of the RGPD and expressly included in article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD), the processing of data can only be considered based on the legal bases of article 6.1.c) i) of the RGPD when this is established by a rule with the rank of law.

Likewise, it must be taken into consideration that if the treatment (the delivery of the information) affects special categories of data (a question that could not be ruled out in the present case, given the nature of the data that the professional associations can obtain treat its members and/or workers with respect) it will also be necessary to count on one of the exceptions established in article 9.2 of the RGPD, in order to be able to consider this data processing lawful.

IV

In the consultation, it is pointed out that the Catalan territorial demarcation of the state-level state college, which has requested documentation or information from the former professional college, is the entity that at the time promote the creation of the professional college by segregation of the state-level professional college.

As we have seen, the TSJC considered, in the aforementioned judgment (...), that this segregation of the Catalan territorial demarcation of the state-level professional association in order to constitute a new professional association (the defunct college) was not carried out following the segregation procedure established in the state legislation of professional colleges. Consequently, it declared the nullity of the Decree (...), creating the professional college.

This judicial pronouncement, also as we have seen, was ratified by the Supreme Court in their judgment (...).

The main consequence of this annulment of the law establishing the professional association is the re-establishment of the previous legal situation (article 71.1.b) LJCA).

From the point of view of the protection of personal data, the existence of a situation like the one described may lead to a change in the responsibility for certain personal data treatments that, until the moment of its dissolution, was carried out by the professional law in the exercise of the legally attributed functions.

According to the information attached to the consultation, the process of liquidation or dissolution of the professional association was entrusted to the people who, before the STSJC (...), cited, nullification of the Decree establishing the college held the positions of members of the governing body of this corporation, according to the data from the Registry of professional associations of the Generalitat de Catalunya on the composition of the governing body of t

Therefore, it is up to these people to make the decision on the destination that should be given to the documentation of the former professional college, including its possible delivery to the Catalan territorial demarcation of the state-level professional college .

In any case, from the point of view of the personal data protection regulations, the treatments carried out by the professional association in the exercise of its public functions were based on the legal basis provided for in article 6.1.e) of the RGPD, that is, that the treatment was necessary for the exercise of a mission in the public interest or of public powers attributed to the college. Once the professional association has been extinguished as a result of the declaration of nullity of its creation, this same legal basis can enable the treatment carried out by the Catalan territorial demarcation of the state-level professional association, as to nine competent collegial body for the exercise of these public functions.

This could include the personal data of the former members of the college - who would be integrated into the state-level professional college - and, even also, of third parties in relation to the activities carried out by them collegiates

Point out, at this point, that the approach that has just been set out would also coincide with the solution provided by the personal data protection legislation in article 21.1 of the LOPDGD, for certain situations similar to the one analyze According to this precept:

"Unless proven otherwise, the processing of data, including its prior communication, which could be derived from the development of any operation of structural modification of companies or the contribution or transmission of business or branch of business activity, will be presumed to be lawful, provided that the treatments would be necessary for the good end of the operation and guarantee, when applicable, the continuity in the provision of services."

Although this precept could not be considered applicable to the specific case (it is intended for cases of corporate or commercial restructuring), it follows that, when it has

place a modification of the person in charge of the treatment as a result of the restructuring described therein, the communication of personal data from one entity to another is presumed lawful.

v

A different question would be the delivery to the Catalan territorial demarcation of the state-level professional association of that personal information linked to the exercise of private functions of the former professional association that may appear in the claimed documentation, such as , the personal data of the people who provided their services to the school or other

In this case, the legal basis of article 6.1.e) RGPD would not enable communication to the state-level professional association to the extent that it would not be a matter of public functions assumed by the state-level professional association.

However, the delivery of this personal information could be articulated on the legal basis of article 6.1.a) of the RGPD, relating to the consent of the persons affected, which should be obtained in the terms of article 4.11) of the RGPD or, if necessary, to affect special categories of data, of article 9.2.a) of the RGPD.

For these purposes, it would be necessary to address the affected persons so that they can give their consent, if they so wish, for the communication of their personal data to the Catalan territorial demarcation of the state-level professional association.

With regard to that personal information that is not delivered to the Catalan territorial demarcation of the state-level professional association, as the consent of the affected persons has not been obtained, from the data protection aspect, in principle should be deleted, to the extent that the dissolution of the professional association entails, in turn, the disappearance or extinction of the purpose or purposes that would justify the treatment for which these data would have been collected, unless some provision require its preservation.

Point out that the RGPD has a set of principles that those in charge and those in charge of treatment must observe in the treatment of personal data, including the principle of limiting the retention period, established in the article 5.1.e), according to which:

"1. The personal data will be:

(...) e) maintained in a way that

allows the identification of the interested parties for no longer than necessary for the purposes of the treatment of the personal data; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, without prejudice to the application of the measures appropriate technical and organizational techniques that this Regulation imposes in order to protect the rights and freedoms of the interested party ("limitation of the conservation period").

Regarding this, recital 39 of the RGPD provides that:

"(...) Personal data must be adequate, relevant and limited to what is necessary for the purposes for which they are processed. This requires, in particular, to guarantee that its retention period is limited to a strict minimum. Personal data should only be processed if the purpose of the treatment could not reasonably be achieved by other means. To ensure that personal data is not kept longer than

necessary, the person responsible for the treatment must establish periods for its suppression or periodic review. (...).”

It follows from these forecasts that the person in charge must keep the personal data for the shortest possible time and that, in determining this retention period, the purpose for which the treatment is needed must be taken into account of the data, in such a way that, once reached, the personal data must be deleted.

This, without prejudice to the obligations to keep the data for a certain time that may establish applicable provisions, in such a way that, once these terms have been met, that is when the personal data must be deleted.

For this reason, it is up to the people who were entrusted with the liquidation process of the professional association the task of examining which data the professional association treated not linked to the exercise of public functions and for what purposes they may continue to be necessary, in order to establish the retention periods of this data or to determine its deletion.

As long as the personal information is necessary or relevant to achieve the purposes for which its treatment responds, taking into account the functions of the college, from the data protection side this information should be kept. Otherwise, it should be deleted.

It should be noted, at this point, that, as provided by the data protection regulations themselves, deletion, when relevant, does not necessarily equate to the erasure or destruction of personal information, but to its blocking.

Specifically, article 32 of the LOPDGDD establishes the following:

"Article 32. Blocking of data.

1. The person responsible for the treatment will be obliged to block the data when it proceeds to its rectification or deletion.
2. The blocking of the data consists in the identification and reservation of the same, adopting technical and organizational measures, to prevent its treatment, including its visualization, except for the provision of the data to judges and courts, the Ministry of Finance or the competent Public Administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the prescription period thereof. After that period, the data must be destroyed.
3. Blocked data may not be processed for any purpose other than that indicated in the previous section.
4. When for the fulfillment of this obligation, the configuration of the information system does not allow the blocking or an adaptation is required that involves a disproportionate effort, a secure copy of the information will be carried out so that there is digital evidence, or another naturaleza, which allows to prove the authenticity of the same, the date of the block and the non-manipulation of the data during the same. (...).”

Once blocked, the data may not be processed for any purpose, except for making the data available to judges and courts, the Public Prosecutor's Office or the competent public administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment (article 32.3 LOPDGDD).

Once this term has been met, which may vary depending on the information processed and the responsibilities that may be generated, the personal information must be effectively deleted (article 32.2 LOPDGDD).

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

Conclusions

In view of the STSJC (...), which declares the nullity of the rule of creation of the professional college, and in accordance with what is established by the people in charge of the liquidation of the professional college, the base legal provision provided for in article 6.1.e) RGDJ would enable the delivery of the documentation of the former professional association to the Catalan territorial demarcation of the state-level professional association containing personal data linked to the exercise of the public functions of professional associations.

With regard to the personal data linked to the exercise of the private functions of the former professional association, its communication to the Catalan territorial demarcation of the state-level professional association could be articulated on the basis of consent of the affected persons (Article 6.1.a) RGPD).

Regarding those data that are not delivered to the Catalan territorial demarcation of the state-level professional association, it is up to the people in charge of carrying out the liquidation of the professional association to examine the need for its treatment and, consequently, determine its conservation or deletion.

Barcelona, June 17, 2021