

Opinion in relation to the query made by a City Council regarding an agreement for the recording and broadcasting of sports competitions in the municipality

A query formulated by a City Council is presented to the Catalan Data Protection Authority, in which reference is made to a proposal for an agreement, to be formalized by the City Council with the municipality's Handball Club and the Unió de Federacions Esportives de Catalunya (UFEC), for the recording and broadcasting of sports competitions in the municipal pavilion .

Specifically, the consultation letter requests an opinion in relation to the text of the proposed agreement, so that the Authority can review it and make the appropriate considerations.

Analyzed the query, which is accompanied by a copy of the Collaboration Agreement between the parties, for the promotion of local and grassroots sport through the digital broadcast of competitions (hereinafter, the Agreement), given the regulations currently applicable, and in accordance with the report of the Legal Counsel, the following is ruled:

I

(...).

II

The City Council requests an opinion from this Authority in relation to the *"Collaboration Agreement (...), for the promotion of local and grassroots sport through the digital broadcasting of competitions"*, for the digital broadcast of sports competitions.

According to the MANIFESTEN section of the Agreement that accompanies the consultation:

"Second.- *That the UFEC, together with the sports federations of Catalonia, is developing the digitalization project of Catalan sport through the installation of artificial intelligence cameras in different sports facilities in Catalonia together with the development of the OTT platform, with the purpose of broadcasting and advertising the competitions, sporting events and matches of the Sports Federations of Catalonia through the OTT platform, Smart TV, mobile devices and tablets .*

(...)

Fifth.- *That the entity Club Handbol (...) and the City Council are aware of the digitization project described and having worked together with the UFEC to adapt it to the municipality, they are interested in leading and implementing the project within the scope municipal together with the UFEC and the sports federations of Catalonia."*

According to the first AGREEMENT of the Convention:

"(...).

The parties involved hereby agree to promote the project in the municipality of (...) through the installation of artificial intelligence devices Pixellot S2 (from now on also referred to as recording material) in the installation -sporting of the Municipal Pavilion ... so that the federated competitions, sporting events and matches of the Catalan Sports Federations are reproduced on the OTT ESPORT+.TV platform owned by the UFEC ."

Thus, the installation of devices in the municipal pavilion would aim, according to the information available, for matches and sporting events to be played on an "OTT platform" (an OTT service, for the English acronym "over - the -top ").

According to the information available on the website www.ufec.cat : *"EsportPlus.TV is a digital platform of audiovisual sports content that offers a wide variety of sports events promoted by the sports federations of Catalonia and that can be viewed from any device and place (...)."*

At the outset, it must be noted that it is not up to the Authority to review or validate the Agreement, as is clear from the terms of the consultation, but only to make the appropriate considerations from the perspective of the personal data protection regulations given the content of the Agreement and the information available.

Having said that, we start from the basis that according to Regulation (EU) 2016/679, of April 27, general data protection (RGPD), personal data is *"all information about an identified or identifiable natural person ("the interested party"); yes Any person whose identity can be determined will be considered an identifiable natural person, directly or indirectly, in particular through an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of physical, physiological, genetic, psychological, economic, cultural or social security of said person;"* (art. 4.1 RGPD).

The processing of personal data in particular of the image and/or voice of natural persons that occurs as a result of the installation of cameras or digital recording devices subject to consultation is subject to the principles and guarantees of the regulations of protection of personal data, that is, the RGPD and Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD)).

In particular, the recording and retransmission or dissemination of images of physical persons who are in the municipal pavilion in which the digital devices referred to in the Agreement would be installed, as long as these persons are identified or identifiable, constitutes a processing of personal data subject to said regulation.

III

Before starting to analyze the content of the Agreement, it is appropriate to determine who has the status of data controller in the case at hand.

In accordance with article 4.7 of the RGPD, the person responsible for processing personal data is:

"the natural or legal person, 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 his appointment may be established by the Law of the Union or of the Member States;

The fourth Agreement of the Agreement provides that the City Council undertakes to finance the project, and also to " *Not access, use or record the matches of the Club Handbol entity .*" Therefore, given the information available, it does not appear that the City Council decides on "the purpose and means of the treatment", for the purposes of article 4.7 RGPD.

According to the same agreement 4 of the Agreement, the Club Handbol entity undertakes to "**Record the images and decide to broadcast them** by virtue of the agreements made with the Catalan Handball Federation".

Likewise, according to this agreement, the UFEC undertakes to:

"a) Acquire, install and maintain 1 camera (...).

(...).

e) Comply with the stipulations of the Catalan Handball Federation regarding the recording and publication of matches.

*f) **Respect the recording and broadcasting decisions of the Club Handbol entity ..., without prejudice to the agreements linked with the Catalan Handball Federation.***"

Taking into account these provisions of the Agreement, it seems necessary to conclude that the Handball Club would be responsible for the treatment, since it is, according to the agreement, to whom the decision to record and broadcast the images corresponds.

At this point it should be added that, according to article 4.8) of the same RGPD, it is: "*responsible for treatment*" or "*responsible*": *the natural or legal person, public authority, service or other organism that processes personal data on behalf of the person in charge of the treatment;*"

The Agreement assigns the UFEC installation and maintenance tasks for the recording device. For this reason, to the extent that these tasks involve access to personal data in accordance with the instructions of the Handball Club, this entity would have the status of data controller.

Therefore, this opinion will be drawn up taking into account these premises: the Handball Club would be the person responsible for the treatment and the UFEC could be, if necessary, a person in charge of the treatment.

It should be remembered that the treatment order must be formalized by means of the corresponding contract or treatment order agreement, in the terms provided for in article 28 of the RGPD.

In this regard, we refer to the Guide on the data controller in the RGPD, which is available on the Authority's website, www.apdcat.cat.

However, we must point out that there is some provision in the Convention that would not fully fit this scheme. Thus, agreement 5.4 provides, for example, that " *No one may access or manipulate the Recording devices without the written authorization of the UFEC, which will be responsible for designating the terms and the authorized persons for the use of the Recording Material and for access, where applicable, to the recording of this* ".

In the event that the person responsible for the treatment is the Handball Club, as noted above, this provision should be modified, in order to make it clear that the authorization of the UFEC is carried out following the instructions of the Club d 'Handball. Otherwise, that is to say, if the UFEC has decision-making capacity regarding the authorization to access and use the images, we could find ourselves facing a case of co-responsibility

The regulations on the protection of personal data also provide for the possibility of establishing joint responsibility **for a treatment**, that is to say, that two or more persons in charge jointly determine the objectives and means of the treatment (art. 4.7 and art. 26 RGPD and art. 29 LOPDGDD).

Thus, according to article 26 of the RGPD:

"1. When two or more persons responsible jointly determine the objectives and means of the treatment, they will be considered co-responsible for the treatment. The co-responsible parties will determine transparently and by mutual agreement their respective responsibilities in fulfilling the obligations imposed by this Regulation, in particular regarding the exercise of the rights of the interested party and their respective obligations to provide information referred to in the articles 13 and 14, except, and to the extent that, their respective responsibilities are governed by the Law of the Union or of the Member States that applies to them. Said agreement may designate a point of contact for those interested.

2. The agreement indicated in section 1 will duly reflect the functions and respective relationships of the co-responsible parties in relation to the interested parties. The essential aspects of the agreement will be made available to the interested party.

(...)."

In any case, if it were decided to establish a co-responsibility model in relation to data processing (capture and retransmission of images of sporting events in this case), the co-responsible parties will need to sign an agreement that clearly determines the respective functions and relationships of those responsible in relation to those affected, who must know the essential aspects of the agreement (art. 26 RGPD).

IV

The data protection regulations require that the person in charge of the treatment as well as, where applicable, the other participants in the treatment such as a person in charge of the

treatment, comply with the principles and guarantees established by the RGPD and the LOPDGDD.

Regarding compliance with the **principle of legality** of treatment (art. 5.1.a RGPD), article 6 of the RGPD provides the following:

"1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gives his consent for the treatment of his data personal for one or several specific purposes;

(...).

*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 interests or rights and freedoms do not prevail over said interests fundamentals of the interested party that require the protection of personal data, en particularly when the interested party is a child.*

(...)."

In the absence of the consent of those affected - which does not seem to be a viable basis given the characteristics of the treatment in question and the space in which it takes place - or other legal bases, it is necessary to assess whether the treatment in question it could be necessary to satisfy the legitimate interests of the person in charge (in principle, and according to the Agreement, the Handball Club), or the legitimate interests of third parties, such as the UFEC itself, or even the Catalan Handball Federation, to which the Agreement alludes on several occasions.

According to recital 47 of the RGPD: *"The legitimate interest of a controller, including that of a controller to whom personal data may be communicated, or of a third party, may constitute a legal basis for the treatment, provided that they do not prevail the interests or rights and freedoms of the interested party, taking into account the reasonable expectations of the interested parties based on their relationship with the person in charge. (...), the existence of a legitimate interest would require a **meticulous evaluation** , even if an interested party can reasonably foresee, at the time and in the context of the collection of personal data, that the treatment for that purpose may occur . In particular, the interests and fundamental rights of the interested party could prevail over the interests of the person in charge of the treatment when processing personal data in circumstances where the interested party does not reasonably expect further treatment to be carried out."*

Once the existence of a legitimate interest has been identified, a weighting of interests will need to be carried out to determine whether the legitimate interest is prevalent and, therefore, a sufficient basis for carrying out the treatment that is intended to be carried out.

In the weighting or weighing test that would require the application of article 6.1.f) es they can take into account the criteria defined by the Article 29 Working Group (WG 29), which

analyzed the application of legitimate interest in the “ *Opinion 06/2014 on the concept of legitimate interest of the data controller under article 7 of the Directive 95/46/EC* ”. These criteria would be transferable to the regulation contained in article 6.1.f) of the RGPD . Thus, to carry out the weighting of interests and determine whether there is a legitimate interest that can base the processing of the data, the legitimate interest of the person in charge or of third parties must be taken into consideration; the impact of the treatment on data subjects; and finally the additional guarantees that apply to the treatments.

In accordance with the principle of proactive responsibility, this entire analysis process must be properly documented.

Also, in accordance with the right to information (art. 12 RGPD), to which we will refer later, it will be necessary to provide the interested parties with all the information specified in that article and that, in the case of treatments based on article 6.1.f) RGPD (existence of a legitimate interest) will also require identifying the legitimate interests on which the treatment is based.

v

Legitimate interests pursued

The Agreement refers to the interest of both the Handball Club and the City Council itself in implementing this project to disseminate sports events that take place in the municipality. We also remember that according to article 25 of Law 7/1985, of April 2, on the bases of the local regime:

"1. The Municipality, for the management of its interests and within the scope of its competences, can promote activities and provide public services that contribute to satisfying the needs and aspirations of the neighborhood community in the terms provided for in this article

2. 2. The Municipality will in any case exercise its own powers, in accordance with the legislation of the State and of the Autonomous Communities, in the following matters:

(...).

l) Promotion of sport and sports facilities and leisure activities."

In the same sense, article 66.3.h) of Legislative Decree 2/2003, of April 28, which approves the revised text of the Municipal and Local Regime Law of Catalonia.

On the other hand, according to Decree 58/2010, of May 4, of the sports entities of Catalonia, the UFEC has as its objectives, among others, the stimulation and coordination of the external projection of Catalan sport (art. 130), and for the fulfillment of its objectives it has, among others, the functions of promoting, defending and representing all federated sport in Catalonia (art. 131.2.a), disseminating the practice of sport for the civic and cultural

development of Catalonia (art. 131.2.f), promote Catalan sport abroad, and promote sports institutions and events (art. 131.2, sections h) ii), Decree 58/2010).

The interest of the parties that sign the Agreement, therefore, can be placed in the purpose of promoting sport, specifically, through the retransmission and dissemination of sporting events that take place in the municipal pavilion, in through the platform offered by the UFEC.

Consequences for the people affected

On the one hand, it should be borne in mind that the data processing provided for in the Convention would affect the right to self-image of the people who participate in the sporting events that would be recorded or of those who attend as an audience.

Therefore, it is necessary to take into account Organic Law 1/1982, of May 5, on civil protection of the right to honor, personal and family privacy and one's image (LO 1/1982).

The right to one's image can be defined as a right that *"each individual has to others do not reproduce the essential characters of his figure without the consent of subject, in such a way that any act of capture, reproduction or publication by photograph, film or other procedure of the image of a person at moments of his life private or outside of it constitutes a violation or attack on the fundamental right to the image, such as so is the use for advertising, commercial or similar purposes"* (STS of March 27, 1999).

In accordance with article 7.5 of LO 1/1982, it is considered illegitimate interference with the right to one's image, among other cases, *"the capture, reproduction or publication by photograph, film or any other procedure, of the image of a person in places or moments of his private life or outside of them, except for the cases provided for in article 8.2."*

Article 8.2, section c), of LO 1/1982, establishes that the right to one's own image does not prevent *"graphic information about a public event or event when the image of a certain person appears as merely accessory."*

Regarding this provision (art. 8.2.c) LO 1/1982), the Supreme Court links the accessoryness of an image to the nature of the act, the recognizability of the subjects that appear in it, the greater or lesser proportion they occupy in the images, the public relevance of the person or the fact of occupying a profession of notoriety or of public projection, or the direct relationship between the published image and the content of the accompanying information, among other circumstances.

For the Court, the interference would be justified to the extent that the image is captured accidentally and secondary in relation to the rest of the graphic information in which it is inserted (SSTS of 22 February 2007 and 20 July 2011).

For weighting purposes, and given these provisions (arts. 7 and 8.2.c) LO 1/1982), it can be considered that the capture and subsequent dissemination of images relating to sporting events, such as those carried out in facilities municipal facilities, would be framed in acts or public events for the purposes of what is described in LO 1/1982.

Thus, as long as the image of the affected persons is treated in an accessory way in relation to the event itself (capture of the athletes while they are playing the match), the treatment in question would not, in principle, constitute an illegitimate interference with the rights of 'these people.

It should also be borne in mind that the capture and retransmission of images of sporting events may fall under the freedom of information recognized in Article 20.1 EC, a provision that could also enable the processing of images of people physical activities that are expected to be carried out following the signing of the Agreement, given the information available.

Therefore, the regulatory framework protects the treatment of images of natural persons, including their capture and dissemination, among others, when the treatment may be related to the freedom of information (that is, when there is a certain interest informative in the event, in this case, of dissemination of sports events), and when the image of the people is accessory to the public event itself.

In these terms, and for weighting purposes, the people who participate in a match in a municipal pavilion, which is a space open to the public, either as participants in the match that is broadcast, or even general public captures assistant, they cannot be considered an illegitimate intrusion from the perspective of LO 1/1982, nor, therefore, particularly invasive of the privacy of the people affected.

For weighting purposes, it is also necessary to take into account the categories of personal data that could be the subject of treatment. The processing of data subject to consultation would mainly affect the physical image of certain people, without ruling out the capture of the ambient sound of sporting events.

Therefore, and without prejudice to other considerations that will be made later, in principle it must be borne in mind that the processing of data does not affect categories of data deserving of special protection (art. 9 RGPD).

On the other hand, also for weighting purposes, it should be taken into account that, according to the information available, the broadcast of the sporting events that are recorded in the municipal pavilion would be carried out through the television platform owned by the UFEC.

Although the query does not provide more information about said platform, according to the information available (www.transparència.ufec.cat), the digital platform "allows access, from any device and place, to the audiovisual content of the federations and clubs sports of Catalonia (...)". In other words, it would allow a wide dissemination through this platform, so that a wide and indeterminate number of recipients will be able to access it.

However, the fact that the broadcast of a sporting event can have an indeterminate number of recipients does not detract from the accessory element of the image of people in the sense set out in Organic Law 1/1982, nor the possible informative value that the retransmission of these matches may have - or contribution to the dissemination of sport - (art. 20.1 EC), as weighting elements.

It does not seem that the people who participate in a sporting event of this nature can have sufficiently justified expectations of privacy to consider the intrusion into their image or their rights illegitimate. In any case, however, for this to be the case, the adoption of appropriate guarantees becomes essential.

Additional guarantees

In principle, given the information available and in terms of the regulations studied (LO 1/1982 and art. 20.1 CE), the recording and broadcasting of sporting events that take place in the municipality's sports hall can have a basis appropriate legal basis (art. 6.1.f) RGPD) as long as the weighting between the elements that have just been exposed and the additional guarantees that apply, results in a prevalence in favor of the achievement of the legitimate interest pursued.

For this reason, in the case at hand, the guarantees offered to the affected persons acquire special relevance. In particular, special attention must be paid to the following issues:

As agreed by GT 29 in the aforementioned Opinion, additional guarantees to prevent an undue impact on the interested parties include, among others, the minimization of data.

According to the **principle of minimization**, the data must be adequate, relevant and limited to what is necessary in relation to the purposes of the treatment (art. 5.1.c) RGPD).

As has been said, the Agreement refers to the installation of " *Pixelot S2 artificial intelligence devices (...)*." Specifically, reference is made to the installation by the UFEC, in the municipal pavilion, of one (1) device.

According to the information available on the website www.transparencia.ufec.cat, the object of the "Esport+.TV" project, to which the agreement refers, would be " *the installation of artificial intelligence devices, that is to say, automatic production devices, for the production of audiovisual content that can be viewed on the Catalan sports channel (...)*."

On the same website, in the document " *Esport+.TV, the OTT of Catalan sport* ", reference is made to the services offered by the platform:

"(...) with the support of advanced technology and artificial intelligence, live sports activities and competitions can be recorded and then played via OTT on different personal devices. A content that can remain on the platform for a minimum of 30 days in order to be downloadable on the electronic devices themselves. This OTT, is a new digital platform that allows access, from any device and location, to the audiovisual content of the federations and sports clubs of Catalonia both in the form of annual subscription and "on demand", as well as a multiplicity of services and experiences linked to the sports sector (...)."

Although, as has been said, the specific characteristics of the device that would be installed in the municipal pavilion are not specified, nor the specific application that will be made of artificial intelligence in this case.

It should be borne in mind that the technology that uses artificial intelligence can allow a higher treatment of images than other systems allow (identification or facial recognition,

treatment of images of specific people, etc.). Thus, the artificial intelligence devices referred to in the query could offer image processing possibilities that go beyond the simple capture and subsequent dissemination of images of a sporting event.

It must be taken into account, from the perspective of the principle of minimization, that the treatment of the images that would be legitimate in the analysis carried out in this opinion, is that which corresponds to the intended purpose, that is, the dissemination of 'sporting events, so that the image of the affected people is accessory, and is not subject to further treatment that exceeds this purpose. Therefore, a treatment of the images of affected people that goes beyond what is appropriate and proportionate for the intended purpose and that incorporates mechanisms such as facial recognition, tracking people, video surveillance purposes of people or facilities ·locations, etc..., could not be legitimate, at least, on the legal basis studied.

In this regard, given that, according to the information available, the purpose of the treatment in question is not part of a video surveillance purpose, either of the affected persons or of the sports facilities in question, they do not apply to case that deals with the provisions of article 22 of the LOPDGDD, relating to the processing of images through camera or video camera systems in order to preserve the safety of people and property as well as their facilities .

Therefore, and in accordance with the main purpose described, depending on the use made of artificial intelligence mechanisms, it may not be appropriate to the principle of minimization.

Also, from the perspective of additional guarantees, **the principle of transparency must be particularly taken into account** (art. 5.1.a) RGPD). Specifically, in the case we are dealing with, the person in charge of the treatment should inform the affected persons under the terms of article 14 RGPD, which includes the information that must be provided when the data is not collected directly from the interested parties themselves.

Although in principle they should be informed in terms of article 14, paragraphs 1 and 2, of the RGPD, the characteristics of the treatment and the physical space where it takes place must be taken into account.

Article 14.5 of the RGPD foresees certain cases in which it will not be necessary to provide information under the terms of article 14, sections 1 and 2, among others, in the event that:

"(...).

*b) the communication of said information is impossible or involves a disproportionate effort, in particular for the treatment for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and guarantees indicated in article 89 , paragraph 1, or to the extent that the obligation mentioned in paragraph 1 of this article could make it impossible or seriously hinder the achievement of the objectives of such treatment. In such cases, the person in **charge will adopt appropriate measures** to protect the rights, freedoms and legitimate interests of the interested party, including making the information public;*

In the case at hand, given the concurrent circumstances and the inherent difficulty in being able to provide information to the affected people, they could be informed, for example, through the installation of information posters in the sports hall, provided that make it

possible to know the existence of the capture and subsequent dissemination of the images, as well as the identity of the person responsible and the possibility of exercising the rights that correspond to them in relation to said treatment, in a manner similar to what is established, for example in cases of video surveillance under article 22.4 of the LOPDGDD:

"4. The duty of information provided for in article 12 of Regulation (EU) 2016/679 will be understood as fulfilled by placing an information device in a sufficiently visible place identifying, at least, the existence of the treatment, the identity of the person responsible and the possibility of exercising the rights provided for in articles 15 to 22 of Regulation (EU) 2016/679. A connection code or internet address to this information may also be included in the information device.

In any case, the person responsible for the treatment must keep it available to them affected by the information referred to in the aforementioned regulation."

In any case, it will be necessary to ensure that the information posters are sufficiently visible to the people affected, so that they can be viewed before the capture of their image takes place, for example, by placing information posters at the different entrance points to the pavilion .

Information posters should include the minimum information referred to in article 22.4 of the LOPDGDD. This, without prejudice to giving information to users about the treatment also by other means, such as through the municipal website or the Sports Club itself, in the information referring to the municipal pavilion and the sporting events that will be broadcast.

conclusion

The capture, recording and dissemination of images of identified or identifiable natural persons in the municipal pavilion constitutes a processing of personal data subject to the principles and obligations of the RGPD, which could be lawful for the purposes of article 6.1. f) RGPD, as long as the specific guarantees apply, specifically, in relation to the duty of information and the principle of minimization.

In any case, it is appropriate to clarify the responsibilities of the subjects involved in order to determine who holds the status of responsible for the treatment, as well as the justification for the use of mechanisms based on artificial intelligence.

Barcelona, October 13, 2022