

## File identification

Archive resolution of the previous information no. IP 55/2022, referring to the Catalan Chess Federation

## Background

1. On 14/02/2022, the Catalan Data Protection Authority received, by transfer from the Spanish Data Protection Agency, a letter from a person for which he made a complaint against the Catalan Federation of Chess (hereafter, FCE), due to an alleged breach of the regulations on personal data protection .

Specifically, the complainant stated that the FCE intended to " *draw up a report with the result of each match which will then be published on the federation's website <https://escacs.cat> with the names and surnames of the players* ". In this regard, he stated that this was what had always been done, but now, to the extent that in order to participate in the tournaments the FCE asked for the exhibition of the "Covid-19 Passport", this meant that the FCE kept the health data of the participants; and not only that, but that this information was known to everyone since it would be published on their website. The person reporting added that the mere preservation of these acts contravened Resolution SLT/8/2022, of January 4, which established that event organizers were prohibited from preserving the data of people who presented them with the covid-19 Passport to participate in certain activities.

2. The Authority opened a preliminary information phase (no. IP 55/2022), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure for application 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 05/09/2022 the reported entity was required to, among others, confirm whether, in order to be able to participate in a chess tournament or match, it was necessary display of the Covid-19 Passport and, in such case, indicate the legal basis that would have legitimized the processing of the participants' health data.

4. On 10/21/2022, the Authority reiterated the information requirement indicated in the previous precedent, given the lack of response from the FCE.

5. On 10/26/2022, the FCE responded to the aforementioned request through a letter in which it stated the following:

- That, " *it is uncertain the statement made by the complainant that, in order to participate in the competitions organized by the Catalan Chess Federation (hereafter FCE) it was essential to present the Covid vaccination passport* " .
- That, " *the will of the FCE was, from the first moment, to try to make the practice of our sport compatible with the health recommendations that came from the institutions of the Generalitat de Catalunya. To this end, and following the usual guidelines in all federated competitions in indoor venues, participants in official tests were required to show documentation certifying that their participation did not pose a risk to the rest of the participants in a certain test.*"

- That, " following the recommendations of the corresponding Public Administrations, the participants who voluntarily wanted to participate in the federative tests had to prove that they were in one of the following situations: a) Have the certificate called "Covid Passport" b ) Have a negative certificate of antigens carried out by a corresponding approved center (not pharmacies) c) Certificate according to which the disease would have been suffered in the months prior to the tournament dispute. d) Medical certificate with exemption from vaccination."
- That, " it is uncertain to state that the only way to be able to participate in the official tournament was to have a Covid passport as stated in the letter of complaint. In fact, the participation of foreign players from non-EU countries where the Covid passport did not exist and who were allowed to play through other health control mechanisms was common. Consequently, it is not true that by being listed in the acts of the competitions it could be inferred that these people had a covid passport ".
- That, " in the text between quotes that is included in the communication, it is indicated that the participation of the players is included in a report with the name and result of the meetings. Indeed, this fact occurs in the team competition called "Catalan League" (...). The restrictions for the players' access to the playing areas, and therefore to participate in the championship, were only valid for one round of the six, nine, ten or eleven (depending on the categories) of which this championship is recorded".
- That, "obviously participation in this tournament is not mandatory. The people who participate are widely aware of the rules and accept the terms of the game which include the subsequent publication of the results"

Ultimately, the reported entity explained that the Health Protocol of the FCE was being updated in accordance with Resolutions SLT/3512/2021, of November 25; SLT/3787/2021, of December 23; SLT 8/2022 of January 4 and SLT/66/2022 of January 19. And, he added, the acts of the Catalan League are published on the website of the Federation so that the results and the classification are public.

The reported entity attached various documentation to the letter. Among other things, he provided an example of a record of the results of a chess match, which does not contain any data relating to the health of the participants.

6. On 10/27/2022, also during this preliminary information phase, the Authority required the reporting person to provide, within 10 days, some document that would prove that the participation in tournaments organized by the FCE, were conditional on the exhibition of the Covid-19 passport.

7. On 10/27/2022, the person making the complaint responded to the Office of this Authority, noting that, " the question is not whether there were other ways to certify that one could participate safely, but the fact that, both the Resolution of the Generalitat of Catalonia of 4-1-2022 and the Judicial Resolution that authorized the covid passport expressly prohibited the retention of the data of people who had presented the covid passport . Well, the Catalan Chess Federation published on the Federation's website the results of the first round of the Catalan League with the names and surnames of the participants who in the vast majority had presented the covid passport ( the pcr was practically unfeasible since it was played on Sunday)". And, in this regard, he considered that, by crossing the results with the list of federated players, a list of people " with a high probability of not being vaccinated" could be obtained . And, because of what was said, he considered that the health data of the players " were implicitly exposed on the website of the Federation".

## 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 stated that, to the extent that, on the one hand, the FCE required the display of the covid-19 Passport to people participating in chess tournaments and, on the other on the other hand, it recorded the results of the competitions in minutes, the aforementioned entity was keeping the data of federated people who had the said passport; and that this information could be known to everyone since the proceedings were published on the FCE website. It is worth saying that from what the complainant stated in his writings, it can be inferred that he understood that said passport was issued only to those people who had followed the vaccination guidelines; and therefore, that the data that the FCE kept and disseminated by publishing the minutes of results, was related to the fact that the people participating in the tournaments had been vaccinated.

Thus, the reporting person did not question that the reported entity publishes the results of the tournaments or competitions it organizes, nor that it requires the exhibition of the covid-19 Passport to the participants, but focused the object of his report on the fact that, through the aforementioned acts, the FCE kept health data of the players (in particular, who had the vaccination schedule), thus contravening Resolution SLT/8/2022, of January 4; at the same time allowing third parties to access this data to the extent that the events of the tournaments were published by the FCE on its website. He also complained that by comparing the list of federated people with the list of people who had participated in a tournament, it was possible to deduce which federated people were not vaccinated.

As a preliminary matter, it should be noted that, indeed, the data referring to whether a person has been vaccinated constitutes data on their health, in accordance with article 4.15 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). 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".*

The digital COVID Certificate of the European Union (the so-called "Covid-19 Passport") is regulated in Regulation (EU) 2021/953, of the European Parliament and of the Council, of June 14, 2021, relating to a framework for to the issuance, verification and acceptance of interoperable Covid-19 vaccination, diagnostic test and recovery certificates ( EU digital COVID certificate), in order to facilitate free movement during the Covid-19 pandemic, within the Union European

For its part, Resolution SLT/8/2022, of January 4, which establishes public health measures to contain the epidemic outbreak of the Covid-19 pandemic in the territory of Catalonia, cited

by the complainant, established in Point 3.4 the prohibition to keep the mentioned data, in the following terms:

*"The persons who own or are responsible for the premises, establishment, equipment or space must establish the access control system that allows the verification of any of the provided certificates presented by the persons who wish to access them as users, without keeping the data contained therein and without using it for any purpose other than the aforementioned access control"*

The events reported take place in a context of a health crisis in which the health authorities, in accordance with article 3 of Organic Law 3/1986, of April 14, on special measures in matters of public health, could adopt *"the appropriate measures for the control of the sick, of the people who are or have been in contact with them and of the immediate environment, as well as those considered necessary in case of risk of a transmissible nature"*. In similar terms, article 55 of Law 18/2009, of October 22, on public health establishes 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.

On the dates on which the facts reported here are located, Resolution SLT/66/2022, of January 19, was in force, establishing the public health measures to contain the epidemic outbreak of the pandemic of COVID-19 in the territory of Catalonia . This resolution covered the requirement of vaccination, diagnostic test or recovery certificates to access, as participants, the facilities where the chess competitions were held.

In accordance with the above, it is necessary to highlight that the request for the covid passport by the FCE, which involves the processing of special category data - health data - is enabled by articles 6.1.c) (it is necessary *"for the fulfillment of a legal obligation applicable to the person responsible for the treatment"* ie) ( it 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"*) ; meeting the exceptions provided for in article 9.2.g) (it is necessary *"for reasons of an essential public interest"* ii) *"it is necessary "for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health"* ) of the RGPD.

From here it is necessary to address the reporting facts, specifically the fact that the FCE keeps the data of the participants linked to the data that they have been vaccinated.

First of all, it must be highlighted that, as justified by the reported entity, there were participants who did not show the Covid-19 Passport, because they were exempt from vaccination, or because they showed an antigen test or the result of a PCR test. Because of what has been said, it is not plausible to say that, from the publication of the proceedings of a chess competition, the vaccination data of the participants was kept; and for this same reason, this information was also not disseminated through the publication of the minutes.

It is true that, to the extent that, on the one hand, the participants in the tournaments had to show the vaccination certificate, diagnostic test or vaccination exception; and, on the other hand, if a report was issued with the result of the tournament, it could be deduced that the participants had some of the requirements that had allowed them to participate, which as we have seen was not only having a vaccination certificate. But it must be said that the linking of the participants with this information was an irremediable fact, since, on the one hand, the FCE had to comply with the law by requiring the mandatory documentation from the participants to access the facilities where the tournaments were held; and on the other hand, he had to record the results of the competition.

Regarding the publication of the minutes of the results on the FCE website, it must be said that the participants could have exercised the right of opposition (regulated in article 21 of the RGPD), requesting that their name and last name was not included in the acts subject to publication, so that said entity would evaluate such a request.

Finally, and with regard to the reported fact regarding the fact that it was possible to know the federated people who had not been vaccinated, by crossing the list with those who appeared in the acts of the competitions, it should be noted that this link is not would produce at all. The fact that a federated person does not participate in a tournament can be due to multiple reasons and not only to the fact of not having exhibited a vaccination certificate.

It is for all of the above that this Authority believes that the treatment object of the complaint does not violate the data protection regulations, which is why the present actions are archived.

**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 proceedings number IP 55/2022, relating to the Catalan Chess Federation.
- 2.** Notify this resolution to the Catalan Chess 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,

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