

Carrer Rosselló, 214, Esc. A, 1r 1a
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RESOLUTION of the rights protection procedure no. PT 24/2018, urged by Mr. (...) against the General Directorate of Police.

Background

1.- On 5/19/2018 it was submitted to the Catalan Data Protection Authority, a letter from Mr. (...), for which he made a claim for the alleged neglect of the right of cancellation, which he had previously exercised before the Directorate General of Police (hereinafter, DGP) of the Department of the Interior of the Generalitat of Catalonia. Specifically, the claimant raised the claim in the following terms: "Since February of last year 2017 I have initiated a long process of canceling the SIP data register and without receiving any response from the cancellation section of police background of the police officers this year 2018 since the months of February and March I have started the cancellation process again and I still do not receive any response and it has been the reason for the denial of my documents since they continue to give negative reports to the public administrations harming as well as my family integrity since they don't grant me a residence permit for that reason."

The claimant provided a copy of a statement of objections formulated during the hearing procedure granted in the context of a temporary residence file.

2.- In view of the claim made and the documentation provided, this Authority, by means of an official letter dated 5/15/2018, required the claimant to clarify what the object of his claim was, given that although from the terms of the same it was inferred that the claim required the lack of response to the right exercised by the DGP, among the documentation provided was a resolution dated 22/1/2018 of the DGP through the which resolved the cancellation of the claimant's personal data in the SIP PF file.

On 5/19/2018, the person making the claim answered said request requesting that: "the possibility is assessed that the DGP gives a response within the terms established by the law which says that for the cancellation of police antecedents that appear in the database of the DGP will be 10 days, and 30 for the request for access to the database."

Along with this response, the person making the claim attached the following documentation:

- 1) Letter - without date - through which the claimant states that: "I wanted to clarify that the response I received from DGP on 01/22/2018 is the response to a request I made on 12/18 /2017 and time 11:44:46 in the register (...). Which referred to the cancellation of the data that counted to me in my number (...), which referred to visits to the police station and some which referred to loss of documents among which did not prejudice in any way the time to request a police report.

The complaint I submitted refers to the following requests now mentioned before the DGP:

02/09/2017 (...) entry settlement number 0261/1085/2017
02/09/2017 (...) entry settlement number (...)
02/09/2017 (...) entry settlement number (...)
02/09/2017 (...) entry settlement number (...)
21/04/2017 (...) entry settlement number (...)
21/04/2017 (...) entry settlement number (...)
03/08/2018 (...) entry settlement number 0261/1502/2018
03/08/2018 (...) entry settlement number (...)
03/08/2018 (...) entry settlement number (...)
03/15/2018 (...) entry settlement number (...)

I remember that I have made 12 requests to which I have attached a copy of said requests and I have only received a single response that refers to a request submitted on December 18, 2017.

For this reason, I ask that the lack of response on the part of the DGP be evaluated, since I consider that my rights have been violated when I requested the DGP to cancel the data contained in my number and continue to issue unfavorable police reports to the delegation of the government (...)"

2) Evidence by means of which it is certified that the applications mentioned in point 1 have been received in the Entry Register of the DGP. In this respect, it should be noted that the applications registered with nos. (...) and (...) appear there with the subject referring to document improvement of requests.

3.- 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 character (hereafter, RLOPD and LOPD, respectively), by means of an official letter dated 5/24/2018, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations that I thought relevant.

3.- The DGP made allegations in a letter dated 7/17/2018, in which it set out, in summary, the following:

- That: "The interested person has the personal data cancellation files AP (...)/2017 and AP (...)/2017 and both files are currently resolved."

• That: "The AP (...)/2017 file was started on 02/09/2017 with several requests that made up this single file and that was resolved on 04/23/2018. The notification of the resolution of the file to the interested person occurred on 05/23/2018.

In this file, requests to amend or improve the application had to be sent, dated February 13, 2017 and May 22, 2017, notified on April 13, 2017 and May 29, 2017, respectively.

In response to these requests, the interested person, whose file was kept open waiting for him to provide the documentation, asked for new data to be canceled and provided various documentation, which finally led to the cancellation of properly justified personal data."

ÿ That: "The file AP (...) /2017 was started on 18/12/2017 with a request to cancel personal data. This file was resolved on 22/01/2018 and the person concerned was notified on 06/03/2018."

Together with these allegations, the DGP provided the following documentation:

- 1) Request for cancellation of personal data recorded in the files of the SIP area, recorded in the Registry of the DGP on 9/2/2017, with no. settlement (...) along with attached documentation.
- 2) Request for cancellation of personal data recorded in the files of the SIP area, recorded in the Registry of the DGP on 9/2/2017, with no. settlement (...) along with attached documentation.
- 3) Request for cancellation of personal data recorded in the files of the SIP area, recorded in the Registry of the DGP on 9/2/2017, with no. settlement (...) together with attached documentation.
- 4) Request for cancellation of personal data recorded in the files of the SIP area, recorded in the Registry of the DGP on 9/2/2017, with no. settlement (...) together with attached documentation.
- 5) Office of the DGP dated 2/13/2017, registered as of departure on 3/21/2017, through which the claimant was required to amend or improve the cancellation request. In particular, he was required to provide a certified copy of his current DNI, passport or NIE.
Likewise, a copy of the receipt from the company Correos by means of which it was recorded that the office was received by the claimant here, on 4/13/2017.
- 6) Request for cancellation of personal data recorded in the files of the SIP area, recorded in the Registry of the DGP on 4/21/2017, with no. settlement (...), together with attached documentation.
- 7) Office of the DGP dated 22/5/2017, registered as outgoing on 24/5/2017, by means of which the claimant was required to amend or improve the cancellation request. Specifically, he was required to provide a copy of the "judicial certification (original or certified photocopy) in which the relationship of the Misdemeanor trial procedure no. (...) /2009, initiated by the court of Instruction no. 3 of Rubí, with the corresponding police proceedings, and in which the filing of the procedure is certified."
Likewise, a copy of the receipt from the company Correos by means of which the receipt of the office by the claimant here, on 29/5/2017, was recorded.
- 8) Amendment of the cancellation requests submitted by the claimant here by means of a letter dated 8/3/2018, with no. settlement (...), together with attached documentation.

- 9) Request for cancellation of personal data recorded in the files of the SIP area, recorded in the Registry of the DGP on 8/3/2018, with no. settlement (...), together with attached documentation.
- 10) Request for cancellation of personal data recorded in the files of the SIP area, recorded in the Registry of the DGP on 8/3/2018, with no. settlement 0261/1504/2018, together with attached documentation.
- 11) Request for cancellation of personal data recorded in the files of the SIP area, registered in the Registry of the DGP on 3/15/2018, with no. settlement (...), together with attached documentation.
- 12) Resolution of the DGP dated 4/23/2018 by means of which it was estimated the cancellation of the personal data of the claimant here related to the first antecedent of said resolution and which appeared in the SIP file PF.
- 13) Office dated 9/5/2018, registered as outgoing on 11/5/2018, by means of which the DGP notified the resolution mentioned in point 12 to the claimant here. There is also the receipt from the company Correos by means of which it is certified that the person claiming received the aforementioned notification on 23/5/2018.
- 14) Request for cancellation of personal data recorded in the files of the SIP area, recorded in the Registry of the DGP on 18/12/2017, with no. settlement (...), together with attached documentation.
- 15) Resolution of the DGP dated 22/1/2018 by means of which it was estimated the cancellation of the personal data of the claimant here related to the first antecedent of said resolution and which appeared in the SIP file PF.
- 16) Office dated 31/1/2018, registered as outgoing on 1/2/2018, by means of which the DGP notified the resolution mentioned in point 15 to the claimant here. There is also the receipt from the company Correos by means of which it is certified that the person claiming received the aforementioned notification on 6/3/2018.

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.- This resolution is issued in accordance with the provisions of the LOPD and the RLOPD, as these are the rules applicable at the time when the right of cancellation that is the object of the claim was exercised.

3.- Article 16 of the LOPD, relating to the right of cancellation, 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

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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 31.2 of the RLOPD, provides the following:

"2. Exercising the right of cancellation results in the deletion of data that is inadequate or excessive, without prejudice to the blocking duty in accordance with these Regulations. (...)"

Article 32 of the RLOPD, sections 1 and 2, determines the following:

"1. (...)

In the cancellation request, the interested party must indicate which data they are referring to, and must provide the documentation that justifies it, if applicable.

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 it does not have the personal data of the affected person, it must also be communicated within the same period."

Given that the right subject to this resolution refers to a treatment carried out by the security forces and bodies, it is necessary to refer to the specific regulation for these cases provided for in articles 22.4 and 23.1 of the LOPD, which determine the following:

"Article 22. Files of the Security Forces and Bodies.

(...) 4. The personal data recorded for police purposes must be canceled when they are not necessary for the investigations that have motivated their storage.

For these purposes, the age of the affected person and the nature of the data stored, the need to keep the data until the conclusion of an investigation or a specific procedure, the final judicial decision, especially acquittal, pardon, rehabilitation and limitation of liability.

Article 23. Exceptions to the rights of access, rectification and cancellation.

1. Those responsible for the files that contain the data referred to in sections 2, 3 and 4 of the previous article may refuse access, rectification or cancellation depending on the dangers that may arise for the defense of the State or

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public security, the protection of the rights and freedoms of third parties or the needs of the investigations that are being carried out.(...)"

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, of the Catalan Data Protection Authority, provides the following:

"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."

4.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP has resolved and notified, within the period provided for by the applicable regulations, the right of cancellation exercised by the person making the claim, since precisely the reason for the complaint of the person who initiated the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

As seen in the antecedents, it is proven that the claimant submitted several requests for cancellation before the Registry of the DGP referring to certain proceedings and/or police requirements indicated in the requests, which appeared in the file SIP PF. Specifically, the requests that were entered in the DGP Registry on 9/2/2017, 21/4/2017, 8/3/2018 and 15/3/2018 resulted in file no. AP(...)/2017 and the application registered with the DGP on 18/12/2017 resulted in file no. AP(...)/2017. Regarding the accumulation of several requests in a single file, it is worth saying that this accumulation is endorsed by the application of article 57 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC).

Well, according to articles 16 LOPD and 32 RLOPD, the DGP had to resolve and notify the request for cancellation within a maximum period of ten days from the date of receipt of the request.

In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of the LPAC and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter,

LRJPCat), on the one hand, the calculation of the maximum term in procedures initiated at the instance of a party - as is the case - begins from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (article 21 of the LPAC), so that before the end of this term the resolution must have been notified, or at least have occurred the duly accredited notification attempt (art. 40.4 LPAC).

Well, with respect to the file AP (...)/2017 and in relation to the aforementioned period of 10 days to notify the decision on the cancellation request, article 25.3 of the RLOPD must be taken into account here, which provides that if the request does not meet the required requirements, the data controller must request its amendment, a request that must take place before the maximum period of 10 days that the body has to resolve and notify or attempt to notify. In the case at hand, the DGP drew up this amendment request office on 2/13/2017 (within the 10-day period), but it was not registered until 3/21/2017, and attempted to notify on 3/23/2017, so both the check-out and the first notification attempt occurred when the maximum 10-day period had already expired. This circumstance entails the assessment of the claim, which was based precisely on the extemporaneity of the DGP's response.

To the above, it should be added that the fact that the claimant had subsequently expanded the object of his cancellation, does not alter the estimation of the present claim to the extent that these new requests were incorporated into the file AP (...)/2017, whose deadline had already expired. Apart from this, it should be noted that finally, the resolution of the AP (...)/2017 file took place on 4/23/2018, with the claimant being notified on 5/23/2018 and that such delay must be attributed to the fact that once the request of 21/4/2017 was received, the DGP again made a request for amendment out of time (specifically on 22/5/2017), which in turn was answered by the claimant here also out of time, specifically he did not do so until 8/3/2018.

Regarding file no. AP (...)/2017 which started with the application registered for entry to the DGP on 12/18/2017, here too the DGP resolved and notified within the maximum period of 10 days established in the regulations of personal data protection, given that this request was resolved on 22/1/2018, i.e. once the 10-day period had already expired, and moreover the first notification attempt did not occur until 9/2/2018 (finally notified on 6/3/2018).

Consequently, the estimation of the present claim proceeds given that as it has seen, the DGP did not resolve and notify in a timely manner the cancellation requests submitted by the affected person that gave rise to file nos. AP (...)/2017 and AP (...)/2017.

4.- In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the manager of the file must be required so that in the term of 10 days make effective the exercise of right. However, in the case at hand, it is considered that it is not appropriate to require the DGP given that, as seen in the antecedents, it had already resolved and notified the resolutions of the cancellation requests of the person here

claimant, before it formulated the claim that has given rise to the present actions.

For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Mr. (...) against the Management General of Police of the Department of the Interior of the Generalitat of Catalonia.

Second.- Notify this resolution to the General Directorate of Police and the person making the claim.

Third.- 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)