

File identification

Resolution of sanctioning procedure no. PS 60/2020, referring to the Riudarenes Town Council

Background

1. On 12/06/2019, the Catalan Data Protection Authority received a letter from a person who made a claim for the alleged neglect of the right to deletion, which he had exercised before the City Council of Riudarenes

Specifically, the person claiming requested that "my personal data exposed on the internet since (...)" be deleted, referring to the personal data that identified him as a member of the electoral board for the elections municipalities of the (...)
(name and surname, ID, postal address and level of education) in the document "Minutes of the session of the Plenary of the City Council on the day (...)", which was published openly on the internet under a domain property of the City Council.

This claim gave rise to the rights protection procedure number PT 26/2019.

2. On 22/11/2019 the Director of the Authority issued a resolution by which the claim of the rights protection procedure number PT 26/2019 was estimated, and it was required of the City Council so that, within 10 counting days from the day after notification of the resolution, make effective the right of deletion (right to be forgotten) exercised by the person making the claim, and within the same period, report it to the 'Authority.

This resolution was notified on 04/12/2019.

Specifically, in said resolution it was stipulated that the City Council had to delete the document "Minutes of the Municipal Plenum of the day (...)" (published on the Internet in duplicate through the electronic headquarters of the City Council, and through a website domain of the City Council), the personal data of the person making the claim relating to first and last name, ID, postal address, postal code and level of education; and of the document "Minutes of the municipal meeting of the day (...)(...)" (published through the electronic headquarters of the City Council), which, despite the change of date, reproduced the same content as the minutes of date (...), but only by publishing the claimant's personal data relating to the initials corresponding to the first and last name, delete said initials.

3. On 14/01/2020, once a series of checks had been carried out on the internet, and in view of the fact that the reported entity had not complied with the resolution of the guardianship procedure number PT 26/2019, it was required to 'entity so that, within a maximum period of ten days, it would certify compliance with the measures established in said resolution, or in any case, report on the procedures carried out. In this requirement it was expressly warned

that, in the event of not complying with the request within the indicated period, an infringement of the personal data protection regulations could be incurred.

4. On 22/10/2020, given that the deadline granted in the request had been exceeded by far, without any response having been received from the Riudarenes City Council, the Inspection Area of the Authority carried out a series of checks via the internet on compliance with the resolution of the guardianship procedure PT 26/2019 and the requirement that followed it.

Thus, it was found that the document "Minutes of the municipal meeting of the day (...)", which contained in the open all the personal data of the claimant of the guardianship procedure PT 26/2019, was still published on the electronic headquarters of the City Council, and under a web address of the City Council's domain that could be accessed by doing a search with the name of the person making the claim through the Google internet search engine:

- Link located on the electronic headquarters of the City Council: [\(...\)](#)

- Link derived from the search through the Google internet search engine: [\(...\)](#) _____

And in the same way, the document "Minutes of the Municipal Plenum of the day (...)(...)", continued to be published in the electronic headquarters of the City Council, identifying the person making the claim through the initials corresponding to the your first and last name:

- Link located on the electronic headquarters of the City Council: [\(...\)](#)

5. On 06/11/2020, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Riudarenes Town Council for an alleged infringement provided for in article 83.6), in relation to article 58.2; all of them from 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 (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 11/12/2020.

6. On 26/11/2020, the Riudarenes City Council presented a letter in which allegations were not properly made against the initiation agreement, but whose main purpose was to highlight the measures that had been taken so that it was no longer possible to access online the personal data of the claimant of PT 26/2019 contained in the controversial minutes of the Plenary Session, published under two different names: "Minutes of the Municipal Plenary Session of day (...)" and "Minutes of the Municipal Plenum of the day (...)(...)".

7. On 03/03/2021, the Authority's Inspection Area made a series of checks via the internet in relation to the demonstrations made by the City Council.

In this regard, it was found that it was no longer possible to access the document "Minutes of the Municipal Plenum of the day (...)" via the internet. On the other hand, it was verified that with regard to the document "Minutes of the Municipal Plenum of the day (...)(...)", it was still published on the electronic headquarters of the municipal website, without having been deleted the initials of the names and surnames of the people selected to integrate the electoral months, and among these, those of the person claiming from PT 26/2019.

8. On 11/03/2021, the person instructing this procedure formulated a proposed resolution, by which it proposed that the director of the Catalan Data Protection Authority admonish the Riudarenes City Council as responsible for an infringement provided for in article 83.6) in relation to article 58.2, all they of the RGPD.

This resolution proposal was notified on 03/17/2021 and a period of 10 days was granted to formulate allegations.

9. On 03/31/2021, the accused entity submitted a statement of objections to the resolution proposal.

10. On 04/07/2021, the Authority's Inspection Area made a series of checks via the internet in relation to the demonstrations made by the City Council. Specifically, it was found that the document "Minutes of the Municipal Plenary of the day (...)(...)" was no longer published on the electronic headquarters of the municipal website.

proven facts

The Riudarenes City Council did not comply with the resolution of the guardianship procedure number PT 26/2019, and continued to publish on the internet, through the electronic headquarters of the entity and under a web address owned by the City Council, the document "Minutes of the municipal plenary session of the day (...)", where the personal data of the person claiming the said procedure were exposed (name and surname, ID, postal address and level of education). It also continued to publish, through the electronic headquarters of the municipal website, the document "Minutes of the Municipal Plenum of the day (...)(...)", where the person making the claim was identified through the initials of their first and last names. Compliance with this resolution was required by means of an official dated 01/14/2020.

In view of the allegations presented by the City Council in the initiation agreement, on 03/03/2021 it was verified that the referenced document "Minutes of the Municipal Plenum of the day (...)" no longer was published on the internet, while the document "Minutes of the municipal plenary session of the day (...)(...)" continued to be published on the electronic headquarters of the municipal website, with the personal data relating to the initials of the name and surname of the claimant of PT 26/2019.

Currently, the document "Minutes of the Municipal Plenary of the day (...)(...)" is no longer published on the electronic headquarters of the municipal website, as the City Council points out in its allegations to the proposed resolution.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of 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 accused entity has made 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, given that they are partly reproduced in the second ones. The set of allegations made by the accused entity are then analysed

First of all, it must be said that both the allegations made before the initiation agreement and the allegations presented before the proposed resolution are not allegations in themselves tending to distort the reality of the facts that motivated the initiation of the sanctioning procedure, nor its legal qualification, and focus on exposing the corrective measures implemented by the City Council in order to adapt its action to the personal data protection regulations.

In relation to this, it should be remembered that, in the resolution of the guardianship procedure number PT 26/2019, the breach of which the present sanctioning procedure derives from, provided the following:

- in the document "Minutes of the municipal meeting of the day (...)" (disseminated on the internet in duplicate through the electronic headquarters of the City Council, and under a web address owned by the City Council), it was necessary to delete the claimant's personal data relating to first and last name, ID, postal address, postal code and level of education; i
- in the document "Minutes of the Municipal Plenum of the day (...)(...)", also published in the municipal electronic headquarters, which contained the initials of the names and surnames of the people selected to integrate the electoral months, and among these, those of the claimant of PT 26/2019, the initial words had to be deleted.

So things are, as the City Council stated in its allegations in the initiation agreement, and this Authority verified on 03/03/2021, the entity removed the publication of the document from the internet "Minutes of the Municipal Plenum of the day (...)", so that its access is no longer possible even by doing an internet search with the name of the person making the claim, already

that the search does not index as a result the web address of the City Council's domain where the controversial document was published, nor through the electronic headquarters of the municipal website.

Likewise, on 06/04/2021, this Authority has verified that the publication of the document "Minutes of the Municipal Plenum of the day (...) (...) has also been removed from the electronic headquarters of the municipal website " which, at the time the proposed resolution was issued, was still published there. In this document, the initials of the names and surnames of the people selected to integrate the electoral months of that year's elections were shown, among them, those of the claimant of PT 26/2019, thus breaching the mandate of the resolution of referenced guardianship which resolved that said initials be deleted, because, as indicated there, the initials linked to a name and surname also have the character of personal data pursuant to the provisions of article 4.1 of the RGPD, and there are many cases where initials can be used to allow the identification of the person.

In this respect, it should be noted that this Authority values very positively the measures taken by the entity that have allowed the personal data of the person claiming from PT 26/2019 that identified him as a member of the electoral board to be removed from the internet for the municipal elections of (...), however, it should also be noted that this does not distort the imputed facts or their legal qualification, consisting of not having complied within the deadline indicated by the Authority both in the resolution dated 22/11/2019, as in the later request dated 14/01/2020, which included a warning regarding its possible non-compliance.

3. In relation to the facts described in the proven facts section, it is necessary to refer to article 58.2 of the RGPD, which provides for the following:

"2. Each control authority will have all the following corrective powers indicated below: (...)

c) order the person in charge and the person in charge of the treatment to attend to requests for the exercise of the rights of the interested party under this Regulation.

(...)

g) order the rectification or deletion of personal data or the limitation of treatment in accordance with articles 16, 17 and 18 and the notification of said measures to the recipients to whom personal data has been communicated in accordance with article 17, section 2, and in article 19"

As indicated by the instructing person, during the processing of this procedure the fact described in the section on proven facts, which is constitutive of the infringement provided for in article 83.6 of the RGPD, has been duly proven to such:

"Breach of the resolutions of the control authority pursuant to article 58, section 2, will be sanctioned in accordance with section 2 of this article with fines

administrative fees of a maximum of 20,000,000 euros or, in the case of a company, of an amount equivalent to 4% of the overall total annual business volume of the previous financial year, whichever is the greater."

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.

The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects. In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

In the present case, it is unnecessary to require corrective measures for the effects of the infringement since the City Council has already removed from the internet the publication of the documents relating to the minutes of the Municipal Plenum where the personal data of the person claiming PT 26/2019, as noted by this Authority.

For all this, I resolve:

1. Admonish the Riudarenes City Council as responsible for an infringement provided for in article 83.6) in relation to article 58.2, both of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the legal basis 4rt.

2. Notify this resolution to Riudarenes Town Council.

3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. Order that this resolution be published 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 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 count from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating 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,