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RESOLUTION of the rights protection procedure no. PT 5/2018, urged by Mrs (...) against the Collbató City Council and Gestió Integral d'Aigües de Catalunya, SA (GIACSA)

Background

1.- On 31/01/2018 the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, the claimant), for which he made a claim for the alleged neglect of the right to rectification of his personal data, which he had previously exercised before the entity Gestió Integral d'Aigües de Catalunya, SA (hereinafter, GIACSA). The claimant provided documentation relating to the exercise of this right.

2.- In accordance with article 117 of Royal Decree 1720/2007, of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on data protection of personal nature (hereafter, RLOPD and LOPD, respectively), by means of an official letter dated 02/02/2018, the claim was transferred to GIACSA so that within 15 days it could formulate the allegations it wanted relevant

3.- GIACSA made allegations in a letter dated 27/02/2018, in which it set out, in summary, the following:

"1.a) (...) Gestió Integral d'Aigües de Catalunya, SA (GIACSA), is solely responsible for processing the data of users of the drinking water supply service of Collbató on behalf of the Town hall. The person responsible for its treatment is the TOWN COUNCIL OF COLLBATÓ.

This is the result of the data processing contract, signed between two entities under the provisions of article 12 of LOPD on 30.06.2016, which is attached to this document as APPENDIX 1.

The aforementioned contract, on the basis that the City Council is the owner of the municipality's drinking water supply service, in its first statement expressly states that "the COUNCIL has the capacity of Responsible for the registered personal files to the Catalan Data Protection Authority".

Reason for which clause II exclusively regulates the "data processing powers that are attributed to GIACSA in accordance with the specific instructions received from the COUNCIL", after clarifying in clause 1a that "access and powers of treatment conferred on GIACSA will not be considered as transfer and communication of data".

The aforementioned contract is aligned in terms of those responsible for the files and those in charge of their treatment, with what this Data Protection Agency stated, among many others, in its opinion CNS-69/2015, which concludes that: Conclusions: The proposal made by the concessionary company of the service, according to which the City Council, holder of the water supply service, would become responsible for the file containing the personal data linked to the provision of this service (article 3.d) LOPD) and the concessionaire company would become the one in charge of

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treatment of this data (article 3.g) LOPD), is in accordance with the data protection regulations.

In order to adapt to this situation, it is necessary for the City Council to have the corresponding personal data file and, subsequently, to formalize a contract for the person in charge of the treatment with the concessionary company in the terms established in the article 12 of the LOPD. 1.b) In the aforementioned contract it is not stated that GIACSA has been entrusted with the ARCO rights (access, rectification, cancellation and opposition) provided for in the LOPD. The aforementioned contract, in pointing out the particular principles that GIACSA must observe in the processing of the data, only refers expressly to the obligation to observe the principles relating to the quality of the data, its security and duty of secrecy (clause 2a "in fine"). All this in line with the provisions of article 12 of the LOPD.

1.c) In accordance with what is established in article 26 of Royal Decree 1720/2007, of December 21, the person in charge of the treatment must transfer the request for rectification to the person responsible for the file, in this case, the Town Hall of Collbató. 1.d) In order to be able to transfer to the person in charge, it was essential and necessary that the request be accompanied by the DNI of Ms. (...)and, above all, the SEPA mandate signed by her with the change of IBAN she requested, as communicated to her in the email of January 22, 2018 and in accordance with the provisions of art. 32.1 of RD 1720/2007: "1. The request for rectification must indicate which data it refers to and the correction that needs to be made and must be accompanied by the supporting documentation for the request."

- Regarding the possible neglect of the right to rectification, GIACSA stated that:

"It is acknowledged that a response was given through the email dated January 22, 2018.

On the other hand, the contractual data of Ms. (...)were not compiled by GIACSA. From the information in the data processing files provided to us by the Collbató City Council, it appears that Mrs. (...)contracted the supply of drinking water in Collbató when this supply was managed by SOREA, the former concessionary company for this service. We do not have any copy of the said contract and therefore we did not have any bank collection mandate and that is why he was requested to sign the new SEPA mandate.

As stated in the SEPA link (<http://www.sepaesp.es/sepa/es/faqs/elmandato/>) that was provided to Ms. (...)in the email dated January 22, 2018:

- "In any of the debt instruments, whether traditional or those defined for SEPA, to issue debt operations, it is necessary that there previously be an order signed by the debtor to direct the payments. Said order will be guarded by the creditor."
- "For the issuance of SEPA direct debits that have not previously been processed in the traditional system, it will be necessary to obtain new mandates based on the rules of the SEPA direct debit instruments, either Basic or B2B."

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Fundamentals of Law

1.- The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

2.- Article 16 of the LOPD, relating to the right of rectification, determines the following:

"1. The person responsible for the treatment has the obligation to make effective the right of rectification or cancellation of the interested party within ten days.

2. The personal data whose treatment does not comply with the provisions of this Law must be rectified or cancelled, where appropriate, and, in particular, when these data are inaccurate or incomplete.

3. The cancellation results in the blocking of the data, and they must only be kept at the disposal of public administrations, judges and courts, for the attention of the possible responsibilities arising from the treatment, during the term of prescription of these responsibilities. Completion of this term, the deletion must proceed.

4. If the rectified or canceled data has been previously communicated, the person in charge of the treatment must notify the person to whom they were communicated of the rectification or cancellation, in the event that the latter maintains the treatment, who must also proceed to cancellation.

5. Personal data must be kept for the periods provided for in the applicable provisions or, where applicable, the contractual relationships between the person or entity responsible for the treatment and the interested party."

For its part, article 31.1 of the RLOPD, provides the following:

"1. The right of rectification is the right of the affected person to modify data that is inaccurate or incomplete."

Article 32 RLOPD in relation to the exercise of the right of rectification provides that:

"1. The request for rectification must indicate which data it refers to and the correction that must be made, and must be accompanied by the supporting documentation for what is being requested. (...)

2. The person in charge of the file must decide on the request for rectification or cancellation within a maximum period of ten days from the receipt of the request. After the deadline has passed without an express response to the request, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13.

In the event that you do not have the personal data of the affected person, you must also communicate it within the same period.

3. If the rectified or canceled data have been transferred previously, the person in charge of the file must communicate the rectification or cancellation to the transferee, within an identical period, so that the transferee, also within ten days counted from the receipt of said communication, proceed, likewise, to rectify or cancel the data.

The rectification or cancellation made by the assignee does not require any communication to the interested party, without prejudice to the exercise of the rights by the interested party recognized by Organic Law 15/1999, of December 13."

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Sections 2 and 3 of article 33 of the RLOPD establish the following regarding the denial of the right of rectification:

"2. The rights of rectification or cancellation may also be denied in the cases in which this is provided for by a directly applicable law or rule of Community law or when this law or rule prevents the data controller from disclosing to those affected the processing of the data to which refers to access.

3. In any case, the person in charge of the file must inform the affected person of their right to request the protection of the Spanish Data Protection Agency or, where appropriate, of the control authorities of the autonomous communities, in accordance with the provisions of article 18 of Organic Law 15/1999, of December 13."

On the other hand, article 18 of the LOPD, regarding the protection of the rights of access, rectification, opposition and cancellation, establishes the following in its sections 1 and 2:

"1. Actions contrary to the provisions of this Law may be the subject of a claim by the interested parties before the Data Protection Agency, in the manner determined by regulation.

2. The interested party who is denied, in whole or in part, the exercise of the rights of opposition, access, rectification or cancellation, may bring this to the attention of the Data Protection Agency or, where applicable, of the competent body of each autonomous community, which must make sure of the validity or inadmissibility of the refusal."

In line with the above, article 16.1 of Law 32/2010 provides:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

3.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the response given by GIACSA to the request for rectification conformed to the regulations then applicable.

First of all, it should be noted that the person making the claim here received GIACSA's response to his request for rectification after the period of ten days provided for the purpose in article 16.1 of the LOPD. Specifically, according to the documentation provided by the person claiming before the Authority, on 11/01/2018 the person making the claim sent an email to the GIACSA address linked to the municipality of Collbató (aiguadecollbato@giacsa.com), through which he requested as the main request:

"It is agreed to correct the inaccurate data relating to me that are in your files, specifically that the bank account number be corrected as follows (...)."

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And GIACSA responded to him by means of an email sent to the now claimant on 22/01/2018, that is to say, two days after the end of the legally provided period for doing so, and therefore extemporaneously, noting essentially the following:

"To change the bank address it is necessary to fill in the SEPA Order, since we do not know of any SEPA mandate signed previously (...)."

Regarding the person obliged to respond to the request for rectification, in the statement of objections GIACSA has pointed out that, given that the data processor contract signed between this entity and the City Council of Collbató does not provide specifically a clause in which GIACSA is entrusted with the resolution of requests to exercise ARCO rights, which include the right of rectification exercised by the person making the claim, it would not be obliged to respond in the specific case, so he concludes that he would not have breached any legal obligation.

Certainly, in the data processor contract signed on 03/30/2016 between the Collbató City Council and GIACSA, there is no clause stipulating that GIACSA will resolve, on behalf of the City Council, requests for exercise of ARCO rights, including the right of rectification exercised by the claimant on 01/11/2018. However, it is not known to the Authority, nor has GIACSA pointed it out in the hearing procedure, that this entity had transferred the request for rectification to the City Council, despite being obliged to do so, as provided for in article 26 RLOPD, which establishes that:

"when those affected exercise their rights before a person in charge of the treatment and request the exercise of their right before him, the person in charge must transfer the request to the person in charge, in order for him to resolve it himself, except that in the existing relationship with the person in charge of the treatment it is precisely foreseen that the person in charge must attend, on behalf of the person in charge, the requests by those affected to exercise their rights of access, rectification, cancellation or opposition".

In defense of its action, GIACSA has stated that in order to transfer the request for rectification to the person responsible, that is to say, the City Council, it was necessary for this request to be accompanied by a copy of the DNI here claiming, plus the SEPA mandate form signed by her, as she was told in the email they sent her on 01/22/2018.

Well, the allegations made by GIACSA cannot deserve a favorable reception. The art. 26 of the RLOPD does not provide for any exception that exempts the person in charge of the treatment from the obligation to transfer to the person in charge of the requests for the exercise of habeas rights dates when he is not entrusted with his resolution. Consequently, GIACSA should have forwarded the request for rectification to the Collbató City Council as soon as it became aware of it, and in any case within a period of time that allowed the City Council to comply with the legal duty to give response within ten days. This, without prejudice that GIACSA could

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inform, for purely illustrative purposes, the requesting person of the requirements he considered necessary to proceed with such rectification.

On the other hand, as part of this guardianship procedure, GIACSA's claim and written statement of allegations have been transferred to the Collbató City Council, specifically, through offices dated 15/ 03/2018 and 04/05/2018, both notified to the City Council on the date of each of the offices, without the City Council having given any response.

As things stand, neither GIACSA properly complied with the obligation that it had as the data controller to send the rectification request to the Collbató City Council as soon as possible, nor did the City Council comply with the obligation that as the person in charge of the file, he had to respond to the rectification request formulated by the now claimant, and to do so within the legally provided ten day period. The finding of this leads without further ado to the estimation of the claim for formal reasons. This without prejudice to what is indicated below on the substance of the matter.

4.- The substance of the matter is then analyzed, that is to say, whether or not the rectification requested by the person making the claim is appropriate.

The purpose of the request is to modify the current account number of the claimant that appears in the corresponding file, linked to the payment of the drinking water supply service managed by GIACSA - as a concessionary entity - on behalf of the Collbató Town Hall. The request and subsequent claim presented to the Authority show that the current account number currently listed - or at least at the time of requesting its modification - would not correspond to that number current account with which the holder - here claimant - intends to link the collection of the drinking water supply service to his private address. From the content of the

request and subsequent letter of claim made by the claimant here, it is clear that the reason for his request for modification is not so much due to the fact that the current account number currently listed is wrong, but to his desire that this number not continue to be linked to the said service, and that another appear in its place.

The request formulated in these terms does not fit perfectly in the right of rectification provided for in art. 16.2 of the LOPD, which starts from the existence of inaccurate or non-updated data, something that would not occur here, assuming that the previous current account number was correct. This regardless of the obligation of the data controller - the Collbató City Council - to respond to the request presented by the now claimant, as indicated in the previous legal basis, as well as the obligation to modify the current account linked to the drinking water supply service at the claimant's private home, with the conditions deriving from the applicable sectoral regulations.

In any case, the claim formulated here has a place in the scope of the right to data protection, because this confers a power on its owner to freely dispose of the

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your data, with the limits provided by law. It should be borne in mind that the processing by GIACSA and the City Council of the current account number of the now claimant in order to pay for the service by direct debit requires the unequivocal consent of this person (art. 6.1 LOPD), and therefore the interested person can revoke the consent initially given at any time.

From the documentation provided by GIACSA and the person making the claim before the Authority it is inferred that GIACSA has made the requested modification subject to the provision, as far as it is concerned, of the SEPA payment order duly signed by the person now claiming. As also that said entity would have denied, at least de facto, the request to modify the c/c of the person here claiming for lack of contribution to the aforementioned order, as this is clear from the body of the claim, where the claimant expressed his disagreement with GIACSA's interpretation of the applicable regulations, in the following terms:

"(...) Receipts are currently being paid for several years by another account of the same entity and the SEPA mandate was signed and delivered to the previous entity.

The one who writes, understands that it is not required to comply with the SEPA mandate to pay the water supply receipts because they are currently being paid and the obligation of the SEPA mandate is an imposition by the new water management company without giving possibility to its negotiation. When the previous company transferred the contracts to the new water management company, it is assumed that all the conditions of said contracts were passed (...)."

Well, regardless of whether the response to such a request was to be given to the City Council as the person responsible for the treatment, or if GIACSA could do it, as the entity in charge of the treatment, with regard to the resolution of the claim , in the face of the persistent silence of the person responsible for the file, that is, the Collbató City Council, proceeds to recognize the right of the affected person to have the current account number modified in the terms indicated - conditional on compliance with the requirements required by the SEPA regulations or any other applicable sectoral legislation-, given that it is the power of the obliged person to decide the current account number in which the receipt corresponding to the contracted service is debited. Accordingly, the estimation of the present claim proceeds.

4.- In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in the event that the claim for the protection of rights is considered, the data controller must be required to make the right effective. Consequently, it is necessary to require the Collbató City Council to make effective the right exercised by the claimant within 10 calendar days from the day after the notification of this resolution. Once a response has been given to the request and the right has been made effective, within the same period of 10 days the City Council must report to the Authority.

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For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Ms. (...) against the City Council of Collbató.

Second.- To require the City Council of Collbató so that within 10 counting days from the day after the notification of this resolution it responds to the request made by the now claimant, and in its if the modification of the current account number requested becomes effective. Once a response has been given to the request - and in its case the right has been made effective -, within the same period of 10 days the Collbató City Council must report to the Authority .

Third.- Notify this resolution to the Collbató City Council and the person making the claim, and communicate it to Gestió Integral d'Aigües de Catalunya, SA (GIACSA).

Fourth.- Order the publication of the Resolution on the Authority's website (www.apd.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 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona , 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 administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)