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RESOLUTION of the rights protection procedure no. PT 13/2019, urged against the Technical Secretariat of the Consultative Board of Administrative Contracting of the Department of the Vice-presidency of Economy and Finance of the Generalitat of Catalonia.

#### Background

1.- On 26/04/2019 the Catalan Data Protection Authority received a letter from Mr. (...), for which he formulated a claim for the alleged neglect of the right of opposition, which he had previously exercised before the Technical Secretariat of the Administrative Contracting Consultative Board of the Department of the Vice-presidency of Economy and Finance (hereafter STJCCA ). Specifically, the claimant - who had been a participating bidder (as an individual entrepreneur) in an administrative recruitment process in 2017 - had requested the STJCCA to cease the treatment consisting in the publication of his name and surname as to a bidder on the procurement platform, a request that had been rejected by said body. The claimant argued that "the document is a public tender decision. At that time I was setting up a company as a freelancer and acting in my own name. Currently, I no longer constitute this company, I am no longer a legal entity and the fact of appearing in this resolution (already indexed in most search engines with a presence in Catalonia) affects my professional and personal reputation".

The claimant provided various documentation relating to the exercise of this right, specifically:

- ÿ Form of the right of opposition exercised by the person here claiming on 21/03/2019 before the STJCCA, drawn up in the terms described above. The person making the claim accompanied this form with the following information: a) Link to the Internet address of the Public Procurement Services Platform through which the Resolution of 05/03/2017 of the City Council of (...), awarding the contract for the provision of the service of (...), in which it appears the name and surname of the person here claiming as a bidder; and, b) Screenshot of the Google search website with the name and surname of the person here claiming, without quotation marks, in which the previous link of the Internet address of the Platform for public procurement services.
- ÿ Resolution dated 04/16/2019 by which the STJCCA denied the request of opposition formulated, based on the provisions of article 21 of 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 treatment of personal data and the free movement of such data (hereinafter, RGPD), which provides that the right of opposition does not apply when the treatment obeys the fulfillment of a legal obligation (art. 21.1.e), as would be the case object of request, according to the criteria of the STJCCA.

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2.- On 04/30/2019 the Authority requested the person making the claim to, as far as possible, specify the reasons why they considered that the publication of their data on the Recruitment Platform affected the his reputation

On 07/05/2019, the person making the claim sent a letter to the Authority informing them that they had been able to verify that "the Public Procurement web portal has stopped indexing the document for which he had exercised the right of opposition". but did not specify the reasons why he considered that the publication on the Recruitment Platform of his data affected his reputation.

3.- By official letter dated 05/14/2019, the claim was transferred to the STJCCA so that within 15 days it could formulate the allegations it deemed relevant.

4.- The STJJA made allegations in a letter dated 05/31/2019, in which it stated the following:

- That they were ratified in the terms of the Resolution of 04/16/2019 issued by the STJCCA, by which the request of the claimant here was denied "in a motivated manner, given that, the publication of the identity of the bidders participating in a procurement procedure - Mr. (name of the person claiming) appears as a bidder - in the Public Procurement Services Platform (hereafter PSCP) is imposed by article 63.3 of Law 9/2017, of November 8, of public sector contracts (hereafter, LCSP), without any of the exceptions provided for in article 154.7 of the same LCSP occurring in this case; and, consequently, given that the processing of their identity data has been carried out in compliance with a legal obligation, there is no place for the interested party to exercise the right of opposition, in accordance with what is established in article 21 of 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 circulation of this data and by which Directive 95/46/EC (General Data Protection Regulation, hereinafter RGPD) is repealed, in relation to article 6 of the same RGPD".
- That with regard to the non-appearance of the name of the person making the complaint in the search engines, "it must be said that, indeed, in the session of the meeting of the Executive Committee of PSCP (Public Procurement Services Platform of the Generalitat of Catalonia), GEEC (Electronic manager of procurement files), and TEEC (Electronic processor of procurement files) that took place last April 4, 2019, among other improvements and corrections, it was reported that, so that personal information data included in the documentation attached to the PSCP does not appear from the Google search engine, with version 6.17.0 of the PSCP, which went into production on March 27, 2019, it was left to index the documentation part of PSCP publications in the Google search engine; It should also be noted that this change also applies to other Internet search engines. Consequently, since March 27, 2019, when the PSCP was updated with version 6.17.0, the necessary technical measures have been incorporated so that

no personal information data of any person can be searched from any Internet search engine - not only of Mr. (name of the person claiming included in the documentation attached to the PSCP"

#### 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.- The claim that is resolved here was formulated with respect to a request to exercise the right of opposition that had been presented to the STJCCA, when the RGPD was already fully applicable, which in relation to the right to 'opposition, determines the following in its article 21:

"1. The interested party will have the right to object at any time, for reasons related to his particular situation, to personal data concerning him being the object of a treatment based on the provisions of article 6, section 1, letters e) of), including the elaboration of profiles on the basis of these provisions. The person in charge of the treatment will stop processing the personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and liberties of the interested party, or for the formulation, exercise or defense of claims. (...)"

For its part, article 6.1 of the RGPD provides the following, regarding the legality of the treatment:

"1. The treatment will only be lawful if at least one of the following conditions is met:  
(...)

c) the treatment is necessary for the fulfillment of an obligation  
law applicable to the person in charge of the treatment;

e) the treatment is necessary for the fulfillment of a mission carried out in the public  
interest or in the exercise of public powers conferred on the person responsible for  
the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the  
person responsible for the treatment or by a third party, provided that these interests  
do not prevail over the interests or fundamental rights and freedoms of the interested  
party that require the protection of personal data, in particular when the interested  
party is a child (...)"

Also, on the rights contemplated in articles 15 to 22 of the RGPD, article 12, apparatus 3, 4 and 5 of  
the RGPD establishes the following:

"3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.

5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:

a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or

b) refuse to act in respect of the request.

The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.

(...)"

In relation to the above, article 16 of Law 32/2010, regarding the protection of the rights provided for by the regulations on the protection of personal data, 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 period, they can submit a claim to the Catalan Data Protection Authority.

2. The Catalan Data Protection Authority must expressly decide on the merits or inadmissibility of the claim referred to in paragraph 1 within six months, with the prior hearing of the person responsible for the file and also of the interested persons if the result of the first hearing procedure makes it necessary. Once this term has passed, if the Authority has not notified the resolution of the claim, it is understood that it has been rejected.

3. The resolution of total or partial estimation of the protection of a right must establish the term in which it must take effect.
4. If the request to exercise the right before the person responsible for the file is estimated, in part or in full, but the right has not been made effective in the form and the deadlines required in accordance with the applicable regulations, the interested parties can bring it to the attention of the Catalan Data Protection Authority so that the corresponding sanctioning actions are carried out."

3.- Having explained the applicable regulatory framework, it is then necessary to analyze the substance of the claim, that is, if the response given by the STJCCA to the request of the now claimant, conformed to the precepts transcribed in the foundation of previous right

As a starting point, it should be borne in mind that the right of opposition regulated in article 21 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 opposition the effectiveness of the fundamental right to the protection of personal data is guaranteed, the limitations to this right must be minimal.

The STJCCA grounds the rejection of the right of opposition in that the legal basis for the publication of the data of the person claiming here on the recruitment platform - the fulfillment of a legal obligation (6.1.c of the RGPD) - , is not planned in article 21 of the RGPD as one of the bases of the treatment that would allow exercising the right of opposition. In this regard, he explains that the person making the claim here participated as a tenderer - individual entrepreneur - in a recruitment process, and that article 63.3 of the LCSP requires the identity of bidders to be published on said platform for a period of 5 years. It is worth remembering here that the natural person bidding must be informed of this publication at the time of collecting their data, as well as of the other extremes provided for in article 13 of the RGPD.

The STJCCA is right when it states that article 21 of the RGPD does not contemplate the exercise of the right of opposition when the legal basis for the processing of the data is based on the fulfillment of a legal obligation, and also when it states that the legal basis that would legitimize the publication of the data of the person claiming here on the recruitment platform would precisely be the fulfillment of a legal obligation, in this case, to comply with the provisions of article 63.3 of the LCSP. But it should be noted that in the case we are dealing with here, this would not be the only legal basis that legitimized the specific treatment of the data of the person making the claim, but that when it comes to the person responsible for the treatment of a public administration, the legal basis provided for in letter e) of article 6.1 of the RGPD would also come into play ("the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person responsible for the treatment "). And unlike what happens with data treatments under the legal basis of the article

6.1.c) of the RGPD, those carried out based on article 6.1.e) of the RGPD do allow the exercise of the right of opposition.

Article 21 of the RGPD provides that "The person responsible for the treatment will cease to treat personal data, unless he proves compelling legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party". In the case we are dealing with, the concurrence of an imperative legitimate reason for the processing (publication) of the data of the person claiming here is noted: the obligation of publication provided for in a law, reason that in this specific case would prevail over the right of the interested person who, in the judgment of this Authority, has not invoked any circumstance that justifies the prevalence of his right, since he simply limited himself to stating that "it affected his reputation". In this regard, it is worth saying that this circumstance does not show that the claimant here was in a subjective situation different from that of the other bidders that could justify the viability of the right of opposition.

Finally, it is necessary to highlight here the action carried out by the STJCCA - to which the affected person has also referred after his claim - in order to prevent the documents published on the Recruitment Platform and that contain personal data, are indexed by internet search engines (3rd precedent).

In accordance with the above, the present claim for protection of the right of opposition should be dismissed.

For all that has been exposed,

RESOLVED

First.- Dismiss the guardianship claim made by Mr. (...) against the Technical Secretariat of the Administrative Contracting Consultative Board of the Department of the Vice-presidency of Economy and Finance

Second.- Notify this resolution to the Technical Secretariat of the Administrative Contracting Consultative Board of the Department of the Vice-presidency of Economy and Finance and to the person making the claim.

Third.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://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

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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,

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