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RESOLUTION of the rights protection procedure no. PT 28/2019, urged by Mr. (...) against the General Directorate of Police.

Background

1.- On 06/17/2019, the Catalan Data Protection Authority received 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 General Directorate of Police. Specifically, the claimant requested that his personal data be deleted from the SIP PF file, relating to police proceedings no. (...), no(...), no. (...) and no. (...) in addition to the identification with no. (...), and he complained about the DGP's lack of response to his request for cancellation, which he had made in a letter dated 06/03/2019, and of which he provided a copy, together with the documentation that accompanied the request to exercise this right.

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 in a letter dated 07/05/2019, in which it set out, in summary, the following:

ÿ That *"On 06/03/2019, the aforementioned person registered a request to cancel personal data recorded in the files of the SIP area at the Social and Family Affairs office of (...) of the Generalitat de Catalunya".*

ÿ That *"On 07/06/2019 this request was received by the General Directorate of the Police".*

- That *"On 06/18/2019, the General Directorate of the Police issued a request to the interested person to provide a certified copy of several documents that he had attached to his application."*

- That *"On 06/21/2019, the request referred to in point previous."*

- That *"The sending of the notification of the request was identified in the company Correus with the sending number (...). This General Directorate still does not have proof of receipt of this notification nor does it have information on what the result was."*

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- That "(...) *this file is pending completion due to which it is waiting for the interested person to provide the documentation that has been requested.*"

The claimed entity provided, together with its allegations, a copy of the request for amendment or improvement of the application addressed to the person making the claim, dated 06/18/2019.

4.- On 22/10/2019, the Authority requested from the DGP the supporting documentation of the date on which the DGP received the request to exercise the right made by the claimant, and in the event that the interested party had responded to the DGP's request, a copy of the supporting documentation of the date on which the interested party responded to said request, and if the DGP had resolved the request, supporting documentation of said resolution and of its notification to the person making the claim.

5.- The DGP, through a letter dated 05/11/2019, responds to the request, in which it set out, in summary, the following:

- That "*The request to exercise the right of cancellation presented by the interested person was received by the Department of the Interior on June 3, 2019 and was sent to the Division of Police Information Systems on June 7, 2019. Therefore, the entry date for the required purposes is June 7, 2019.*"
- That "*The request for amendment made to the interested person on June 18, 2019 was not fulfilled, having received it on July 31, 2019.*"
- That "*In view of the fact that the interested person did not comply with the requirement, the withdrawal of the cancellation request made by (...) was declared through the resolution of October 23, 2019.*"

The claimed entity provided together with its allegations, a screen print showing the entry entry in the Sarcat register of the claimant's request on 06/07/2019; copy of the postal notice of the personal notification on 07/31/2019 to the person claiming the amendment requirement of their application; and copy of the resolution of the director general of the DGP, dated 23/10/2019, declaring the withdrawal of the request to cancel the personal data made by the person making the claim.

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 treatment

personal data by the competent authority for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of this data (Directive (EU) 2016/680), of 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 person responsible for the treatment has the obligation to make effective the right of rectification or cancellation of the interested party within ten days.

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 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.

(...) 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 regard, it is certified that on 06/03/2019 a letter was entered in the Register of the Office of Social and Family Affairs of (...) 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 area, which was entered in the register of the DGP on 07/06/2019, as stated by the DGP in its letter presented during the procedure of audience

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 the duly accredited notification attempt (art. 40.4 LPAC).

Having seen the allegations and documentation presented by the DGP during the hearing procedure, it should be noted that on the date the DGP notified the request

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of amendment to the interested party in order to provide the documents linked to his cancellation request (31/07/2019) the maximum deadline for the resolution and notification of the sole request. What's more, in the hypothetical case in which this deadline had been suspended due to this amendment request, even discounting the deadline of suspension the resolution issued by the DGP would have been equally extemporaneous. All this, without prejudice to the fact that in accordance with article 39 of the LPAC, the effectiveness of the resolution of the DGP is subject to its notification, which at the moment is not accredited.

Consequently, it is necessary to estimate the claim regarding the lack of response to the request to exercise the right of cancellation, since the DGP has not resolved and notified in form and time the said request presented by the person affected.

On the other hand, with regard to the merits of the claim, it is not considered necessary to make further considerations in this regard, given that the resolution of the DGP infers that the person claimant did not provide the certified documentation, linked to the police proceedings that were the subject of his cancellation request, which was required of him. In this regard, it should be noted that the non-presentation of said documentation meant that the DGP did not could verify whether the requirements to estimate the request were indeed met or not, and in this sense we must refer to article 28.5 of the LPAC which provides that *"when the relevance of the document in the procedure requires it or if there are doubts about the quality of the copy, the administrations can request a reasoned comparison of the copies provided by the interested party, for which they can require that the original document or documentation be displayed"*. In this regard, add that due to the judicial nature of the required documentation it has not been drawn up by an Administration nor was it in the possession of the Administration, and therefore the DGP could only have access to it if the interested party provided it. For this reason, the DGP required such documentation from the applicant, in accordance with what is established in article 68 of the LPAC, which provides that if the interested party does not repair the lack or attach the documentation required in the period granted for the purpose, it is considered that he gives up his request, with the previous resolution that must be issued in the terms provided for in article 21 of the LPAC. Consequently, it is considered that the withdrawal resolution issued by the DGP is in accordance with the law.

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. In the present case, the estimate obeys the fact that the DGP did not attend to the right of cancellation within the period provided for the purpose, but it did issue an extemporaneous resolution, once the present case had begun procedure, although the effectiveness of said resolution is delayed until its notification. This is why it is necessary to request the DGP to certify the notification of the resolution or its availability at the electronic headquarters of the Administration. On the other hand, as announced in the previous legal basis, it is not appropriate to require the DGP in terms of substance, because the declaration of withdrawal is considered to have been resolved based on article 68 of the LPAC. All this without prejudice to pointing out that the person making the claim here can exercise again at any time their right to cancel their personal data from the SIP PF file, always

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and when you provide the original or an authenticated copy of the referenced documentation, so that the DGP can verify its authenticity.

For all that has been exposed,

RESOLVED

First.- Declare extemporaneous the decision of the DGP to cancel the personal data contained in the SIP PF file, for not having responded within the period established in the regulations applicable to the request for cancellation of data from Mr. (...), and reject the substance of said claim for the reasons explained in the 4th ground.

Second.- Request the DGP so that within 10 counting days from the day after the notification of this resolution, give an account to the Authority of the notification of the resolution issued by the DGP to the person interested

Third.- Notify this resolution to the DGP 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 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,