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File identification

Resolution of the rights protection procedure no. PT 39/2019, petition against the Department of Education.

Background

1.- On 07/24/2019 the Catalan Data Protection Authority received a claim made by Mr (...) (hereafter, claimant) against the Department of Education, for refusal of the request to exercise the right of deletion, a right that is provided for in article 17 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons regarding the processing of personal data and the free movement thereof (hereinafter, RGPD).

The deletion request, dated 07/06/2019, referred to the claimant's data that appear in files of the Department of Education due to the fact that his minor daughter is enrolled in a public educational center in Catalonia Although he had previously requested the cancellation of his data before the Department of Education, and the refusal on the part of this had been confirmed by this Authority in the rights protection procedure no. PT 55/2017, the request that again made by the person claiming it was based on a pronouncement judicial date subsequent to the resolution of the rights protection procedure, specifically, Judgment no. (...)/2019 issued on date (...)/2019 by the Court of 1st instance and Instruction no. (...), in the judicial process of divorce no. (...)/2016, in which the mother of the minor common daughter was assigned the exclusive exercise of parental authority - the claimant being excluded - as well as her guardianship and custody.

The claimant provided a copy of the aforementioned judgment, as well as the response letter from the Department of Education, in which his request for deletion was denied.

In view of the content of the judgment provided, the claimant also requested that: "when the circumstances of PT 55/17 of this Authority change, they revoke that decision and order all the Departments of the Generalitat affected to make the appropriate revocations".

2.- In accordance with article 5.b) of Law 32/2010, of October 1, of the Authority, by means of an official letter dated 09/08/2019, the transfer of the claim to the data protection delegate of the Department of Education (hereinafter, DPD d'Educación), so that within 15 days he can make any allegations he deems relevant. In the transfer office, a statement was also requested regarding the possibility that the request made by the claimant could be included in the exercise of the right of opposition.

3.- The DPD for Education formulated allegations by means of a letter dated 09/13/2019, in which it stated the following:

"On July 8, 2019, the Territorial Services of the Department of Education in (...) Regions received a request for the deletion of personal data made by Mr. (...). Although his request for data deletion referred to the Judgment (...)/2019 of the Court of First Instance (...), this was not provided as a supporting document for his request. Considering the circumstances of your request and taking into account that the legal bases included in the Resolution of the rights protection procedure PT 55/2017 were applicable, both for the type of request made by Mr. (...) and due to the type of situation referred to, the Department chose to apply the same principles and dismiss his request.

On the other hand, and in accordance with Judgment no. (...)/2019, that Mr. (...) contributes to the request for protection of rights presented to the Catalan Data Protection Authority (APDCAT), and to which we have now had access, and bearing in mind that certainly despite attributing shared parental authority, it attributes the exercise of this one exclusively to the mother, to whom it also attributes the custody and custody of the common daughter, without establishing in favor of the father any regime of communication or relationship with the daughter (...) the Department states that it would have no objection in loving a request to object to the processing of your contact data, if Mr. (...) so states or if the APDCAT so resolves it and requires it from the Department of Education."

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.- Article 17 RGPD, relating to the right of deletion, determines the following:

"1. The interested party has the right to obtain from the data controller, without undue delay, the deletion of the personal data affecting him. The person in charge must delete them without undue delay, when any of the following circumstances occur: a) The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise treated. b) The interested party withdraws the consent on which the treatment is based, in accordance with article 6, paragraph 1, letter a), or with article 9, paragraph 2, letter a), and this is not based on another legal basis. c) The interested party objects to the treatment, in accordance with article 21, paragraph 1, and there are no other legitimate reasons for the treatment or the interested party objects to the treatment, in accordance with the article 21, section 2. d) The personal data have been treated unlawfully. e) The personal data must be deleted, to fulfill a legal obligation established in the law of the Union or of the member states to which the data controller is subject. f) The personal data have been obtained in relation to the offer of information society services mentioned in article 8, paragraph 1.

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2. If the data controller has made public the personal data and, in virtue of what is provided in paragraph 1, is obliged to delete this data, taking into account the available technology and the cost of applying it, the controller must take reasonable measures, including technical measures, to inform those responsible who are processing this data from the data subject's request to delete any link to this personal data, or any existing copy or replica.

3. Sections 1 and 2 do not apply when the treatment is necessary: a) To exercise the right to freedom of expression and information. b) To fulfill a legal obligation that requires the processing of data imposed by the law of the Union or of the member states to which the data controller is subject, or to fulfill a mission carried out in the public interest or in the exercise of conferred public powers to the responsible c) For reasons of public interest in the field of public health, in accordance with article 9, section 2, letters h) ii), and section 3. d) For archival purposes in the public interest, purposes for scientific or historical research or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right mentioned in paragraph 1 may make impossible or seriously hinder the achievement of the objectives of this treatment, or) To formulate, exercise or defend claims."

Article 16 of Law 32/2010, regarding the protection of the rights provided for in 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.

Article 57.1 f) RGDPD establishes that it corresponds to each control authority, in its territory: "Treat the claims presented by an interested party or by a body, an organization or an association (...)".

3.- With regard to the merits of the claim, it is necessary to analyze whether the answer given by the Department of Education conformed to article 17 RGDPD which has been transcribed in the previous legal framework.

The Department of Education denied the deletion request presented by the person here claiming based on the legal criteria of this Authority set out in the resolution dated 02/16/2018 issued in the rights protection procedure no.

PT 55/2017. By means of that resolution, the Authority dismissed as to the merits the claim that the same person claiming here presented on 02/03/2018 against the Department of Education for neglecting the request to cancel their personal data. In its fourth legal basis, the following is noted:

"(...) article 236-6 of Law 25/2010, of July 29, of Book Two of the Civil Code of Catalonia (hereinafter, CCCat) when it regulates the deprivation of

parental authority provides that the deprivation of this "must be decreed in a civil or criminal process and is effective from the moment the sentence becomes final, without prejudice to the fact that it may be agreed as a precaution to suspend its exercise" (paragraph 3) , an extreme that the claimant has not proven. What's more, even for the case in which the deprivation of parental authority had been judicially agreed upon, section 6 of the same precept determines that such deprivation "does not exempt the parents from fulfilling the obligation to do everything necessary to assist the children or to provide them with food in the broadest sense". Therefore, even after the deprivation of parental authority has been decreed by final judgment, the obligation to provide assistance and food to his daughter persists.

Consequently, while the daughter of the claimant here remains in school, the School cannot cancel the data of the claimant here, and this in accordance with the provisions of article 4.5 of the LOPD, according to which the personal data cannot be canceled as long as they are no longer necessary or relevant for the purpose for which they were collected or registered. Therefore, the School must keep those personal data of the claimant that are necessary to guarantee the exercise of parental authority by the parents, such as contact data. And in the event that the claimant here is deprived of his parental authority by a final judgment, in accordance with the article 236-6 CCCat previously transcribed, the School could continue to process the data of the claimant here resulting necessary to achieve the fulfillment of the obligations of assistance and maintenance of his daughter."

It is worth saying that in the present case the applicable regulation is the RGPD, and not the LOPD in the which the transcribed resolution refers to, but the legal basis contained there is in essence equally applicable.

It is necessary to start from the fact - not altered by sentence no. (...)/2019 provided by the claimant to motivate his latest request - that the data of the claimant appearing in the files of the Department of Education, obey the fact that his minor daughter -regarding the person who maintains the ownership of parental authority is attending school in a public educational center in Catalonia, which is owned by the Department of Education.

Certainly, sentence no. (...)/2019 attributes to the mother the exclusive exercise of parental authority over her minor daughter, in accordance with the provisions of article 236-10 of the CCCat. So that the claimant here remains excluded, and this failure to exercise parental authority leads to a significant decrease in father-daughter relations, and, as far as is now concerned, also a decrease in the father's participation in matters related to his daughter's schooling. And this inevitably produces effects on the processing of the personal data of the claimant here that can be carried out by the educational center, and in general by the Department of Education, as will be explained later.

However, despite what has been said, the fact that the judgment maintains the ownership of parental authority to both parents - mother and father - is decisive, so that the father - here claimant - continues to maintain certain parental responsibilities towards the daughter in power

In this regard, it is necessary to reiterate the mandate provided for in article 236-6 CCcat, which refers to the parents' duty to "do everything necessary to support the children", and the obligation to "provide them with food in the broadest sense". The precept specifies that these obligations persist even in the event that the parent has been deprived of parental authority. So that in the case of the claimant - only deprived of his exercise - it would be fully applicable. Regarding the concept of food - of family origin - to which the aforementioned precept refers, article 237-1 CCcat states that: "alimony means everything that is indispensable for the maintenance, housing, clothing and medical assistance of the person fed, and also the expenses for training if this is minor and for the continuation of training, once they have reached the age of majority, and has not finished it earlier for a reason that is not attributable to them, as long as they maintain a regular performance. Likewise, food includes funeral expenses, if they are not covered in another way". On the other hand, article 37.2 of Law 14/2010, of May 27, on the rights and opportunities in childhood and adolescence, establishes that: "fathers and mothers and the people who have the guardianship or guardianship of children and adolescents must ensure, within their possibilities, the living conditions necessary for the integral development of children and adolescents".

The fulfillment of some of the obligations derived from parental authority are related to educational purposes specific to the functions attributed to the Department of Education, a reason that legitimizes the processing by the Department of the data of the parents (or guardians or guardians), in this case of the person making the claim, to attend if the case reaches the minor requiring intervention, which justifies the denial of its deletion. Consequently, the Department of Education must keep the claimant's data that are necessary for the fulfillment of its obligations towards the minor in school.

In accordance with the above, with regard to the request for deletion presented by the claimant here, the assumption provided for in article 17.3.b) RGPD is applicable, which provides that the data will not be deleted of the person concerned when the treatment is necessary: "to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge". Consequently, the present claim must be dismissed, and the legal adequacy of the response made by the Department of Education denying the deletion request must be confirmed.

4.- Without prejudice to what was stated in the previous legal basis, in view of the statements made by the person claiming before the Authority within the framework of the present guardianship procedure, in which it was made clear that his last wish is to limit the contacts that the Department may have with his person, because of his daughter, it is considered appropriate to make a pronouncement on whether it would be appropriate to consider the claimant's request within the framework of the exercise of the right of opposition provided for in article 21 RGPD, which precept determines the following:

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"1. For reasons related to his particular situation, the interested party has the right to object to the personal data affecting him being the subject of treatment based on the provisions of article 6, section 1, letters e) of) , including profiling in accordance with these provisions. The person in charge of the treatment must stop processing these personal data, unless he proves compelling legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation, exercise or defense of claims (...)"

With respect to this issue, in the hearing phase the Department of Education has stated that: "it would have no objection to considering a request for opposition to the processing of your contact data, if Mr. (...) so states or if the APDCAT decides so and requires it from the Department of Education".

Regarding compliance with the requirements indicated in Article 21 RGPD, the following should be stated:

- With regard to the legal basis that legitimizes the processing of the claimant's data carried out by the Department of Education: this is the one provided for in article 6.1.f) RGPD, given that it would process the data that is necessary for the 'exercise of the conferred public power.
- With regard to the reasons related to the particular situation of the claimant that would substantiate an opposition request: certainly the sentence no. (...)/2019, of June 18, involves a unique relevant situation in attributing the exclusive exercise of parental authority to the mother, and consequently resulting excluding the claimant, although shared ownership of parental authority (mother and father) is confirmed. Specifically, with regard to the custody and custody of the minor daughter common to the parties, this is attributed exclusively to the mother for economic, geographical and personal reasons, without establishing a visitation regime in favor of the father -here claiming- for the reasons mentioned; the judgment provides that, as a result of this attribution, no relationship and communication regime is established between the father and the daughter, nor any regime for the daughter to stay with the father during festive periods, holidays or in specified dates; that it will be the mother who will take care of all the daily activities of the daughter; that the mother will not need the father's authorization in the event that she wishes to change the educational center in which her daughter is enrolled; and that she will also not have to inform and consult the father or require his authorization on matters relating to the minor that involve a change.

In line with the limits to the parental authority of the claimant that have just been set out, it would be necessary to review the processing of the claimant's data carried out by the Department of Education, in order to determine which of those treatments exceed the parental responsibilities of the person claiming that they derive from the new regime of exercise of parental authority and the new regime of

custody and custody established.

To this end, the Department of Education - including the educational center where the minor is enrolled - must adopt the necessary technical and organizational measures to limit the processing of the claimant's data carried out for these purposes, especially that corresponding to the claimant's request to prevent the Department of Education (including the aforementioned school) from contacting him about his minor daughter. With regard to the assessment of the treatments that should be limited, it should be taken into account that article 236-18 CCcat establishes in section 1 that: "the exercise of parental authority over children entails the legal representation of these ", and that sentence no. (...)/2019 attributes to the mother of the minor the exclusive use of parental authority.

Conversely, it will not proceed to limit those treatments that are necessary to fulfill the obligations indicated in the 3rd legal basis, and that must be interpreted in accordance with sentence no. (...)/2019, and taking into account that the interest of the minor prevails over any other legitimate interest that may arise (art. 2 LO 1/1996).

5.- Finally, it is appropriate to refer to the part of the letter of claim where the claimant requested the Authority to revoke the resolution issued by this institution on 02/16/2018 in rights protection procedure no. PT 55/2017 - request based on judgment no. (...)/2019, dated (...)/2019-, and the communication of the revocation of the resolution to the other Departments of the Generalitat.

In this regard, it should be noted that the requested revocation does not proceed, since, based on the fact that the sentence is dated after the Authority's resolution, the changes introduced by the sentence - in essence, the attribution to the exclusive mother of the exercise of parental authority - do not alter the decision contained in that resolution of the Authority, in which the rejection of the claim was based on the consideration that the claimant's personal data that appeared in the files of the Department of Education were necessary for the fulfillment of the obligations he has towards his daughter under guardianship - to which the Department must assist - due to the fact that he has been assigned the ownership of parental authority, an attribution that the sentence does not have altered. Therefore, article 4.5 of Organic Law 15/1999, of December 13, on the protection of personal data is considered applicable (LOPD) -in force at the time of the events-, which provides, on the contrary, that the cancellation of those data that are necessary for the fulfillment of the purpose for which they have been collected or recorded does not proceed. And as pointed out in the third legal basis of this resolution, it is a legal criterion that this Authority, in essence, maintains, and which justifies that in this respect the claim is once again dismissed. Consequently, the claimant's request for revocation must be dismissed, in accordance with the provisions of article 109 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), and consequently the request to communicate the revocation to the other Departments of the Generalitat must also be dismissed.

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resolution

Therefore, I resolve:

First.- Dismiss the guardianship claim made by Mr. (...) against the Department of Education.

Second.- Dismiss both the request to revoke the resolution dated 02/16/2018 issued by the Authority in the rights protection procedure no. PT 55/2017, as its communication to the Departments of the Generalitat, for the reasons indicated in the fifth legal foundation.

Third.- Consider that the request made by the person making the claim is susceptible to be included in the right of opposition, and consequently the Department of Education is required so that, within 10 days, counting from the day after the notification of this resolution, it takes effect the claimant's right of opposition, in the form and scope indicated in the fourth legal basis, in relation to the third legal basis. Once the right of opposition has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

Fourth.- Notify this resolution to the Department of Education and the person making the claim.

Fifth.- 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 to directly file an administrative contentious appeal before the administrative contentious courts of (...), 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 contentious jurisdiction administrative

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

The director,