

File identification

Archive resolution of the previous information no. IP 501/2021, referring to the Catalan Football Federation

Background

1. On 13/12/2021, the Catalan Data Protection Authority received a letter from a person in which he filed a complaint against the Catalan Football Federation (hereafter, FCF), on the grounds of a alleged breach of the regulations on personal data protection .

In particular, the complainant stated that football clubs must provide the FCF, through a computer application, with information on the state of health of their members, related to Covid-19. In particular, he complained that the FCF is asking the clubs for "*player data on the presence of symptoms, date of onset of symptoms and whether or not they are fully vaccinated*" and that this collection of data exceeds the federation's needs , and contravenes the personal data protection regulations.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 501/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 17/05/2022 the reported entity was required to, among others, indicate whether it collected health data from members of football clubs who obtain a positive result for Covid-19 or who have been in close contact with a positive person, and specify the legal basis that would protect the collection of health data.

4. On 09/06/2022, the FCF responded to the aforementioned request through a letter in which it stated the following:

- That, "*the FCF has complied with the regulations in force at all times, in particular, Decree 63/2020, of June 18, on the new governance of the health emergency caused by COVID-19; by Resolution SLT/1429/2020, of June 18, by which basic protective and organizational measures are adopted to prevent the risk of transmission and favor the containment of SARS-CoV-2 infection; and the Action Plan for the deconfinement of sport in Catalonia of the General Secretariat of Sport and Physical Activity of the Generalitat of Catalonia. (...) In application of these regulations, the Board of Directors of the FCF approved the Protocol to be followed in the development of these and by all its participants to minimize the risk of contagion of COVID-19 (. ..) and which was communicated to federations and clubs (...). To highlight that this protocol and its latest versions have always been carried out in a coordinated manner and under the guidelines of the public institutions of Catalonia, having been validated and approved both by the Union of Catalan Sports Federations and by the General Secretariat of Sport and of the Physical Activity of the Generalitat of Catalonia, in accordance with the Action Plan for*

deconfinement of sport in Catalonia of the General Secretariat of Sport and Physical Activity of the Generalitat of Catalonia "

- *That, " clubs are obliged to declare the positive cases of members of the entity who are affiliated to the FCF (and therefore in possession of a license) under the Protocol to minimize the risk of contagion of COVID-19 in football competitions. The person who must declare the cases and give the data is the one the club has previously designated as responsible for compliance with the indicated Protocol (must be a manager or licensed staff). The information is only requested regarding people who have an active license with the FCF (players, coaches, assistants, or delegates)".*
- *That the clubs provide the FCF with information regarding people who are positive for Covid-19, for the purposes of managing and organizing the sports competitions that take place.*
- *That, " the data entered to fill in the positive communication form of the COVID Management section can only be accessed through the club's intranet, a section that can only be accessed and used if it has been assigned and registered a responsible for compliance with his club's Protocol, who is in charge of ensuring compliance with it and processing the data entered by the corresponding physical persons".*

Also, the FCF pointed out that the referred Protocol was mandatory compliance by " *all the people who directly or indirectly participate in the official competitions organized by the FCF* ". And, in relation to the management of incidents arising as a result of possible Covid-19 infections, within the framework of sports competitions organized by the FCF, he set out the following two cases:

"a) Positive cases of team members. If it is confirmed that one of the team members is positive for COVID-19, the person designated by the club as responsible for compliance with the Protocol and interlocutor with the authorities must notify and document the incident in the shortest possible time at the FCF, through the "Covid 19 Management" section of the federative intranet. You will have to fill in the "Communication of contagions" form indicating the name of the person, team to which he belongs, date of onset of symptoms or of positive diagnosis (if it is an asymptomatic case) and matches or sports activities in which he has taken part in the 48 hours prior to that date, specifying his participation (...). A file must also be attached with the document certifying the contagion of the federation. (...) According to the statement made by the club (...) and according to the parameters established by the health authorities at any given time, home isolation must be carried out for all members of the same team or club that have the consideration of close contact with this positive person and do not have the complete vaccination schedule (...) therefore, the purpose of the collected data corresponds to being able to diligently manage the object of the FCF as an institution that is to organize the competition and corresponding placements (...).

b) Need for home isolation due to contact with strangers. The need for home isolation of a member of the team for having been in close contact with a person outside the team, or if he is waiting to get the result of a test, does not affect the rest of the members who can continue with their usual sports practice. This circumstance, therefore, will only have to be notified and credited to the FCF if it occurs in such a number that it reduces the total number of players in the team to less than eleven, less than seven or less than five, depending in the case of football (...) the notification must include the identification of the players who are in isolation, the expected end date of this as well as the relevant documentary accreditation, and the FCF will determine in which meeting(s) must be postponed due to force majeure. (...) Therefore, this treatment has been necessary for

reasons of public interest in accordance with the guidelines issued by the Union of Catalan Sports Federations, as well as by the General Secretariat of Sport and Physical Activity of the Generalitat de Catalunya".

The reported entity attached various documents to its letter, among which, circular number 13, dated 09/29/2020, which contains the Protocol to be followed in the development of the competitions, validated and approved by the Union, stands out of Catalan Sports Federations and the General Secretary of Sport and Physical Activity of the Generalitat of Catalonia. And, with respect to all the above, the FCF argued that the reported treatment was necessary for reasons of public interest, and that it was protected by articles 6 and 9 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD).

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.

2. As explained in the background, the complainant complained about the fact that the FCF collected health data - related to the identification of people infected by Covid-19, their symptoms and their vaccination status - from members of sports clubs, which he considered were not necessary for the management of the grassroots football competition.

Well, as a preliminary matter, it should be noted that the data referring to whether a person has been vaccinated or has symptoms of Covid-19, constitutes health data, in accordance with article 4.15 of the RGPD. This precept describes the data relating to health in the following terms:

"personal data relating to the physical or mental health of a person, including the provision of health care services, which reveal information about their state of health".

Having established the above, it is necessary to contextualize the facts reported. In this regard, it is worth saying that the collection of the controversial data takes place at a time of health crisis in which the health authorities, in accordance with article 3 of Organic Law 3/1986, of April 14, of special measures in matters of public health, could adopt *"the appropriate measures to control the sick, the people who are or have been in contact with them and the immediate environment, as well as those considered necessary in case of transmissible risk"*. In similar terms, article 55 of Law 18/2009, of October 22, on public health provides for the power of health authorities to intervene in public and private activities to protect the health of the population and prevent illness

Along the lines of the above, it should be borne in mind that, article 15 of Law 2/2021, of March 29 on urgent prevention, containment and coordination measures to face the health crisis caused by Covid-19, in relation in the facilities for the practice of sports activities and

competitions, provides that the competent administrations must ensure compliance with the standards of capacity, disinfection, prevention and conditioning that are established.

Thus, in accordance with the regulatory framework set out, the complaint was submitted on 13/12/2021, when Resolution SLT/3652/2021, of 7 December, was in force, which establishes the measures regarding public health for the containment of the epidemic outbreak of the Covid-19 pandemic in the territory of Catalonia. This resolution, in relation to sports competitions, in its twelfth section, refers to the Action Plan for the deconfinement of sports of the Generalitat de Catalunya, in everything that does not contradict it. And, in this regard, it is worth saying that the resolutions approved prior to the one referred to here, were pronounced along these same lines with regard to the regulation of sports activities (vid. as an example, Resolution SLT / 2704, of September 2).

In turn, in accordance with the Action Plan for the deconfinement of sports in Catalonia, approved in June 2020, *"every organizer of a competition and sporting event must have a protocol that ensures the traceability of participating athletes, avoids the risk of contagion by Covid-19 and guarantee the measures provided for in this Plan. Also, the participating people must declare responsibly that in the last 14 days they have not had any symptoms compatible with COVID-19, have not tested positive, have not lived with people who have been or have had close contact with infected people"*. In this sense, the aforementioned Plan also established the obligation of sports federations to designate a person in charge of controlling the measures required for the prevention of Covid-19.

Well, the entity denounced here, in compliance with the Action Plan for the deconfinement of sport in Catalonia, drew up the Protocol to be followed in football competitions, to minimize the risk of contagion of Covid-19, with the approval of the Union of Sports Federations of Catalonia and the General Secretariat of Sport. This Protocol provided as a general principle of action, among others, that relating to traceability, understood as the guarantee of identifying all the people involved in sports practice, and being able to control, should they appear clinical symptoms associated with Covid-19, the infected person and possible risk contacts. Thus, for the purpose of streamlining communications, the FCF made available to the clubs, through the federative intranet, a section relating to "Covid-19 Management", through which controversial health data was communicated.

For what is of interest here, the FCF Protocol also regulated aspects related to the development of the competition's matches, on hygienic and contagion prevention measures, and on the management of incidents related to Covid-19. In relation to this last section, the preceding quarter of this Resolution transcribes the two casuistics provided for in the Protocol, in the event that a member of a sports club turns out to be positive for Covid-19 or close contact.

So things are, on 19/11/2020 the general secretary of the FCF issued circular number 23, of application for the communication of positive cases of Covid-19, which established the obligation to notify using the form that was made available to sports clubs, the positive cases of Covid-19. In this regard, the circular indicated that sending the form was essential in order to *"be able to decide on postponements and carry out the control and follow-up of the different positive cases that arise, both on the part of the clubs that participate in the field competitions of the FCF and of the clubs that take part in the delegated state competitions"*.

Also in this sense, circular number 48, issued by the general secretary of the FCF, on 11/05/2021, which updated the Reference Protocol, established, as a basic feature, that, in

the event of detecting a positive case, the FCF had to be informed of the data relating to the " *type and date of the test, date of onset of symptoms, date of the last contact of the positive person with the team and list of close contacts (...)*" in order for the FCF medical services to decide whether to isolate the affected team or to suspend sporting activity.

Well, in accordance with everything explained so far, it should be made clear that the FCF has invoked the regulations that protected the collection of the aforementioned health data, and has justified that the said data processing reported here was carried out with the sole purpose of being able to decide whether to postpone competition matches, based on the monitoring of positive cases, in order to minimize the contagion of Covid-19 during sports competitions.

In relation to the above, it should be noted that knowing which people were positive for Covid-19, the date of presentation of symptoms, and their vaccination status, was necessary information for the adoption of decisions related to the organization of sports competition. That being the case, it is not superfluous to point out that the aforementioned processing of personal data was provided given the circumstances and the time frame in which it was carried out - in the midst of a pandemic -. In this sense, the judgment of the Constitutional Court 207/1993 provided that, in order to verify whether a measure is restrictive of a fundamental right, it must pass the judgment of proportionality, defined in the following terms: "it is necessary to ascertain whether it *complies the three requirements or conditions: if such a measure is capable of achieving the proposed objective (judgment of suitability); if, in addition, it is necessary, in the sense that there is no other more moderate measure for the achievement of such purpose with equal effectiveness (juicio de necesidad); and finally, if the same is weighted or balanced, more benefits or advantages can be derived from it for the general interest than damages on goods or values in conflict (proportionality judgment in the strict sense)*".

In light of the above, it should be noted that the purpose of collecting personal data was to prevent the spread of the virus, based on the adoption of decisions affecting the calling or postponement of matches and training sports. Thus, there is no doubt that, in view of this objective, the controversial processing of personal data was an appropriate measure (allows the proposed objective to be achieved), and also necessary and weighted, since the eventual impact on the right to protection of the data of the affected people, had to decline in the face of the general interest of preventing the spread of the virus in a state of health pandemic.

For all the above, it must be concluded that the treatment object of complaint, which involves the treatment of data of a special category - health data -, is enabled by article 6.1 of the RGPD section c) "it is necessary for *the compliance with a legal obligation applicable to the person in charge of the treatment*", concurrent with the exceptions provided for in article 9.2 g), which states that the treatment of health data must be necessary "for reasons of essential public interest" ii) " *it is necessary for reasons of public interest in the field of public health, como la protección frente a amenazas transfronterizas graves para la salud* " of the RGPD, in connection with the regulations in force in the field of public health and prevention of contagion of Covid-19.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, any fact that

could be constitutive of any of the infractions provided for in the legislation on data protection, it is necessary to agree to its archive.

Article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that "(...) *no charges will be drawn up and the dismissal of the file and the archive of actions when the proceedings and the tests carried out prove the non-existence of infringement or responsibility. This resolution will be notified to the interested parties*". And article 20.1) of the same Decree determines that the dismissal proceeds: " a) *When the facts do not constitute an administrative infraction;*"

Therefore, I resolve:

1. Archive the previous information actions number IP 501/2021, relating to the Catalan Football Federation.
2. Notify this resolution to the Catalan Football Federation and communicate it to the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the which provides for article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998 , of July 13, governing the contentious administrative jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director,