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RESOLUTION of the rights protection procedure no. PT 5/2019, urged by Mr (...) against the General Directorate of the Police

Background

1.- On 16/02/2019 it was reported to the Catalan Data Protection Authority, a letter from Mr (...) (hereinafter, the person making the claim), in which he formulated a claim for the alleged neglect of the right of cancellation or deletion, which he had previously exercised before the General Directorate of Police (hereinafter, the DGP).

Specifically, the claimant complained that in the resolution issued on 04/02/2019 by the director of the DGP, regarding his request to cancel personal data in the SIP PF file, this body would not have considered the 'exercise of his right given that he would not have resolved to suppress all of the requested police proceedings, nor would he have given reasons for such a decision.

Specifically, in the request for cancellation of personal data, the person claiming requested the cancellation of the following police proceedings:

- Police proceedings no. (...), processed by the USC Gràcia, of the Police of the Generalitat - Mossos d'Esquadra (hereafter, MMEE).
- Police proceedings no. (...), processed by the USC of the Hospitalet de Llobregat of the MMEE, which derived with the abbreviated procedure no.(...).
- Police proceedings no. (...), processed by the Sant Feliu de Llobregat Investigation Unit of the MMEE, which led to the Trial of Minor Crimes (...)

2.- By official letter dated 02/26/2019, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 03/19/2019, the DGP formulated some allegations in which, in summary, stated the following:

- ÿ That "On 02/01/2019, the interested person submitted a request for the cancellation of personal data in which he related the data he wanted to cancel.";
- ÿ That "On 04/02/2019, a resolution was issued in which it was agreed to cancel the personal data requested by the person interested in their request.";
- That "Consequently with the above, this General Directorate has estimated the request for cancellation of data presented in the terms that the interested person requested".

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The claimed entity provided together with its allegations, a copy of the request for deletion of personal data presented by the person here claiming before the DGP; copy of the resolution of the director general of the Police, dated 02/04/2019, by which the deletion request made by the person making the claim is estimated; and copy of the notification of said resolution to delete personal data together with the copy of the acknowledgment of receipt of mail, dated 02/15/2019.

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.- At the time when this resolution is issued, the personal data that were the subject of processing by the DGP and to which the cancellation request referred, the Directive (EU) 2016/680, of the European Parliament and of the Council of 27/4, relating to the protection of natural persons with purposes of prevention, investigation, detection or prosecution of criminal offenses or enforcement of criminal sanctions, and the free circulation of this data (Directive (EU) 2016/680), in accordance with what is established in its article 1, which provides in its article 16 the right to deletion, which replaces the previous right of cancellation. In this regard, it should be noted that Directive (EU) 2016/680 has not been transposed into national law within the deadline set for that purpose (05/06/2018), and consequently individuals can directly invoke European law before the courts, regardless of whether or not they have been transposed into national law. Thus, in accordance with the doctrine of the Court of Justice of the European Union, individuals may invoke the direct effect of the directive's precepts when they confer rights unconditionally and in a sufficiently clear and precise manner before public administrations. The cancellation or deletion request analyzed here was submitted

when Organic Law 3/2018, of December 5, on Personal Data Protection and Digital Rights Guarantee (LOPDGDD) was already fully applicable, which repealed Organic Law 15/1999, of December 13, on data protection of a personal nature (LOPD). However, with regard to data processing that is subject to Directive (EU) 2016/680, it should be noted that transitional provision 4a of the LOPDGDD provides that these will continue to be governed by the LOPD, and in particular by article 22, and its development provisions, until the rule that transposes into Spanish law what the aforementioned Directive provides comes into force. Thus, it should be noted that when article 16.2 of Directive (EU) 2016/680 provides that the Member States will demand "without undue delay" from the controller the deletion of personal data and the right of the interested parties to obtain from the controller processing the deletion of personal data, compliance with this requirement must be understood as fulfilled in the terms established in article 16.1 of the LOPD, on the right of rectification and cancellation, which establishes that the

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

3.- In accordance with the above, and 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, sections 1 and 3, 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 deny access, rectification or cancellation depending on the dangers that may arise for the defense of the State or public security, the protection of the rights and freedoms of third parties or the needs of the investigations being carried out. (...)

3. The person affected who is denied, in whole or in part, the exercise of the rights mentioned in the previous sections can bring this to the attention of the director of the Data Protection Agency or the competent body of each autonomous community in the case of files maintained by the police forces of these communities, or by the autonomous tax administrations, which must make sure of the origin or impropriety of the denial."

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.

In this regard, it is certified that on 02/01/2019 he had access to Registration of the DGP a writing of the person here claiming, through which he exercised

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your right to cancel your personal data that appeared in the SIP PF file, in relation to police proceedings linked to criminal offences.

In this sense, article 16.2 of Directive (EU) 2016/680, provides that "Member States will require the person in charge of the treatment to delete the personal data without undue delay and will have the right of the interested party to obtain from the person in charge of the treatment the deletion of the personal data that concern him without undue delay when the treatment infringes articles 4, 8 or 10, or when the personal data must be deleted by virtue of a legal obligation to which the person in charge of the treatment is subject".

In accordance with articles 16 LOPD and 32 of Royal Decree 1720/2007, of December 21, approving the Development Regulation of the LOPD (hereinafter, RLOPD), the DGP had to resolve and notify the cancellation request within the 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 Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the request of a party - as is the case - it starts 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, the DGP has not proven to have responded to the request within the ten-day period provided for that purpose, since the DGP itself states that it did not do so until 02/15/2019, when it notified now claiming the resolution by which his request for the cancellation of personal data was considered, a copy of which has been provided in the hearing procedure, and which was signed electronically on date 4/ 02/2019.

Consequently, the assessment of the claim proceeds from this formal perspective, given that the DGP did not resolve and notify the said request presented to the affected person in a timely manner.

5.-Once the above has been established, it is appropriate to analyze the merits of the claim, given that the reason for the claimant's complaint was the possibility that the total cancellation of the data had not been carried out in respect of those that had exercised their right.

First of all, it should be noted that, contrary to what the interested person seems to point out in his claim presented to this Authority, the resolution of the DGP dated 02/04/2019 resolves to cancel all personal data

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relating to the three police investigations indicated in the claimant's request, and collected in the 1st record of the indicated resolution.

Having said that, it must be admitted that the legal foundations of the controversial resolution may lead to some confusion as to the meaning of the resolution, specifically with regard to the wording of the last paragraph of the fifth legal foundation. However, it is necessary to highlight the clarity of the dispositive part of the resolution, in which it is clearly stated that it is resolved to "cancel the personal data of (...), with ID (...), and which have been related to the first de facto precedent of this resolution". In the first factual background of the resolution, the personal data of the claimant that appeared in the SIP PF file had been detailed, in relation to three

police proceedings identified there with their number, which coincide in their entirety with the police proceedings indicated in the request for suppression of the now claimant.

In addition, it confirms the will of the DGP to cancel all the data mentioned in the statement of allegations formulated in the hearing procedure by the DGP, in which following the transfer of the present claim, it is indicated expressly that "this Direction General has considered the data cancellation request presented in the terms that the interested person requested". In other words, the DGP therefore confirms the estimated meaning of the resolution of the DGP dated 02/04/2019.

Consequently, it would not be necessary to carry out any consideration from a substantive perspective, since the right that is the object of the claim here would have been made effective.

6.-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 protection of rights, the manager of the file must be required so that in the period of 10 days makes the exercise of the right effective. However, in the present case, even if the resolution is considered for formal reasons, it is not appropriate to require the DGP in this regard, given that it would have already notified the resolution of the deletion request, even if it was extemporaneously. On the other hand, as announced in the previous legal basis, it is not appropriate to require the DGP in terms of the fund, because it would have already canceled the personal data of the claimant here.

For all that has been exposed,

RESOLVED

First.- Appreciate for formal reasons the claim for the protection of the right of cancellation made by Mr. (...) against the General Directorate of Police, without making any request for the right to have become effective, in accordance with what it has been indicated in the fundamentals of law 5th and 6th.

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

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 term of one month from the day after the 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 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,