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RESOLUTION of the rights protection procedure no. PT 29/2019, urged by Mr. (...) against the General Directorate of the Police

Background

1.- On 06/25/2019, 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 the Police (hereinafter, DGP). Specifically, the claimant requested that his personal data be deleted from the Generalitat Police Information System (SIP PF) file, relating to the following police proceedings:

- Police proceedings no.(...), which gave rise to the disciplinary file no.(...).
- Police proceedings no.(...), which resulted from the urgent proceedings-rapid trial no. (...), which resulted in executive order no. (...) of the Criminal Court no. 2 of Tarragona.
- Police proceedings no. (...), which resulted in the misdemeanor trial no. (...), instituted by the Court of Inquiry no. 20 of Barcelona.
- Police proceedings no.(...), which resulted in execution no.(...) of the Criminal Court no.1 of Tarragona.
- Police proceedings no.(...), which gave rise to the disciplinary file no(....).
- Police proceedings no.(...), of USC Valls.

The claimant was specifically complaining about the DGP's lack of response to his request for cancellation, which he had made through a letter submitted on 04/29/2019 to the Registry of the Territorial Delegation of the Government of the Generalitat in Tarragona, and of which he 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 06/26/2019, 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 07/22/2019, in which it set out, in summary, the following:

ÿ That *"On 04/29/2019, the aforementioned person registered a request for the cancellation of personal data recorded in the files of the SIP area at the Territorial Delegation of the Government of the Generalitat in Tarragona"*

ÿ That *"On 03/05/2019 this request was received by the General Directorate of the Police"*

- That *"On 06/17/2011, the General Directorate of the Police issued a request to the interested person to provide documentation."*

- That *"On 06/20/2019, the request referred to in point previous that was notified on 06/27/2019."*

ÿ That *"On 07/03/2019, a letter was entered in the register of the Territorial Delegation of the Government of the Generalitat in Tarragona, by which documentation was provided. The letter was received by the DGP on 07/08/2019."*

ÿ That *"On 07/10/2019, the General Directorate of the Police resolved the request for cancellation presented by the person concerned"*

- That *"The sending of the notification of the resolution was identified to the postal company with the sending number (...). According to the website of this company, the notification was delivered on 07/17/2019"*

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 06/20/2019; copy of the proof of receipt of the amendment request dated 27/06/2018, copy of the resolution of the Director General of the Police, dated 10/07/2019, by which the deletion request made is estimated by the person here claiming, with the exception of the data related to police proceedings no. (...) and a copy of the notification of the decision to delete personal data, dated 07/11/2019

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 the person making the claim here formulated the request to exercise his right of cancellation, to the personal data that were the subject of treatment by the DGP and to which the sole referred cancellation request, Directive (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 of the competent authorities 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), in accordance with 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. (...)"

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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. The interested persons who are denied, in part or in full, the exercise of the 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 Data."

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 04/29/2019 a letter was entered in the Registry of the Territorial Delegation of the Government of the Generalitat in Tarragona 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 DGP's register on 05/03/2019, as the DGP has stated in its brief presented during the hearing procedure.

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).

Well, according to the proceedings, the DGP issued a resolution on 07/10/2019, which was not notified to the person here claiming until 07/17//2019, in accordance with what he has certified the DGP during the hearing procedure, so that the term established by regulation for the purpose was exceeded by far. 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 passed.

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

Regarding the substance, as seen in the antecedents, given that the DGP has agreed in the operative part of its resolution to consider the request to cancel the personal data

presented by the person here claiming, with the specific exception of police proceedings no. (...) - rejection to which we will refer in the following section -, it is not considered necessary to make further considerations regarding the personal data of the claimant here linked to the police proceedings on which the request for cancellation, without prejudice to the fact that in the event that the person making the claim considers that their right to cancel has not been fully exercised with respect to personal data recorded in the files of the SIP PF area, they may bring it to the attention of this Authority.

5.- Finally, it is appropriate to refer to the rejection of the cancellation of the personal data of the claimant here relating to police proceedings no. (...).

As indicated in the previous section, from the wording of the dispositive part of the resolution of the DGP dated 07/10/2019, it follows that the DGP rejects the cancellation of the data related to the proceedings police officers no. (...), since this number of police proceedings is not included in the 1st legal antecedent of said resolution, to which the dispositive part of the resolution is referred when it decides to estimate the cancellation of personal data there indicated. The reason for the non-cancellation is mentioned in the legal antecedent 8th of the resolution issued by the DGP in which it is indicated that *"The interested person requested to cancel the personal data related to the police proceedings no.(...). However, he did not provide the required supporting documentation."*

Thus, the DGP comes to justify the denial of the cancellation of the personal data related to the number of police proceedings no.(...), with the lack of presentation by the interested person of the supporting documentation that should have accompanied the cancellation request submitted. In this regard, it should be noted that article 32.1 of the RLOPD establishes that *"in the cancellation request, the interested party must indicate which data he is referring to, and must provide for this purpose the documentation that justifies it, if applicable"*. Likewise, the cancellation request form that the DGP makes available to people interested in requesting the cancellation of police records, foresees several boxes relating to documents to be provided by the applicant for substantiate your claim in relation to the different cases provided for in article 18 of Instruction 12/2010, of September 28, of the General Directorate of the Police, which establishes the procedure for exercising the rights of 'access, rectification and cancellation of personal data, which is mentioned in the 5th legal basis of the resolution of the DGP.

In the present case, according to the allegations of the DGP and the documentation provided in the hearing procedure, the request to cancel the data of the claimant here, despite the indications on the request form, was incomplete because there was a lack of judicial documentation relating to some of the police investigations that were the subject of the cancellation request. In this respect, the DGP on 06/17/2019 made a request for amendment and improvement of the application to the interested party to provide the documents linked to his application, based on what is foreseen in article 68 of the LPAC. In said request, the interested person was warned that he had a period of 15 days in order to correct the defect or to accompany the mandatory documents required, and that if this period had passed without the corresponding amendment having been made, the '

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instructor would consider the interested party to give up his request. Well, from the resolution of the DGP it is inferred that the interested person did not provide the documentation linked to all the police proceedings indicated in your cancellation request, and specifically to the one relating to police proceedings no. (...), a fact that would certainly support the non-cancellation of the data relating to the controversial proceedings recorded in the SIP PF files of the DGP. However, it is necessary to warn the DGP that in the indicated amendment request the necessary documentation related to different numbers of police proceedings was identified, but the express reference to the contribution of the documentation related to the police proceedings was omitted no. (...), an omission that would have led to the interested person not providing the judicial documentation linked to the referenced police proceedings, and consequently the DGP could not assess with certainty whether the cancellation of the SIP PF files was appropriate. In this regard, the DGP should be required to amend this fault, in the sense that it requires the interested person to provide the court documentation relating to police proceedings no. (...), and thus be able to assess whether or not the cancellation of the aforementioned police proceedings is appropriate.

This is how things are, and from the perspective of the right of cancellation regulated in the LOPD and the RLOPD, the pronouncement of this Authority regarding the claim of cancellation of personal data relating to police proceedings no. (...) must be an estimate, because the DGP based the rejection on the lack of presentation of the mandatory documents to estimate the cancellation of the data, without having previously required the amendment of the request in relation to the referenced proceedings police, as established in article 68 of the LPAC.

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 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 in relation to one of the police proceedings (no.(...)) requested by the claimant. That is why, for the reasons set out in the 5th legal basis, it is appropriate to request the DGP in order to require the interested person for the judicial documentation relating to police proceedings no. (...), and thus be able to assess whether or not the cancellation of the aforementioned police proceedings is appropriate.

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 sir (...); and consider the merits of said claim for the reasons explained in the 5th ground in relation to police proceedings number (...).

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Second.- Request the DGP so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of access exercised by the person making the claim, in the manner indicated in the basis of right 6th. Once the right of access has taken effect, within the same period of 10 days the claimed entity must give an account to the Authority.

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 the jurisdiction

administrative litigation.

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

The director,