

RESOLUTION of the rights protection procedure no. PT 27/2019, urged by Mr. (...) against the General Directorate of the Police

#### Background

1.- On 29/05/2019 it was registered with the Catalan Data Protection Authority, a letter presented by Mrs. (...), representing Mr. (...), in which she made a claim for the alleged neglect of the right of cancellation, which she had previously exercised before the DGP.

Specifically, the claimant requested that his personal data be deleted from the SIP PF file, relating to police proceedings number (...), which resulted in Executive Procedure no. (...) and in the Abbreviated Procedure no(...), of the Criminal Court no. 3 of Vilanova i la Geltrú.

The claimant was specifically complaining about the DGP's lack of response to his request for cancellation, which he had made by means of a letter dated 9/04/2019, and of which I provided a copy.

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 06/18/2019, 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 by means of a letter dated 02/07/2019, in which it set out, in summary, the following:

- That "On 09/04/2019, the aforementioned person registered a request to cancel personal data recorded in the files of the SIP area."
- That "On 05/29/2019, from the General Directorate of the Police, the interested person was required to provide a certified copy of their DNI, NIE or passport in force. This requirement was notified to the interested person on 06/04/2019, as stated on the post office website"
- That "On 06/04/2019, the interested person answered the request earlier mentioned and provided a certified copy of his passport"
- That "On 06/13/2019, the General Directorate of the Police resolved the request presented by the person concerned"
- That "On 06/21/2019, the notification of the resolution referred to in the previous point was registered as outgoing" and ""according to the website of this company (referring to Correus), the notification was delivered on 26/06/2019".

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The claimed entity provided together with its allegations, a copy of the request for amendment or improvement of the application addressed to the person here claiming, dated 05/29/2019; copy of the resolution of the director general of the Police, dated 06/13/2019, 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, dated 06/17/2019.

#### 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 would apply (EU) 2016/680, of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data by the competent authorities for the 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 of 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 request for cancellation - or deletion - of data analyzed here was submitted before the DGP when Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), which repealed Organic Law 15/1999, of December 13, was already fully applicable protection of personal data (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. In this regard, it should be indicated that when article 16.2 of Directive (EU) 2016/680 foresees that the Member States will demand from the data controller the deletion of personal data "without undue delay" and the right of the interested parties to obtain the responsible for 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 controller has

the obligation to exercise the interested party's right of rectification or cancellation within ten days.

3.- Article 16 of the LOPD, regarding 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 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, 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.

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(...) 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. (...)"

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.

In this respect, it is certified that on 09/04/2019 a letter was entered in the Registry of the DGP by the person here claiming, through which he exercised his right of cancellation with respect to personal data recorded in the files of the SIP scope.

In accordance with 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 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, according to the proceedings, the DGP issued a resolution on date 06/13/2019, which was not notified to the person here claiming until 06/26//2019, in accordance with what the DGP has certified during the hearing procedure, so that it was overcome with exceeds the regulatory term established for the purpose. In this regard, it should be noted that in this case, and in accordance with article 22.1.a) of the LPAC, the deadline for resolution could have been suspended due to the request of the DGP to the interested party in order to contribute documents linked to your data cancellation request, based on article 68 of the LPAC. However, it should be noted that the indicated amendment request had already been formulated by the DGP once the maximum deadline for the resolution and notification of the request had been exceeded. What's more, even discounting the period in which it had been suspended due to said amendment request, the resolution issued by the DGP would also have been clearly extemporaneous.

Consequently, from a formal point of view, the estimate of the claim proceeds, since the DGP did not resolve and notify in form and time the said request submitted by the affected person.

Regarding the merits of the claim, given that the DGP has agreed to consider the request to cancel the personal data presented by the person making the claim, it is not considered necessary to make further considerations in this regard, notwithstanding that in the case that the claimant considers that his cancellation right has not been fully exercised with respect to personal data recorded in the files of the SIP area, he may bring this to the attention of this Authority.

5.- 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 period of 10 days makes the exercise of the right effective.

However, in the present case the estimation obeys the fact that the DGP had not attended to the right of cancellation in time, but did so extemporaneously, once the present procedure had been initiated. That is why it is not appropriate to require the DGP

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in this way. 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 to cancel data made by Mr. (...) against the General Directorate of Police, without making any request for the right to have become effective, in accordance with what has been indicated in the 4th and 5th fundamentals of law.

Second.- Notify this resolution to the DGP and 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 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,