

Opinion in relation to the query made by a professional association on the possibility of being an authorized consultant of the Official Register of Catalan Sports Professionals

A letter from a professional association is presented to the Catalan Data Protection Authority in which it proposes the feasibility of being an authorized consultant of the Official Registry of Professionals of Sport in Catalonia (henceforth, ROPEC).

Specifically, the following questions are raised:

"1. Know the feasibility and if there is any legal impediment in the matter of data protection for the College to be an authorized consultant of the ROPEC for the sole purposes of processing complaint files presented to this College, and always with full respect for the legislation on the protection of personal data since in no case is it intended to have special protection data.

2. Find out if there is any legal impediment in the field of data protection that would argue against the ROPEC being a registry open to citizens, understood as a right to access the information of the professionals who attend to them. "

Having analyzed the consultation and given the current applicable regulations, and in accordance with the report of the Legal Advice I issue the following opinion.

I

(...)

II

The Professional Association states in its consultation letter that it receives many inquiries, both from companies that hire sports professionals and from citizens who consume sports services, and also from its own members, in which I would like to know if these professionals have the qualifications required by current legislation for the exercise of the profession.

He then states that, as regards those professionals graduated in Physical Activity and Sport Sciences, he can give an answer easily, given that they are people

colleagues in the school. As for the rest of the sports professionals, taking into account that they must register with ROPEC, he states that he is transferring them to the General Secretariat of Sport, which is responsible. At this point he points out that the response from this body is often delayed or denied, so they cannot respond to the query that has been made to them.

Faced with this situation, the professional association asks this Authority whether it would be feasible, from the data protection point of view, to configure themselves as authorized ROPEC consultants and, therefore, have direct access to the registry database.

To point out that, in response to the manifestations of the professional association, access to ROPEC seems to be considered not only to attend to this type of inquiries they receive, but also to process complaint files in relation to people registered in ROPEC . This forces us to analyze, separately, both scenarios.

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 RGPD establishes that all processing of personal data must be lawful, fair and transparent (Article 5.1.a)) and, in this sense, establishes a system for legitimizing the processing of data which is based on the need for some of the legal bases established in its article 6.1.

In the context in which we find ourselves, the legal basis of article 6.1.e) of the RGPD is of particular interest, relating to *"the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person responsible for the treatment"*.

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), data processing can only be considered based on this legal basis when it is established by a rule with the rank of law.

That is to say, from the point of view of data protection, the legal basis of article 6.1.e) of the RGPD could legitimize the processing of personal data that are necessary for the exercise of powers or functions public that is legally attributed to the professional association, provided that the rest of the principles and guarantees established in the data protection legislation are also respected.

The professional association raises the possibility of accessing the ROPEC to attend to queries made to it about certain sports professionals, specifically, to find out if they have the appropriate qualifications to carry out a certain sporting activity.

Given this, it is necessary to mention Law 3/2008, of April 23, on the exercise of sports professions, which aims to *"regulate the essential aspects of the exercise of certain sports professions, expressly recognize what these professions are, assign the associated skills, specify the qualifications or accreditations, determine the qualifications necessary to exercise them and attribute to each profession the specific functional area that corresponds to it"* (article 1.1).

Article 8 of this law provides that *"persons who, in addition to meeting the general requirements established therein, are registered in the Official Register of Professionals of the 'Esport de Catalunya' or, where appropriate, that they are members of the professional association that belongs to them. The requirement of association is only enforceable if the corresponding professional association exists"* (paragraph 1). And he adds that *"the structure, functions and the regime of publicity and operation of the Official Register of Professionals of the Sport of Catalonia must be fixed by regulation. (...)"* (section 3).

Decree 68/2009, of April 28, which regulates the ROPEC, approved in implementation of article 8.3 of Law 3/2008, specifies that they must not register in the ROPEC, among others, *"the people who, in accordance with current legislation, must register compulsorily in the professional association that belongs to them"* (article 2.2).

Article 2.1 of the Statutes of the professional college provides that *"graduates or graduates of physical education or physical activity and sport sciences, in possession of a recognized academic degree and in a state of being able to carry out their own activities of the profession, they will necessarily be grouped in a professional college (...)"*.

Therefore, people who want to exercise the professions of sport and have certificates or official training titles determined in Law 3/2008 must register compulsorily with the ROPEC.

Now, if we are talking about people with degrees or degrees in Sciences of Physical Activity and Sport (CAFE), they must not register with ROPEC, but must join the professional college.

The regulatory regulations of the ROPEC state that this register depends on the department competent in matters of sport and that it is attached to the Catalan Sports School of the Catalan Sports Council (article 8.2 Law 3/2008 and article 3.1 Decree 68 /2009).

Despite the possibility of delegating the public function of ROPEC management to a corporation under public law, a professional association or any other entity that can receive the delegation of public functions of an administrative nature (article 8.4 Law 3/2008), it is not that this has been carried out in the professional college.

Therefore, it is the responsibility of the Generalitat Administration, specifically, the General Secretariat of Sport and Physical Activity, and not the professional association, to attend to and resolve queries that are made about the compliance with the requirements for the exercise of professions in the field of sport referred to in Law 3/2008 regarding those professionals registered in ROPEC.

Consequently, the processing of data intended by the ROPEC by the professional association (direct access to the register) could not be based on the legal basis of article 6.1.e) of the RGPD, that is in the fulfillment of a mission carried out in the public interest as a result of a competence attributed by a rule with the rank of law.

This does not mean, however, as we will see below, that the professional association cannot have access to the ROPEC, although this treatment, from the point of view of data protection, will have to find its basis in one of the other legal bases of article 6.1 of the RGPD.

IV

The RRGD provides that the processing of data will be lawful if this *"is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment"* (article 6.1.c)).

As in the previous case, this treatment can only be considered based on this legal basis of the RGPD when this is established by a rule with the rank of law (article 8.1 LOPDGDD).

Therefore, from the data protection aspect, this legal basis of Article 6.1.c) of the RGPD could legitimize the access of the professional association to the ROPEC, to the extent that a rule with rank of law that establishes the obligation of the person in charge of the ROPEC to facilitate access to the information contained in this register. This, notwithstanding that said access must respect the rest of the principles of data protection legislation.

Law 3/2008 provides that regulations must regulate, among other aspects, the advertising and operation regime of ROPEC (article 8.3), which leads to bearing in mind, once again, what is established in Decree 68/ 2009, previously cited.

Article 4.2 of this Decree provides that *"any person has the right to access the Register, in the terms established by article 37 of Law 30/1992, of November 26, on the legal regime of public administrations and the common administrative procedure."*

This rule, Law 30/1992, was repealed by Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC). The LPAC recognizes as a right of people in their relations with public administrations, access to public information, files and records, in accordance with the provisions of the regulations on transparency, access to public information and good government, and the rest of the legal system

(article 13.d)).

Therefore, the reference to Law 30/1992 must be understood as being made to the regime of regulated access to the transparency legislation.

The professional association states in its letter of inquiry that it does not understand why the ROPEC is not open to all citizens for consultation, bearing in mind that it is a public register.

As this Authority has highlighted on numerous occasions (among others, in opinions [CNS 22/2013](#) and [CNS 29/2019](#) or in the [IAI report 52/2018](#), available on the Authority's website), the public nature of the records provided for by the applicable regulations must not presuppose access to any type of personal information that they may contain or that this information must be disseminated through any system and with a generalized scope. In this case, it is Decree 68/2009 itself which, despite being a public register, does not provide for active publicity (which should be provided for in a standard with the rank of law) and refers to the regulation that regulates the right of access to public information.

In our case, it is therefore necessary to take into account what is established in Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC).

Article 18 of the LTC recognizes the right of people to *"access public information, referred to in article 2.b, in an individual capacity or in the name and representation of any legally constituted legal person"* (section 1).

Article 2.b) of the LTC defines "public information" as *"the information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law"*.

For its part, article 53.1 of Decree 8/2021, of February 9, on transparency and the right of access to public information (RLTC), specifies that it is public information subject to the right of access *"all the information, any data or documents that the public administrations have prepared, possess, or can legitimately demand from third parties as a result of their activity or the exercise of their functions."*

The information on sports professionals included in the ROPEC, in terms of article 3.2 of Decree 68/2009, is public information under article 2.b) of the LTC and, therefore, remains subject to the access regime provided for in this regulation, which establishes, as a general criterion, that the right of access to public information can only be denied or restricted for the reasons expressly established by law (article 20 and s. LTC).

Specifically, and with regard to the right to the protection of personal data, it is necessary to take into account what is established in articles 23 and 24 of the LTC, as well as the principles of the personal data protection regulations.

Regarding access to public information that does not contain data deserving of special protection, as would be the case at hand, article 24.2 of the LTC provides the following:

"2. If it is other information that contains personal data not included in article 23, access to the information can be given, with prior weighting of the public interest in disclosure and the rights of the affected persons. To carry out this weighting, the following circumstances must be taken into account, among others:

- a) The elapsed time.*
- b) The purpose of the access, especially if it has a historical, statistical or scientific purpose, and the guarantees offered.*
- c) The fact that it is data relating to minors.*

*d) The fact that it may affect the safety of people.
(...).”*

For the purposes of said weighting, it must be taken into account that, as the preamble of Law 3/2008 points out, sports activities are part of the so-called leisure industry, of recreation, of leisure time, of health, tourism or even aesthetics, and have a strong impact on the health and safety of the people who practice them. It is worth highlighting especially since, among the recipients of these activities, we often find a whole group of people deserving of special protection, such as children, the elderly and people with health problems. It cannot be ignored that the provision of services specific to sports professionals without having a degree or without meeting the required requirements can pose a risk to the health and safety of these people.

Given this, it can be considered of public interest to be able to know whether a certain person who claims to be a sports professional and who provides his services as such meets the legally required requirements for the exercise of such a profession, for the better defense of the rights of the person who is a user and/or consumer, in the same way, in fact, that this information could be known if it were a sports professional obliged to join (through the consultation of the register of members (article 40 bis.2 Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations)).

From the point of view of data protection, handing over this information would lead to an interference with the right to data protection of the sports professionals affected, given that it would make it possible to know not only their identity but also that they have the qualification and the rest of the necessary requirements to carry out the professional activity he develops. But it should be borne in mind that it would in any case be about aspects linked to his professional activity as a sports professional.

It should be borne in mind that the consultation or access to ROPEC information would be considered with respect to a certain sports professional, in relation to whom doubts are raised about his qualification, and not in an indiscriminate or generalized manner to all ROPEC information and respect all registered professionals.

Taking these considerations into account, it does not seem that data protection regulations should prevent citizens from accessing ROPEC information regarding accreditation of a specific sports professional for the exercise of the sports activity he provides, when they so request.

This, transferred to the case at hand, would also lead to admitting the possibility that the professional association may have access to this information from the ROPEC, as long as it occurs in the terms indicated. In other words, any direct access to ROPEC should be configured in such a way that access is only allowed to information linked to a certain sports professional, about whom the query is made to ROPEC, and not in a way indiscriminate

This access, from the point of view of data protection, would be lawful on the legal basis of Article 6.1.c) of the RGPD, in connection with the examined provisions of the LTC and the applicable sectoral regulations (Law 3/2008 and Decree 68/2009).

V

The professional association also raises in its consultation the possibility of accessing the ROPEC for the purposes of fighting against professional intrusion and, specifically, of processing the files of the complaints they receive in relation to registered sports professionals in this record.

Article 11 of Law 7/2006, of May 31, on the exercise of qualified professions and professional associations, relating to intrusion and irregular professional actions, defines professional intrusion as *"the performance of professional actions without meeting the legally established requirements for the exercise of the profession"* (section 1).

In accordance with article 6 of this Law, the essential requirements that every professional must meet in order to exercise their profession are:

- "a) Have the academic title and the conditions determined by article 5 (on access to the exercise).*
- b) Not being in a situation of professional disqualification.*
- c) Not be subject to any of the causes of incompatibility or prohibition established by law.*
- d) Comply, if applicable, with the corresponding collegial rules."*

In accordance with article 39 of the same Law, it is up to the professional associations, among other public functions, *"to ensure the rights and the fulfillment of the duties and obligations of the members and so that acts do not occur of intrusion, unfair competition or other irregular actions in relation to the collegiate profession, adopting, where appropriate, the measures and actions established by the legal system"* (letter b)).

At this point, it should be noted, in accordance with the terms of the proposed consultation, that the disciplinary power of the professional associations covers only its members.

This is established in article 5.i) of Law 2/1974, of February 13, on Professional Associations, according to which they have, among other functions, that of *"ordering in the field of its competence, the professional activity of the collegiates, ensuring professional ethics and dignity and due respect for the rights of individuals and exercising the disciplinary faculty in the professional and collegial order"*.

In the same sense, article 15.3 of Law 7/2006 provides that *"professional associations and, where appropriate, the councils of professional associations have the power to sanction members who violate the provisions collegiate and professional, in accordance with the provisions of this title and title V."*

Therefore, it must be borne in mind that, with respect to sports professionals registered with the professional association, in the event that there are sufficient indications of the commission of an administrative offense or infraction, the professional association would be forced to open a disciplinary file, in order to verify the situation indicative of professional intrusion (such as practicing without a qualification) and, where appropriate, to sanction it (article 80 Statutes).

As such, in the context of this disciplinary procedure, the professional association could request or consult a third party for information on whether the member in question has obtained the qualification required for the exercise of the profession to the extent that this information is relevant to the processing of the disciplinary file against a member. The communication or access to this information would be based on the exercise of a public function attributed by law to the professional association and, therefore, would be lawful on the basis of article 6.1.e) of the RGPD, in connection with the regulatory regulations of professional associations.

This situation, it should be noted, could correspond to the example mentioned in the query on the fact that the *Ministry of Education* allows the professional college access to its database.

However, with respect to sports professionals not affiliated to the professional association, it must be taken into account that, in the event of suspicion or evidence that they are carrying out activities specific to or exclusive to the profession without meeting the required requirements, the professional college should be limited to bringing to the attention of the Administration of the Generalitat this conduct of professional intrusion, given that it is this administration and not the professional association that has the competence to adopt the necessary administrative measures to correct it and, consequently, who can process the personal information necessary for that purpose (article 6.1.e) RGPD).

In this sense, article 15.2 of Law 7/2006 provides that *"the disciplinary regime for non-collegiate qualified professions is exercised by the Administration of the Generalitat. It is also exercised in the case of professionals who have the obligation to be registered and do not comply, or of companies and entities that hire professionals in this case."*

Specifically, I should bring it to the attention of the General Directorate of Law, Legal Entities and Mediation of the Department of Justice, since, in accordance with Decree 47/2022, of March 15, restructuring the Department of Justice, it is up to this body to *"carry out legal actions against professional intrusion in the terms established in current legislation on the exercise of qualified professions and professional associations"* (article 25.1.f)).

This, without prejudice to the fact that conduct indicative of professional intrusion detected by the professional association may also be brought to the attention of the judicial authorities or the Public Prosecutor's Office in the event that criminal responsibilities may arise from it (article 262 LECrim.).

For all that, it must be concluded that in this case access to the ROPEC information proposed by the professional association for the purposes of controlling the professional intrusion of non-members could not be allowed.

conclusion

The professional association's access to ROPEC information on whether a certain sports professional is registered there can be based on the legal basis of article 6.1.c) of the RGPD, in connection with the provisions of the transparency legislation, in the terms set out in section IV of this opinion.



Autoritat Catalana de Protecció de Dades

On the other hand, this legal basis would not justify the access of the professional association to control the professional intrusion of a person who is not a member of the professional association.

Barcelona, June 2, 2022

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