apdcat
Autoritat Catalana de Protecció de Dades

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File identification

Resolution of the rights protection procedure no. PT 49/2018, urged by Mr. (...)against the Official Bar Association of (...)

Background

1.- On 08/10/2018 it was registered with the Catalan Data Protection Authority, a letter from Mr. (...) (hereinafter, claimant), for which he made a claim for the alleged neglect of the right of deletion, which he had exercised previously before the Illustrious Bar Association of (...) (hereafter, (...)). As it was inferred from the complaint letter, in the request presented to (...) the person making the claim requested that (...) delete certain information regarding a conversation private that he would have maintained with third parties, and that, as he stated, would be in the possession of the (...) by mistake ("...it only seems that they will be sent, it seems, to the College by mistake"). According to the claimant, the (...) would have provided, without his consent, a copy of this conversation (the claimant was referring to recordings) to a lawyer - against whom the claimant had lodged an ethical complaint -, who later he would have provided them in a judicial proceeding. In the letter of claim, he also requested the deletion of this copy that would be in the possession of the aforementioned lawyer.

2.- Given that the claim contained several formal defects that prevented its processing (lack of signature and lack of remittance of the documentation that attests to having previously exercised the right before the person in charge of the file or treatment), through the office of the Authority of date 17/10/2018 he was required to amend. This office attempted to notify the claimant through the Post Office on 10/22/2018 at 11:47 a.m. and on 10/24/2018 at 7:14 p.m., both attempts being unsuccessful, which is why the Authority sent him an email on 11/30/2018, requesting that he confirm the address indicated for notification purposes, which the claimant did by email of the same date.

3.- On 12/15/2018, an email from the person claiming was received in the Authority's mailbox, in order to correct the formal defects noted in the Authority's office dated 17/10/2018. The mail contained as attached documents the duly signed letter of complaint, as well as a letter dated 24/08/2018 of (...), in which the College responded to the deletion request , denying it, noting the following:

> "In view of the request made by D (...), on July 26, 2018, by sending an email to the Deontology Department of the Ilustre Colegio de la Abogacía de (...))) (deontologia@(...).cat) regarding the deletion of your personal data, we proceed to inform you within the established period that your request has been examined by the Data Protection Officer (DPD) of (...) :

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In the first place, that in his writing he does not clarify, in a concrete way, the personal data of those he seeks to suppress, alluding, in general, to documents accompanied in the framework of a complaint against a lawyer, without specifying the concrete data of the that requests the deletion.
Secondly, that in relation to your personal data, we confirm that in the deontology department of (...) it has been processed in informational file number (...), already resolved in which your initial complaint against the lawyer Mr. (...) and the one that accompanied the documents that Vd. He considered it convenient to contribute in support of his claim against the Letrado.
We also inform you that the Ilustre Colegio de Abogados de (...), under the provisions of Law 7/2006, of May 31, of the Parliament of Catalonia, on the exercise of qualified professions and the Colleges Professionals, has as its purpose and recognized among the public functions of the school, the exercise of disciplinary power over the collegiates, a power that must be exercised in accordance with the provisions of administrative law and with respect to the procedural guarantees established by the legislation of legal regime and administrative procedure (arts. 36, 39 and 66 of the aforementioned law).
It is in fulfillment of said purpose of exercising collegiate public functions that the data that you offered us in your letter of complaint against the lawyer was processed. It is also in compliance with the guarantees provided for in Law 39/2015, of October 1] of the Common Administrative Procedure of Public Administrations, arts. 53 y siguientes, that the complaining lawyer had access to the content of the file, since everything is covered by the current regulations indicated and therefore, the treatment given to the data provided in his complaint is legal.

Likewise, to inform you that the General Data Protection Regulation provides in its art. 17 exceptions to the right to deletion of data when their treatment is necessary:
"b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge."
And that, in the present case, it is considered by (...), at the proposal of the DPD, that this exception applies, so the interested deletion does not proceed.

Finally, and without prejudice to any other recourse or judicial action, we inform you that in accordance with article 12.4 of Regulation (EU) 2016/679 of the European Parliament and of the Council
(RGPDUE), which in view of this resolution at your request, can Vd. submit a complaint to the Control Authority (in this case the Catalan Data Protection Authority) or take legal action."

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4.- By official document dated 12/18/2018, the claim was transferred to (...) through the EACAT platform (entry registration no. (...)) , so that within 15 days he formulated the allegations he considered relevant.

Once the deadline has passed without having received allegations from the (...), and for the purpose of clarifying several points, such as the eventual existence of the recordings mentioned by the person claiming in his letter of claim, the Authority carried out a second transfer of the letter of claim to (...). The transfer office was notified on (...) also by the EACAT platform, on 26/03/2019 (entry registration no. on (...) (...)).

On 27/03/2019 the (...) stated to the Authority technical reasons that prevented it from receiving notifications from the Authority through the EACAT platform, which would have caused it not to have made allegations in the period initially granted.

5.- The (...) made allegations by means of a letter dated 01/04/2019, in which he set out, in summary, the following:

> "(...) SECOND.- In relation to the specific claim made by Mr. (...), we proceed to inform this Authority of the following:
> 1.- On September 8, 2017 Mr. (...)formulates, by means of an e-mail addressed to the deontology department of (...), a complaint against an Iletrat affiliated to this institution, which accompanied documentation consisting of emails to which (specifically in some of them dated September 13, 2017) incorporated transcription of conversations with third parties. At no time was any type of recording made by Mr.
>
> (...).
> (It is accompanied for these purposes by Document 1 consisting of certification issued by the Secretary of (...) in relation to the content of the complaint made by Mr. (...))
> 2.- Processed the corresponding information file by the Department of Ethics of I'(...), with reference (...), on July 25, 2018, by email to the same Mr. (...) sends a new communication where he requests a new deontological complaint against the Iletrat himself.
> 3.- It is dated July 26, 2018, that Mr. (...) sends a new communication by e-mail to the deontology department of (...) requesting the destruction of information, without specifically specifying what it is, referring to some conversations private with third parties.
> 4.- The data protection representative of I'(...) was consulted, and the checks that were considered appropriate were carried out (obtaining a report from the Ethics Department, checking emails sent by the complainant to I'(...)) proceeded to communicate to Mr. (...) that the requested deletion did not proceed, based on the legal considerations stated in the communication.

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(It is accompanied by Document 2, a copy of the motivated communication dated August 24, 2018)."
5.- The indicated communication was forwarded by email on August 24 at 1 1:34 a.m. to Mr. (...), with the aim of receiving it as soon as possible, ensuring its receipt on the same day, and without prejudice to being sent, also by certified mail, with proof of receipt of the same by the interested party on the 9 of September

THIRD.- That, in relation to the reasons for the non-deletion of the data concerned by Mr. (...), we refer to the arguments contained in the same reasoned communication dated August 24 that was sent to the interested party, and which we attach to this letter as document number 3(...)."

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.- Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/CE (hereinafter, RGPD), regulates in article 17 the right to deletion, and determines the following:

"1. The interested party has the right to obtain from the data controller, without undue delay, the deletion of the personal data affecting him. The person in charge must delete them without undue delay, when any of the following circumstances apply:

a) The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed.
b) The interested party withdraws the consent on which the treatment is based, in accordance with article 6, paragraph 1, letter a), or with article 9, paragraph 2, letter a), and this is not based on another legal basis.
c) The interested party objects to the treatment, in accordance with article 21, paragraph 1, and there are no other legitimate reasons for the treatment or the interested party objects to the treatment, in accordance with the article 21, section 2.
d) The personal data have been treated unlawfully.
e) The personal data must be deleted, to fulfill a legal obligation established in the law of the Union or of the member states to which the data controller is subject.

f) The personal data have been obtained in relation to the offer of information society services mentioned in article 8, paragraph 1.
2. If the person in charge of the treatment has made personal data public and, by virtue of the provisions of section 1, is obliged to delete this data, taking into account the available technology and the cost of applying it, the person in charge

of the treatment must take reasonable measures, including technical measures, to inform those responsible who are processing this data of the data subject's request to delete any link to this personal data, or any existing copy or replica.

3. Sections 1 and 2 do not apply when the treatment is necessary:
a) To exercise the right to freedom of expression and information.
b) To fulfill a legal obligation that requires the processing of data imposed by the law of the Union or of the member states to which the data controller is subject, or to fulfill a mission carried out in the public interest or in the exercise of conferred public powers to the responsible
c) For reasons of public interest in the field of public health, in accordance with article 9, section 2, letters h) ii), and section 3.
d) For archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the

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right mentioned in section 1 may make impossible or seriously hinder the achievement of the objectives of this treatment, or
e) To formulate, exercise or defend claims."

On the other hand, article 12 of the RGPD establishes the following in sections 3 and 4:

"3. The person responsible for the treatment must provide the interested party with information related to their actions, if the request has been made in accordance with articles 15 to 22 and, in any case, within one month of from the receipt of the request. this deadline can be extended by another two months, if necessary, taking into account the complexity and number of requests. The person in charge must inform the interested party of any of these extensions within one month of receiving the request, indicating the reasons for the delay.
When the interested party submits the request by electronic means, whenever possible the information must be provided by these same means, unless the interested party requests that it be done in another way.
4. If the data controller does not process the interested party's request, without delay and at the latest after one month, he must inform him of the receipt of the request, of the reasons for the his non-action and the possibility of presenting a claim before a control authority and of exercising judicial actions."

Article 77 of the RGPD, entitled "Right to present a claim before a control authority", establishes the following:

"1. Without prejudice to any other administrative recourse or judicial action, any interested party has the right to submit a claim to a supervisory authority, in particular in the Member State in which he has his habitual residence, place of work or place of has produced the alleged infringement, if it considers that the processing of personal data affecting it infringes this Regulation.

> 2. The control authority before which the claim has been submitted must inform the claimant about the course and result of the claim, including the possibility of accessing judicial protection under the provisions of the article 78."

For its part, article 16.1 of Law 32/2010 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."

3.- Once the above has been established, it is appropriate to analyze the substance of the claim, that is to say, if the response given by (...) to the request of the now claimant, conformed to the precepts transcribed in the previous legal basis.

As a starting point, it should be borne in mind that the right to deletion regulated in Article 17 of the RGPD is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data.

Given that through the exercise of the right of deletion the effectiveness of the fundamental right to the protection of personal data is guaranteed, the limitations to this right must be minimal. Article 17 of the RGPD conditions the right to delete personal data to the occurrence of one of the cases provided for in its section 1, and as long as one of the exceptions noted in section 3 of the same article does not apply.

With regard to the present claim, first of all it is necessary to specify what its object is and some concurrent circumstances. Although in the letter of complaint presented to the Authority the person making the claim referred to recordings, requesting their deletion, it seems that this would be due to an error by the claimant, and that his request for deletion would refer to a conversation that the claimant here would have had in an internet chat with third parties, which would appear transcribed in an email dated 09/13/2017 that the claimant sent to the Ethics Department of the (...) to include it in file no. (...), initiated following the deontological complaint that he presented on 09/8/2017 before (...), against another lawyer. This is clear from the answer given by the (...) in the hearing procedure, through a letter dated 01/04/2019, where the college pointed out that: "At no time, in the file of complaint initiated by the Ethics Department of I'(...)

no type of recording was provided by mr. (...)".

The pronouncement contained in this resolution is therefore limited to the origin of deleting the email dated 09/13/2017 with the content of the chat, although this and the legal considerations set out here can be extrapolated to the set of emails electronic documents provided by the person making the claim as additional documentation to the deontological complaint presented to the (...).

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With regard to the statements made by the person making the claim regarding the fact that the sending of the mail with the mentioned chat was due to an error, such an assertion cannot be inferred from the content of the disputed mail, since in this respect it is sufficient to state that in the same mail the claimant pointed out, right after transcribing the said chat, that this mail was sent for the purpose of incorporating it into the deontological complaint file. This is relevant in the assessment of the consent given, as explained below.

With regard to the assessment of the origin of the deletion request, it must be ruled out at the outset that the treatment carried out by (...) of the personal data in question was unlawful. In the event of such a defect, the assumption provided for in art. 17.1.d) of the RGPD, which provides for the deletion of data when these have been treated unlawfully, and in turn such an eventuality would lead to estimating the claim.

But the processing by the (...) of the disputed data is not considered illegitimate, but legitimate, since its contribution by the same affected person (here claimant), with the express indication noted, is expression clear of his consent, at least at the time he sent said emails to (...). Regarding the provision of consent, it should be remembered that article 4.11 of the RGPD admits that a clear affirmative action is valid in order to consider that the affected person has accepted the processing of his data. Specifically, it defines the consent of the interested party as: "any manifestation of free, specific, informed and unequivocal will by which the interested party accepts, through a statement or a clear affirmative action, the processing of personal data affecting him ". Consequently, it would be apl(...)le the assumption provided for in art. 6.1.a) of the RGPD, which determines that the treatment will be lawful when: "The interested party has given consent for the treatment of his personal data, for one or several specific purposes".

Based on this collection of data that had the consent of the claimant here, the subsequent processing of this personal data that would have been carried out by (...) would be necessary for the processing of ethical file no. . (...), so that they would also be considered legitimate to be carried out in the exercise of the disciplinary power recognized in (...) with respect to the persons involved
by articles 15.3 and 39 of Law 7/2006, of 31 May, on the exercise of qualified professions and professional associations. Therefore, it would apply(...)le the assumption provided for in art. 6.1.e) of the RGPD, which determines that the treatment will be lawful when: "The treatment is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment".

In accordance with the above, the reason given by (...) to deny the right of deletion would be in accordance with article 17.3.b) of the RGPD (“To fulfill a legal obligation that requires the treatment of data imposed by the law of the Union or of the member states to which the data controller is subject, or to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the

responsible"), because the mail provided by the claimant had to be part of the file processed following the deontological complaint that he had made. The same conclusion is reached from reading the reasons for the deontological complaint and the e-mails that the claimant brought before (...), especially the e-mail dated 09/13/2017 - which contains the controversial chat-, and from the email sent on 08/09/2017 by the law firm to which the lawyer belongs against whom the claimant here formulated the ethical complaint. Indeed, in the deontological complaint the claimant here stated as grounds for complaint that the hired lawyer had committed:
"coactions, insults, slander, professional malpractice, threats, lies, falsehoods and excuses to provide me with service and fulfill the contract for the provision of services signed with him and his company". The origin of the claimant's complaint would be in an email dated 09/08/2017 - which appears in the proceedings - from the law firm he had hired, in which he was told the reasons why they decided to terminate the contract for the provision of legal services signed by the claimant.

A few days after receiving that email from the law firm, in the above-mentioned chat, the claimant here asked two Internet users to make a negative assessment of the said law firm on the Internet portal www.(...).how, with
statements like these: "Why don't you try to put a star on it and say something bad about this office?", "Hello David, can you also comment something negative about this office here?"). These written conversations are those that the claimant himself would have contributed to (...), and in respect of which he requests the deletion.

On the legal adequacy of the response given by (...) to the deletion request,
it should be added that, as stated by (...), the day before the claimant submitted the request to delete these emails, that is to say, on 07/25/2018, the claimant returned to submit a second deontological complaint against the same lawyer against whom he had made the first complaint.

At this point, it is necessary to refer to the cases in which article 17.1 of the RGPD determines that the deletion of personal data is necessary. Of the six cases mentioned in article 17.1 of the RGPD, it is appropriate to refer to the first two, that is, that provided for in section 17.1.a) RGPD, which determines the origin of the deletion when "the personal data are no longer necessary in relation to the purposes for which they were collected or treated in another way", and the assumption provided for in section 17.1.b) of the RGPD, which determines that the deletion of the data proceeds when "the interested party withdraws the consent on which the treatment is based, in accordance with article 6, section 1, letter a), or with article 9, section 2, letter a), and this is not based on a other legal basis".

In the present case it is clear that with the request for deletion the person making the claim would have revoked the consent they initially gave, an option that is expressly provided for in article 7.3 of the RGPD, which states that: "the interested party has the right to withdraw the your consent at any time". However, article 17.1.b) of the RGPD conditions the origin of the deletion on the fact that the treatment is not based on another legal basis Regarding the latter, the reason given by the (...) for denying the deletion

requested, relative to the case provided for in art. 17.3.b) of the RGPD, in relation to the legal basis contained in article 6.1.e) of the RGPD, could justify the denial of the requested deletion.

However, it cannot be overlooked that the claimant's request for deletion could have been made when the file opened following the deontological complaint had already been resolved. The question therefore arises as to whether, when the person making the claim presented the deletion request to (...) -which took place on 07/26/2018, via email- , the disputed data were no longer necessary for the intended purpose, which was none other than the resolution of the deontological complaint. If this were the case, the assumption provided for in article 17.1.a) of the RGPD, transcribed above, would apply, and therefore, the data would be deleted.

In this regard, the Authority does not have precise information on the eventual processing of the procedure to settle the eventual disciplinary responsibilities of the lawyer against whom the claimant here made the complaint, nor, in his case, its termination. In the letter of response from (...) to the deletion request it is only inferred that, at least on the date of the letter of response from (...), the 24 /08/2018, the information file opened following the first complaint - and where the emails provided by the claimant had been incorporated, including the one containing the chat - had already ended. This is clear from the letter where it is pointed out that: "(...) we confirm that in the deontology department of (...) it has been processed in information file number (...), already resolved in the that his initial complaint against the lawyer Mr. (...) and the one that accompanied the documents that Vd. he considered it convenient to contribute in support of his claim against the Attorney".

In the case that the (...) had already issued the corresponding resolution and that the procedure had therefore ended, such a circumstance would not imply that the disputed data are no longer necessary. Indeed, conservation would be necessary, in the first place, against the eventual filing of appeals or any other judicial or administrative action against that decision of the (...). In any of these cases, the case provided for in article 17.3.c) of the RGPD would apply, which provides that: "Sections 1 and 2 do not apply when the treatment is necessary: (...)e) To formulate, exercise or defend claims". But in addition, the apl(...) regulations impose a duty to keep the file, regardless of whether one of the affected people has lodged an appeal.

The terms of retention of the disputed data would be extended to the acts derived from the processing of the second deontological complaint presented by the claimant here before the (...) against the same registered lawyer, if this was a continuation of the first or maintain an intimate connection or a similarity that required the processing of that data.

Finally, it could also be necessary to preserve the controversial data if the lawyer against whom the claimant here formulated the deontological complaint, had taken some judicial action, in respect of which the said chat constituted documentary evidence, and

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it was necessary to preserve the chat by the (...) (such as if the claimant questioned its veracity in the judicial proceedings).

4.- For all the reasons set out in the 3rd legal basis, and given that the claimant requested the deletion of his data on 07/26/2018, one day after he made the second complaint against the same lawyer with registered, on 07/25/2018, it is considered that the (...)'s negative response to the requested deletion was in accordance with law. And therefore, the present claim must be dismissed.

For all that has been exposed,

RESOLVED

First.- Dismiss the guardianship claim made by Mr. (...), against the Illustrious Bar Association of (...) (hereafter, (...)), for the reasons indicated in basis of third party law.

Second.- Notify this resolution to (...) 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 to directly file an administrative contentious appeal before the administrative contentious courts of (...), 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 contentious jurisdiction administrative

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

The director,