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Autoritat Catalana de Protecció de Dades

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File identification

Resolution of sanctioning procedure no. PS 38/2018, referring to the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 02/28/2018, the Catalan Data Protection Authority received a letter from the Grievance Ombudsman in which he brought to the attention of the Catalan Data Protection Authority certain facts that could contravene the data protection regulations, regarding the dissemination of personal data relating to a minor who could have been the victim of sexual abuse by (...). Specifically, the Ombudsman stated that he had received a letter from the mother of the minor in which, among others, she complained that in an article published in the newspaper "(...)" data appeared that allowed, in his opinion, to identify his minor daughter as a victim of said abuses.

On 03/14/2018, at the request of this Authority, the Ombudsman provided the following documentation:

- Copy of the complaint made by the child's mother before the Ombudsman.
  In this letter it was stated that on (...) he had reported to the PG-ME the alleged assault on his daughter and that, subsequently, on (...), the newspaper (...) had published an article in which a series of data on his youngest daughter were provided that would allow her identification.
- Copy of the article published in the newspaper "(...)" on (...). In this article, entitled "(...)", the following information relating to the minor is mentioned which, according to the complaint made, would make her identifiable: course and name of the school where the minor was schooled, and the fact that this he had not returned to school. It must be shown that this article mentioned other data that affected the most intimate sphere of the minor (such as the fact that she had allegedly been the victim of sexual abuse and the result of a medical examination).

On the other hand, to the extent that the letter of complaint filed before the Ombudsman by the minor's mother complained about the dissemination of the data carried out by the newspaper "(...)", it was transferred from writings presented to this institution to the Spanish Data Protection Agency, regarding this means of communication.

2.- The Authority opened a preliminary information phase (no. IP 77/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of 'application to the 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 likely to motivate the

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initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3.- In this information phase, on 03/20/2018, the Directorate General of Police (hereinafter DGP) was required to comply with the following:

- Provide a copy of the log of access to the police proceedings that would have been initiated following the complaint made by the minor's mother, corresponding to the period between (...) and (...) (both inclusive)), in which all the information prescribed by article 103 of Royal Decree 1720/2007, of December 21, which approves the LOPD Deployment Regulations (RLOPD); and be informed of the reasons that would justify each of the accesses.

- Provide a copy of the complaint made by the minor's mother, and also of any other police document in which the statements made by this person on the occasion of his complaint to the Police were recorded.

4.- Due to the lack of response, on 04/25/2018 the DGP was requested again and was warned that, if they did not respond to the request, they could be in breach of the data protection regulations for not meet the requirements of this Authority.

5.- On 05/10/2018, the DGP responded to the above-mentioned request in writing in which it stated the following:

- That, in relation to access to the aforementioned police proceedings, "it must be indicated that some respect has been detected in which, in appearance, it seems that there is no direct relationship between the functions of the assignment unit of the 'agent who accessed it and the proceedings that are the subject of your procedure. It is for this reason that this information will be transferred to the Internal Affairs Division of this General Directorate so that it can carry out the investigations it considers relevant in order to determine the reason for these accesses".
- That "all the users on the list are authorized to access the portal of corporate IT applications of the Police Information Systems of the General Directorate of the Police (...)".

- That, in relation to the request for a copy of the complaint, "all the documents that make up the police report were immediately delivered to the corresponding judicial authority, which is who, therefore, has the aforementioned proceedings".

The reported entity attached the log of accesses to the referred police proceedings, from (...) to (...), which contained only the information relating to the user who accessed, the assignment unit of the same and the date of access.

6.- In view of the information provided, on 05/14/2018 the DGP was required to comply with the following:

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- Indicate what would be the specific accesses of those contained in the facilitated register, with respect to which "some respect has been detected in which, in appearance, there does not seem to be a direct relationship between the functions of the asscription unit of the agent who accessed it and the proceedings that are the subject of your procedure".
- Provide a copy of the document containing the results of the investigative actions carried out by the Internal Affairs Unit in order to clarify the reasons for said allegedly unjustified access. Or failing that, report in detail on the information you have about it.

- As requested in the previous office of 03/20/2018, provide a copy of the complaint made by the child's mother before the PG-ME.

7.- Given the lack of response to this second request for information, on 18/06/2018 the DGP was requested again and warned again that, if they did not respond to the request, an infringement could be incurred to the data protection regulations for not meeting the requirements of this Authority.

8.- On 07/10/2018, the DGP responded to the second request, and reported the following:

- That, with regard to the investigation of access, "the Internal Affairs Division of this General Management initiated the Reserved Information procedure (...) in order to clarify the facts. At the moment, this procedure and the investigations that are being carried out have not yet been completed (...)"
- That, in relation to the submission of a copy of the complaint made by the minor's mother, "all the documents that make up the police report were handed over to the judicial authority. Specifically, the police proceedings (...) were handed over, on (...), to the court of inquiry acting as guard-detainees 1 in Barcelona. In these circumstances, it is this authority that has custody of the documentation that you request from us and that will be able to determine the subjects who can access it and under what conditions (...)"

9.- On 28/09/2018 the DGP was required to provide this Authority with the following information:

- Copy of the document that contained the result of the Reserved Information procedure referred to in a previous answer; or, failing that, report in detail on the information available in this regard, specifying specifically which of the accesses made to the police proceedings referred to would not be justified.

10.- Given the lack of response to this third request for information, on 25/10/2018 the DGP was requested again and was warned once again that, if it did not respond to the request, it could incur a violation of data protection regulations for not meeting the requirements of this Authority.

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11.- On 31/10/2018, the DGP responded to the third request, and reported the following:

- That "The Reserved Information procedure number (...) has ended with a report in which it is concluded that there are sufficient indications to infer disciplinary responsibility for the conduct of an agent of the PG-ME, in relation to an alleged misuse of the police database, which should be conveniently specified through the corresponding disciplinary file. Specifically, in this report it is established that the aforementioned agent acceded to the police proceedings (...), which were not related to the tasks entrusted to him as an agent in accordance with his operational destiny and without that this person has presented any circumstances to justify this access"

Also, in the aforementioned report it is also established that neither this agent nor any other member of the PG-ME has been proven to have illegitimately disseminated the information contained in the police proceedings (...). In this regard, mention should be made of the following fragment of this report:

"In relation to the article published in "(...)" on date (...), it should be mentioned that its content does not show that the source necessarily took the information from the query in the database of the PGME of the police proceedings instructed by the investigation, since there are some aspects that are explained in the press report that are not recorded or are contradictory to those exposed in the police proceedings, such as for example the moment in which the minor was visited in the hospital, which the certificate states was before going to file the complaint and the article states that it was afterwards. The location where the arrest took place also does not match, in the proceedings it was stated that the arrest took place at the police station of (...), and the publication states that it was at the door of the school
On the other hand, it should be borne in mind that on (...), the police certificate was delivered to the competent court with a copy for the Public Prosecutor, so that access to its content was no longer limited solely to members of the Corps of Mossos d'Esquadra».

- That, "on 09/26/2018, as a result of the aforementioned reserved information report, the Director General of the Police decided to initiate the file disciplinary (...) for an alleged misuse of police databases against the officer of the Mossos d'Esquadra previously referenced. This disciplinary file is currently in the investigation phase".

12.- On 20/12/2018, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the DGP for an alleged minor infringement provided for in article 44.3.d) in relation to article 10 of the LOPD. Likewise, he appointed

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instructor of the file Mrs. (...), an employee of the Catalan Data Protection Authority.

13.- This initiation agreement was notified to the imputed entity on 12/21/2018.

14.- The initiation agreement explained the reasons why no charge was made regarding the eventual leak to a media outlet (newspaper "(...)") of the minor's data contained in the complaint which he presented to the PG-ME and which were incorporated into the police proceedings, publication to which the letter of complaint of the minor's mother referred, among other issues. Regarding this, the following was set out in the section of reported events not imputed in the initiation agreement:

"In this regard, it should be noted that it is an indisputable fact that the aforementioned newspaper accessed certain information that the mother of the minor provided to the PG-ME when she reported the day (...) to this police force on alleged crime of which his daughter would have been subject. But it is also necessary to demonstrate that, as the DGP has stated, the police proceedings (...) were delivered on (...) to the court of inquiry in guard duties–
arrested 1 from Barcelona, therefore, days before the news was published in the newspaper (on (...)).

That being the case, the truth is that both the PG-ME and the other bodies that had authorized access to the personal data contained in the police investigations - as would be the case of the aforementioned court - could be responsible for the leak to the newspaper " (...)".

The Supreme Court, in its ruling of 03/27/1998, declares that one of the fundamental principles of the law of sanctions is the personality of sanctions, as a manifestation of the principle of responsibility for sanctions enshrined in article 28 of Law 40/2015, of October 1, on the legal regime of the public sector, under which the reproach for the imputed violation can only fall on the author of the infraction, in accordance with what is established in article 43.1 of the LOPD, according to which it is up to the person responsible for the file or treatment to assume responsibility for the violations committed.

As has been said, in the case we are dealing with here, it has not been possible to determine in which of the bodies that had access to the information relating to the minor, the leakage of the data that led to the subsequent disclosure of the same occurred by the newspaper "(...)". Therefore, in the present case, it is not possible to determine the person responsible for this eventual infringement, based on the personality principle mentioned above.

This principle of the personality of sanctions is intimately linked to another of the inspiring principles of the criminal order, which also govern the matter of penal law, with some nuance but without exceptions. This is the right to the presumption of innocence, enshrined in article 24.2 of the Spanish Constitution and article 53.2.b) of the LPAC, which determines that "The sanctioning procedures must respect the presumption of non-existence of responsibility administrative until proven otherwise". (...)

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In short, in the case at hand, even if it is proven that the newspaper "(...)" had access to the minor's data contained in the police proceedings, the truth is that it cannot be imputed to the DGP the responsibility for the leakage of this data, having proven that prior to the publication of the controversial news, the police proceedings - and therefore the personal data of the minor included there - were also accessed by other outside bodies to the DGP, who therefore held the status of recipients of the disputed personal data. It is because of all the above that it is not possible to demand responsibility from the DGP for a possible leakage of data that was initially under its custody, in accordance with what has been explained and based on the principles of personality of the infringements and presumption of innocence. Therefore, it is necessary to agree on the archive of the present actions regarding this leakage of the data to the mentioned means of communication, without prejudice to the responsibility that is imputed here to the DGP for the unjustified access by a member of the PG-ME to the data contained in the police information system."

15.- In the initiation agreement, the accused entity was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of tests that it considered convenient for defend their interests.

16.- The DGP made objections to the initiation agreement by means of a letter of 08/01/2018. Likewise, the DGP requested a copy of the file, a request that was appreciated and access to said copy was granted.

17.- On 06/03/2019, the instructor of this procedure formulated a resolution proposal, by which she proposed that the director of the Catalan Data Protection Authority declare that the DGP had committed a serious infringement provided for in article 44.3.d) in relation to article 10 of the LOPD.

This resolution proposal was notified on 03/12/2019 and granted a period of 10 days to formulate allegations.

18.-On 01/04/2019, the accused entity presented a statement of objections to the proposed resolution.

proven facts

Of all the actions taken in this procedure, the facts detailed below are considered accredited.

On an undetermined date, but between the days (...) and (...), an agent who provides services to the Police of the Generalitat-Mossos d'Esquadra accessed the corporate application of the Information Systems Police (SIP), and consulted the police proceedings number (...), which contained, among others, personal data of a minor. This access was not

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justified to the extent that, according to the information provided by the DGP, there was no relationship between the functions attributed to the unit of assignment of the agent who accessed it and the content of the police proceedings referred to.

Fundamentals of law

1.- The provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), and article 15 of the Decree apply to this procedure 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, according to what it provides
DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority.
In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2.- The DGP has formulated allegations both in the initiation agreement and in the resolution proposal. The first ones were already analyzed in the proposed resolution, but even so it is considered appropriate to mention them here as well, given that they are partly reproduced in the second ones. The set of allegations made by the accused entity are then analysed.

2.1.- On "the justification or legitimacy of access".

In its statement of objections to the initiation agreement, the DGP asserted that this direction "has not made any categorical statement in relation to the legitimacy, or not, of access to police proceedings", in the insofar as "as of today, it only has indications that the conduct of the officer in charge could be illegitimate and deserving of disciplinary reprimand.
So until the disciplinary file initiated on the facts is finalized, this Directorate
General cannot determine without a doubt that the access to the police proceedings carried out by the affected agent was improper". The DGP considered that "the initiation of the present sanctioning file, without it having been reliably proven that the access to the proceedings was improper" supposes, on the one hand, a violation of the presumption of innocence of the agent against whom the DGP had initiated a disciplinary file, since "according to the APDCAT this agent is already guilty without the need to process a procedure against him with all the guarantees, the resolution of which, in addition, may be the subject of administrative and jurisdictional appeals that correspond (...) If the DGP accepted the culpability of the agent at this procedural moment, it would be manifestly clear that there could be no talk of an adversarial disciplinary process processed with all the guarantees". And on the other hand, a violation of the right of defense and presumption of innocence of the DGP, to the extent that "the DGP cannot use all the relevant evidence for its defense, because the facts that are the subject of this sanctioning procedure are still sub iudice (...) The fact of having to make allegations and propose evidence in these circumstances generates an obvious legal uncertainty for this General Directorate as the circumstances surrounding the case are not fixed and the way in which the disciplinary file ends and the facts that are declared proven in it can decisively condition the responsibility

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of the DGP. Thus, for example, if the disciplinary file were filed or, in a subsequent judicial challenge, it was determined that the access to the data was legitimate, this fact would have a direct and decisive impact on the present file ".

Finally, the DGP alleged in its statement of objections to the initiation agreement that the present sanctioning procedure is based on "the indication of an indication", and that "there is no minimum solid legal basis on which to base the initiation of the present sanctioning procedure".

As explained by the instructor in the proposed resolution, it should first be noted that, in the preliminary information phase that initiated this procedure, in response to the request of this Authority, which requested certain information following the complaint received from the Ombudsman de Greuges, it was the DGP herself who informed this Authority in a letter dated 10/31/2018 of the following:

"The Reserved Information procedure number (...) has ended with a report in which it is concluded that there are sufficient indications to infer disciplinary responsibility for the conduct of an agent of the PG-ME, in relation to a suspected misuse of the police database, which should be conveniently specified through the corresponding disciplinary file. Specifically, in this report it is established that the aforementioned agent acceded to the police proceedings (...), which were not related to the tasks entrusted to him as an agent in accordance with his operational destiny and without that this person has presented any circumstances to justify this access".

In summary, that in the report that put an end to the reserved information initiated against the agent of the PG-ME, the following was established:

- That the said agent of the PG-ME acceded to the controversial police proceedings which had nothing to do with his tastes in accordance with his operational destiny.
- That this agent did not present any circumstances to justify the access.
- That there are sufficient indications to infer disciplinary responsibility for the conduct of an agent of the PG-ME, in relation to the alleged misuse of the police database.

As evidenced by the instructor, it is appropriate at this point to highlight the difficulties for the normal development of the investigation actions carried out by the Authority,
given the attitude of little collaboration on the part of the DGP, without such conduct having come to be qualified as presumptively constitutive of a conduct with which the inspectorate function had been obstructed. In any case, it should be noted that the DGP did not provide the Authority with all the information that was required of it, such as a complete copy of the access log containing all the elements established in article 103 of the RLOPD, as well as the indication of the specific accesses that had been considered unjustified during the Reserved information phase initiated by the DGP against the PG-ME agent.

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Despite not having collaborated with the DGP in the manner required by article 19.4 of Law 32/2010 ("the entities (...) have the obligation to assist, on a preferential and urgent basis, the Authority "), this Authority considers the facts that are the subject of imputation here to be sufficiently proven, which are not based on "the indication of an indication" -in the words of the imputed entity-, but are collected in a report drawn up by the DGP itself, in which the following is recorded: a) that the access to the aforementioned police proceedings by an agent of the PG-ME had no relation to the functions entrusted to him; ib) that the agent had not presented any circumstances to justify the access.

So, based on the elements mentioned, this Authority agrees with the instructor in the sense that it can be affirmed that the controversial access was not justified, or in other words, the access by an agent of the PG-ME in the personal data included in the referred police proceedings, did not have a justification related to the functions entrusted to this agent.

Therefore, the facts that are considered proven here, are not based on "the indication of an indication", as defended by the DGP in its statement of allegations in the initiation agreement; nor, as she argues in her statement of objections to the proposal, in an "interpretation made by [the instructor] of the manifestations of this DGP", "simple manifestations" - which are denied by the DGP -following the line of argument of the accused entity- "distorts the evidence and the proven facts fall away". In this regard, it is necessary to insist again that it is an uncontroversial fact that the DGP drew up a report with the content that has been transcribed and that these facts gave rise to the initiation of disciplinary proceedings against an agent of the PG-MM . It is therefore about facts collected in documents of the DGP, and not conjectures or interpretations.

Another thing is that, as the DGP stated in its letter of 10/31/2018, said DGP has initiated disciplinary proceedings against the agent who materialized the controversial access to consider that there are "sufficient indications to deduct disciplinary responsibility from the conduct of an agent of the PG-ME (...) which should be suitably specified through the corresponding disciplinary file". As the instructor explained, it should be stated that the punitive basis of the sanctioning regime provided for cases of violation of data protection regulations is different from that which supports the disciplinary power of the Administration towards the people who make up its organization , insofar as the good or legal interest protected in both regimes is also different. In fact, in the sanctioning power exercised here, the legal object of protection is the fundamental right of every natural person to have control over their data, and over their use and destination, to avoid the illicit traffic of these or its use harmful to the dignity and rights of the people affected (STC 94/1998). On the other hand, when a Public Administration exercises disciplinary power against its public employees, the protected legal good is the public interest, as indicated in STS 04/30/1991:

"the purpose of the disciplinary law applicable to public officials is not, much less, an end of corporate protection, but must be considered as one of the means for the Administration to serve the general interests according to the criteria that are included in the art. 103 of the Constitution to whose effect the legislator ,

delimits and defines the conduct of officials that are incompatible with said performance criteria, being the purpose of the sanctions, also provided for legally, to repress those who commit punishable acts, so that the commission of someone is proven, the purpose of the rule it is fulfilled, in principle, by linking the act committed to the correlative sanction, since the damage to the public interest is implicit in the fact that the Law has typified the conduct in question".

It cannot be claimed, as the DGP seems to defend in its allegations, that the proof of the eventual illegality of a violation of the data protection regulations that is the object of imputation in the sanctioning procedure processed by the corresponding control authority against the responsible subject (in this case the DGP as responsible for the treatment), depending on the outcome of any disciplinary proceedings that may have been instituted against the public employee who had materially carried out the violation, in this case as an employee of the entity responsible for the treatment. Admitting the thesis that the DGP seems to support would imply leaving the possibility of being sanctioned or not sanctioned by the corresponding control authority in the hands of the same entities imputed in the eventual sanctioning procedures instituted for violation of data protection regulations; or make it depend, ultimately, on the decision adopted in the corresponding disciplinary procedure. On this issue, it should be noted that if the DGP's allegation were successful, the provision established in article 21.2 of Law 32/2010 would be rendered meaningless (in line with the provisions of article 46.2 of the 'LOPD - in force at the time when the proven facts took place -), under which the Authority, in the resolution that ends the sanctioning procedure initiated against an entity as responsible for the file or treatment, may propose the initiation of disciplinary actions, in accordance with what is established by the current legislation on the disciplinary regime of personnel in the service of public administrations. Indeed, the thesis postulated by the DGP would prevent the application of such legal provision, since the Authority's declaration of infringement would depend on the firmness of the disciplinary sanction, precisely the opposite of how it has been set up in the Law.

In relation to this last paragraph, the DGP states, in its statement of objections to the proposal, that it is not true that the provision of article 21.2 of Law 32/2010 is rendered meaningless, "since the initiation of disciplinary infractions may be proposed by the APDCAT in those cases in which the DGP has not taken disciplinary action ex officio and in advance, as is the case at hand". Although it is necessary to admit the possibility pointed out by the DGP, we cannot fail to warn that, as has been said, whether the sanction that may eventually be imposed by the corresponding control authority may depend on the decision that is adopted in the corresponding disciplinary procedure; it does not escape anyone's notice that entities can decide to initiate confidential information - prior to the initiation of any disciplinary proceedings - or directly a disciplinary proceeding as soon as the entity becomes aware that the Authority has initiated investigative actions, the which would mean, de facto, making the sanctioning procedure for breach of data protection regulations dependent on the outcome of the disciplinary proceedings initiated by the entity responsible for the infringement pursued by this Authority.

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Finally, it must also be said that the declaration of infringement for breach of data protection regulations by the DGP does not at all imply a breach of the principle of presumption of innocence of the PG-ME agent, since as previously stated, both sanctioning procedures have different punitive foundations, which is why the principle of non bis in idem or concurrence of sanctions contained in article 31 of Law 40/2015, of 1/ 10, of the legal regime of the public sector. And this different punitive basis undoubtedly has its impact when assessing the concurrence of grief or guilt in the conduct of the agent in the event that the conduct typified as an infraction in the disciplinary regime is considered proven, typical conduct that, that is to say, it does not have to coincide with the one described in the sanctioning regime of the data protection regulations.

Intimately related to this last point, in its statement of objections to the proposal, the DGP asserts that the right of defense of the DGP itself has also been violated, in the sense that this Directorate could not "enter into freely assessing the facts that are the subject of this disciplinary file without inevitably affecting the disciplinary file (eg: if the DGP accepted its responsibility in this file it was determining that the access to the data that the agent made was illegitimate , an issue which was precisely what was being elucidated in the disciplinary file and, consequently, it inevitably affected the presumption of innocence of this official)".

In this regard, it is necessary to insist again on the different punitive basis of one and the other procedure (disciplinary file against the civil servant and sanctioning procedure for violation of data protection regulations, in this case against the DGP). And this difference in the punitive basis can lead to, unlike what the DGP maintains, being considered
certain access is illegal in accordance with the data protection regulations, but that no disciplinary proceedings be initiated against the specific official who materialized the access, as happened in the sanctioning procedure processed by this Authority with the number PS 20/2018, the resolution of which can be consulted on the website of this Authority (www.apdcat.cat).

2.2.- On "the responsibility of the General Directorate of the Police"

The DGP argued in its statement of objections to the initiation agreement that, as soon as it became aware that "facts had occurred that allegedly could have compromised the confidentiality of the data, it automatically opened a reserved information (...) in order to investigate the facts. This fact confirms the manifest will of the person in charge of the file in order to preserve the secrecy and proper custody of the data. (...) Therefore, it must be understood that this General Directorate, as responsible for the file in which the data was included, acted with the diligence that can be required of it and, therefore, cannot be sanctioned even if there has allegedly been some type of irregular action on the part of one of its workers"; question on which affects again in his letter of allegations to the proposal.

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In this regard, it should be noted that the commission of the offense charged here would be materially attributable to a specific person who provides services to the DGP. However, as evidenced by the instructor in the proposal, according to the system of responsibility provided for in article 43.1 of the LOPD, responsibility for breaches of data protection regulations falls on those responsible for the files and those in charge of the treatment. Specifically, the mentioned article 43.1 of the LOPD, establishes that:

> "Those responsible for the files and those in charge of the treatments are subject to the sanctioning regime established by this Law".

So things are, in accordance with the regime of responsibility provided for in the precept that has just been transcribed and from the point of view of the right to the protection of personal data, the person responsible for the facts that are considered proven is the DGP, given the his position as the person responsible for the file or treatment, without prejudice to the fact that at the time of demanding this responsibility in the corresponding sanctioning resolution, this Authority could propose disciplinary actions against an employee, as indicated.

In short, and in line with what has already been argued, it is necessary to insist that the actions that the DGP has already initiated against the agent who materially committed the action contrary to the data protection regulations indicated in the proven facts in order to demand eventual disciplinary responsibilities, they do not exempt the DGP from its administrative responsibility in application of the sanctioning regime provided for in the data protection regulations, as the person responsible for the file or treatment (art. 43.1 of the LOPD) . That is to say, that the possible disciplinary actions carried out by the person responsible for the file or processing, in no case replace the responsibilities that are required of him as such, by application of the sanctioning regime of the data protection regulations . On the responsibility attributable in these cases to the person in charge of the treatment, the Superior Court of Justice of Catalonia has pronounced clearly in its sentence of 11/04/2014 issued in a case very similar to the one analyzed here, in which it was to sanction a City Council for violating the confidentiality principle established in article 10 of the LOPD for improper access, materially committed by a local police officer, with respect to the data of a person included in a file for which this City Council was responsible. In said ruling, the court rejected the City Council's grounds of appeal relating to the alleged violation of the principles of guilt, presumption of innocence and responsibility.

In view of what is stated in this legal basis, the allegations made by the DGP in the context of this sanctioning procedure, they cannot succeed.

3.- In relation to the facts described in the proven facts section, relating to the breach of the confidentiality principle, it is necessary to refer to article 10 of the LOPD - rule in force at the time the facts here occurred proven statements-, which provides for the following:

> "The person in charge of the file and those who intervene in any phase of the processing of personal data are bound by secrecy

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> professional with regard to the data and the duty to save them, obligations that subsist even after the end of their relationship with the owner of the file or, where appropriate, with its manager".

As indicated by the instructor, during the processing of this procedure the fact described in the proven facts section, which is considered constitutive of the serious infringement provided for in article 44.3.d) of the LOPD, has been duly proven , which typifies as such:

> "The violation of the duty to keep secret about the processing of personal data referred to in article 10 of this Law."

4.- Article 21 of Law 32/2010, in line with article 46 of the LOPD, provides that when the offenses are committed by a public administration, the resolution declaring the commission of an offense must establish the measures to be taken so that the effects cease or are corrected. In this case, as indicated by the instructor, it is considered that it is not appropriate to require the adoption of any corrective measures, since it would be a matter of specific facts already accomplished.

On the other hand, with respect to the possibility that the director of the Authority proposes the initiation of disciplinary actions, which has already been mentioned, in the present case it is considered not to proceed, insofar as the DGP has informed this Authority that it has initiated a disciplinary file in relation to the facts that have given rise to this procedure.

resolution

For all this, I resolve:

1.- Declare that the General Directorate of the Police has committed a serious infringement provided for in article 44.3.d) in relation to article 10 of the LOPD.

2.- Notify this resolution to the General Directorate of the Police.

3.- Communicate this resolution to the Ombudsman and transfer it to him literally, as specified in the third agreement of the Collaboration Agreement between the Ombudsman of Catalonia and the Catalan Data Protection Agency, of date June 23, 2006.

4.- Order that this resolution be published on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

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Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003 , of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with what they provide
article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal 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, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

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

The director,