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RESOLUTION of the rights protection procedure no. PT 48/(...), relating to the Open University of Catalonia

Background

1.- On 03/10/(...) the Catalan Data Protection Authority received a letter from Mr. (...), for which he formulated a claim for the alleged neglect of the right of deletion and the right of access, which he had previously exercised before the Open University of Catalonia (hereinafter, UOC). Specifically, the claimant stated that he had requested the UOC to delete his personal data, including bank data, as well as information relating to the people who had accessed his file, and he complained that *"it's been more than a month without an answer."*

The person making the claim provided as documentation relating to his claim on the exercise of the right of deletion and the right of access, the screen printout of the exchange of three emails between the person making the claim and the UOC, the content of which is the following:

- E-mail sent by the person here claiming on date (...) to the UOC, through which he requests that *"TODOS and cada uno de mis datos that they put in their database" be deleted. This includes any email that has my number or information that I have exchanged with various departments. I don't want them to be in possession of my account number either.* Likewise, the person making the claim adds that they want to access information related to *"if the jobs we deliver in the subjects, where are they kept and if they are subject to some type of protection?" then they enter the number and more data and their colleagues access (...)"*
- Email reply from the UOC here claiming on date (...), through which it is informed that *"as established by the privacy policy of the UOC, you can request the exercise of your rights presented in a written to the postal address of the head or by sending an electronic message to fuoc.pd@uoc.edu and attaching a photocopy of the DNI or any other similar legal document, as indicated by law."*
- Email from here claiming on date (...) to the UOC, through which he requests that *"they provide me with a record of all the people who have accessed my file" and "confirm that they have canceled mi móvil y mi cuenta de su database "*.

2.- On 22/10/(...), the Authority forwarded the claim to the data protection delegate of the claimed entity, in order for him to respond to the claim within the deadline one month, and to communicate this response to the Authority, in accordance with the provision established in article 37.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (in forward, LOPDGDD).

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3.- The UOC made allegations by means of a letter dated 22/11/(...), in which it set out, in summary, the following:

- That "On date (...) he was notified - with reference to the now claimant - of the agreement to initiate his disciplinary file for plagiarism in which it was agreed to adopt precautionary measures, consisting of the "Loss of the right to be assessed by the TFM". Faced with these facts, the interested party submitted allegations and the corresponding Proposals for Resolution and the Resolution were drawn up and notified. Mr. (...)he did not file an appeal".
- That "on 03/02/(...) the disciplinary file became final and thus communicate on 08/02/(...).".
- That "the email dated (...) that is also provided in the letter is after other communications that were maintained and to which a response was given".
- That in relation to the e-mails exchanged, it is stated that the person here claiming "on date (...) sent to the mailbox dpd@uoc.edu and to fuocpd@uoc.edu the following request:

(...)

1- Delete any email that has my number or information that I have exchanged with various departments.

2- I don't want to be in possession of my account number either (..) --DERECHO CANCELLATION

3- In the same way I want to confirm if the works that we deliver in the subjects, where are they kept and if they are subject to some type of protection?

Then enter our number and more data and your colleagues/ teachers access (

emails) - RIGHT OF ACCESS.

(..)

PS I also REQUEST THAT THEY DELETE MY DNI and confirm it ONCE they have READ this (attached DNI)"

- That "On 11/07/(...) he was confirmed to have received the requests (...) and he (...) received answers to the specific questions he requested:

Appreciated (...)

We notify you that we have proceeded to initiate the cancellation of your personal data. We will let you know when it is effective. (...)

In relation to your question about the protection of your works, we inform you that, according to the Order of October 18, 1999, by which the different documentary evaluation tables are approved, these are subject to total destruction when the exam qualification is signed.

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Finally, we inform you that your ID cannot be deleted, since, once the identity of the interested party has been verified, this information is kept properly blocked until the legally established prescription periods have passed.

- That "on date (...) the interested party sent an email (email attached in the claim)".
- That "on 12/08/(...) he was informed from the fuoc_pd@uoc.edu mailbox that his case was being analyzed in order to be able to give him an answer. (...) Finally, together with the Trustee, it is agreed to send him the following response on (...) of (...) from the [mailbox fioc_pd@uoc.edu](mailto:fioc_pd@uoc.edu):

*Appreciated (...)
(...)*

In addition, in relation to academic documentation, we inform you that the UOC is also governed by the document evaluation tables, approved by Order of October 18, 1999.

Likewise, we inform you that the data of an academic and economic nature are kept blocked until the legal obligations derived from the service provided are prescribed.

Finally, inform him that questions related to the academic field should be addressed to Academic Services. Given that the cancellation of your data was effective, if you wish to do so, you must contact us through the contact form that you will find on the UOC website"

- That " on (...) of (...) the interested party requested that each point he had initially requested be answered because the information we had provided him was misleading. (...). The answer is received, (...) from (...) from the mailbox fuoc_pd@uoc.edu is the following:

Appreciated (...)

As previously communicated, in relation to your request to exercise the right to cancel your personal data, we inform you that, as we indicated, the cancellation was effective. However, we inform you that the data of an academic and economic nature are kept blocked until the legal obligations arising from the service provided are prescribed.

Likewise, to remind you that your ID cannot be deleted, since, once the identity of the interested party has been verified, this information is kept properly blocked until the legally established prescription periods have passed.

- That *"Ultimately, the request was processed within a reasonable time, with the majority speed possible and not exceeding the response month"*

4.- On 11/03/(...), this Authority considered it necessary to request more information from the UOC, and in this sense an office was addressed in which information was required in order to justify the specific reasons, based on article 32 LOPDGDD, for which it had not been destroyed and the data relating to the claimant's ID had been blocked. Also, to report, for the specific case of the works delivered by the person claiming, and in accordance with the Order of October 18, 1999, what was the scheduled date in order to be able to proceed with their destruction.

5.- The UOC, on 12/03/2020, responded to the request for information in the following terms:

- That *"the Order of July 3, 2001 approving the Evaluation Table Document 412 (attached as Annex 1) regulates that students' academic records must be kept permanently. This file is made up of the student's personal and admission documents to the faculty or school, the documents generated during the student's stay and the degree issuance documents (if applicable). The person making the claim was a student at the UNIVERSITAT OBERTA DE CATALONIA, which is why the data relating to the DNI are kept blocked in our files."*
- That *"The Order of October 18, 1999 approving the Evaluation Table Document 302 (attached as Annex 2) regulates that the exams and the students' work must be destroyed when the exam's grading report is final. However, in the present case, on (...) of 2018, a disciplinary case was initiated against Mr. (...) having found that he was the author of the serious offense consisting of "copying, plagiarism or the attempt to obtain a better academic result using any illegal means" in the completion of a work of a subject. For this reason, the work in which plagiarism was found was attached to the notification of the initiation agreement and preserved as evidence of this conduct, until the termination of disciplinary responsibility, on June of (...), in accordance with the Regulations on Rights and Duties of the Open University of Catalonia."*

For all this, to this day the only data that is kept of the interested party are those corresponding to the academic record as regulated by the Evaluation Board Documentary 412".

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 made in respect of a request submitted by the person making the claim to the entity claimed on date (...), relating to the exercise of the right to delete their data. The person making the claim, in said application, also made a request for information relating to the work delivered during the course taken (*where are they kept and if they are subject to some kind of protection?*), which he conveyed as a right of access, and in relation to which, in the section where the substance of the request is analyzed, the corresponding considerations will be made.

In this regard, it should be noted that articles 15 and 17 of Regulation (EU) 2016/679 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 and the free circulation of these (hereinafter, the RGPD), regulate the right of access and the right of deletion, respectively.

Article 15 of the RGPD, relating to the right of access of the interested party, determines the following:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;*
- b) the categories of personal data in question;*
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;*
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;*
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;*
- f) the right to present a claim before a control authority;*
- g) when the personal data has not been obtained from the interested party, any available information about its origin;*
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.*

2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party submits the request by electronic means, and unless he requests that

otherwise facilitated, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others.”

Regarding the right to deletion, article 17 of the RGPD establishes the following:

"1. The interested party will have the right to obtain without undue delay from the controller the deletion of the personal data concerning him, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:

- a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
- b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 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, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party in accordance with article 21, section 2;*
- d) personal data have been treated unlawfully;*
- e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;*
- f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.*

2. When he has made personal data public and is obliged, by virtue of the provisions in section 1, to delete said data, the controller, taking into account the technology available and the cost of its application, will adopt reasonable measures, including technical measures, with a view to informing those responsible who are processing personal data of the interested party's request to delete any link to these personal data, or any copy or replica thereof.

3. Sections 1 and 2 will not apply when the treatment is necessary:

- a) to exercise the right to freedom of expression and information;*
- b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;*
- c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;*

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d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or

e) for the formulation, exercise or defense of claims.”

Also, regarding the rights contemplated in articles 15 to 22 of the RGPD, article 12.4 of the RGPD establishes the following:

“4. If the data controller does not proceed with the request, it will inform you without delay, no later than one month after receiving the request, of the reasons for its non-action and of the possibility of filing a complaint with a control authority and to take legal action”

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, regarding the protection of the rights provided for by the regulations on personal data protection, 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.”

3.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the UOC has resolved and notified, within the period provided for by the applicable regulations, the response to the request made on (...), since precisely the reason for complaint of the person who initiated the present legal guardianship procedure was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on date (...) the person making the claim sent an email addressed to the UOC, through which he exercised his right to delete *“TODO y cada uno de mis datos quean sus bases de datos.”*, and made specific mention of the deletion of any *“email containing my number or information that I have exchanged with various departments”* and *“my account number”*.

Likewise, in the e-mail, the person making the claim also requested information regarding the place where the academic papers submitted during the course taken are kept and about any protective measures adopted: *where are they kept and if they are subject to any type of protection?* The claimant related this request to the exercise of the right of access, but, as will be explained in the following section of this resolution, it does not fit into any of the items provided for in article 15 of RGPD that configure said right of access.

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In any case, in accordance with article 12.3 of the RGD, the UOC had to resolve and notify the request to exercise the requested rights within a maximum period of one month from the date of receipt of the request. It is worth saying that this term can be extended by another 2 months (3 in total), taking into account the complexity or number of requests.

Well, as the claimant himself attests with the contribution of the documentation, it is clear that, in effect, the UOC on 25/03/(...), gave an answer to the request submitted on (...) by the person claiming. In said e-mail, the UOC indicated the e-mail address of the contact box that the entity is authorized to attend to requests in this matter, at the same time that the person concerned was required to amend his request with the contribution of *"a photocopy of the DNI or any other similar legal document, as indicated by law"*. In relation to this, it should be noted that article 25 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of Organic Law 15/1999, of December 13, on the protection of personal data (henceforth, RLOPD) - in force in everything that does not contradict the current LOPDGDD establishes that for the exercise of the rights of access, rectification, cancellation and opposition, the interested person will have to carry out the file through a communication addressed to the person in charge of

"a) Name and surname of the interested party, photocopy of his national identity document, or his passport or other valid document that identifies him and, where appropriate, of the person representing him, or equivalent electronic instruments; as well as the document or electronic instrument certifying such representation. The use of an electronic signature identifying the affected person will exempt from the presentation of photocopies of the DNI or equivalent document.

b) (...)"

So things are, since the request to exercise the right to delete the personal data of the complainant here did not meet the requirements established by the applicable specific legislation, the UOC could not proceed until the interested party should repair the fault and attach the photocopy of the ID. And, in this sense, the UOC informed the person making the claim, 5 days after the submission of their request.

From the documentation provided by the claimed entity, it is proven that it is not until the day (...) that the claimant sends a new email to the contact mailbox indicated by the UOC, in which he again requests the 'exercise of deletion of your personal data, information on the conservation of the works delivered, and on this occasion, also attach a file with the copy of your ID.

The UOC, on 11/07/(...), acknowledges receipt of said e-mail, and through an e-mail dated (...) it responds to the now claimant, informing him that *" we have proceeded to initiate the cancellation of your personal data."* In the e-mail message, the UOC also informs of the consequent blocking of the data in the sense that *"your ID cannot be deleted, since, once the identity of the interested party has been verified, this information is properly kept blocked until the deadlines have passed of legally established prescription."*

Therefore, for all the above, it is proven that, once the person amended his request, the UOC granted him the right to deletion before the expiration of the one-month period, and therefore gave an answer in the period provided for the purpose.

On the other hand, with regard to the claimant's request for information about his submitted academic works, it must be said that although the claimant conveys this request to a right of access, what is ascertained from the exchange of e-mails between the claimant and the UOC, that is, the claimant here wants to access certain information: "*Where are they stored and if they are subject to some type of protection?*", questions that do not match or can be subsumed within of any of the concepts that make up the right of access provided for in article 15 of the RGPD. Here, just note that the UOC also responds to these questions, through the email dated (...)

Consequently, the allegation regarding the lack of response to the request to exercise the right of deletion within the deadline is dismissed, since the UOC resolved and notified said request in the form and deadline presented the affected person.

4.- Once the above has been established, it is appropriate to analyze the merits of the claim, that is to say, whether the response given by the UOC to the claimant's request was in accordance with the precepts transcribed in the legal basis 2 where

As a starting point, it must be taken into account, as already justified in the previous legal basis, that the two requests made by email on (...) and on (...) to the UOC, contrary to what the claimant here states, they can only succeed as requests to exercise the deletion of their personal data, not to exercise the right of access.

Another thing is the request that the person making the claim here makes through a later email, dated (...), in which he requested that "*they provide me with a record of all the people who have accessed my file*". In this case, this information is circumscribed within the content of the information that, by virtue of the right of access, regulated in article 15 of the RGPD, must be provided to the owner of the personal data. However, there is the circumstance that when the claimant requests the exercise of his right of access, the information cannot be provided to him, given that the UOC had previously resolved, and informed by email dated (...), that "*we have proceeded to initiate the cancellation of your personal data*", as requested by the person here claiming on date (...).

Regarding the exercise of the right of deletion, it should be noted that in the aforementioned email from the UOC, dated (...), the person making the claim is informed about the initiation of the deletion of their personal data and the blocking of personal information, such as your ID. It should be noted, at this point, that, as provided by the data protection regulations themselves, deletion, when relevant, does not necessarily equate to the erasure or destruction of personal information, but to its blocking.

Specifically, article 32 of the LOPDGDD, establishes that:

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"Article 32. Data blocking

- 1. The person in charge of the treatment is obliged to block the data when carrying out the rectification or deletion.*
- 2. The blocking of data consists of the identification and reservation of these, with the adoption of technical and organizational measures, to prevent their treatment, including display, except for making the data available to judges and courts, the Public Prosecutor's Office or the competent public administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the limitation period thereof.*

After this period, the data must be destroyed.

- 3. Blocked data cannot be processed for any purpose other than that note the previous section.
(...)"*

So, although the limitations to the right of deletion must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed, it is also necessary to take into account the obligations to preserve the data , duly blocked, for a certain period of time that may be established by the applicable provisions, in such a way that, once these terms have been met, which may vary depending on the information processed and the responsibilities that may be generated, it is when the personal data they must be deleted.

In this respect, as reported by the UOC on this matter, the blocking of the data relating to the ID of the person claiming here and studying there, is based on the provisions of the corresponding document access and evaluation tables (TAAD). The TAAD determine for each documentary series, the retention period and the criteria for the application of the regulations that govern access to the documents.

With regard to the personal data relating to the DNI of the claimant here, it is necessary to emphasize the Order of July 3, 2001, issued by the Minister of Culture, approves the TAAD no. 412, which determines the *"permanent conservation"* of the academic records of university students. In this sense, in the detail of the said TAAD, it is specified that the documents that make up the academic file of a university student are the *"personal and admission documents of the student to the faculty, documents generated during the stay of the student and documents for the issuance of the degree"*. Certainly within the group of personal documents of the student or those necessary for the issuance of the degree, the students' ID must be found there. Consequently, it must be concluded that in the case of the personal data relating to the DNI of the claimant here, they cannot be deleted by the UOC, given that their *"permanent conservation"* is prescribed.

With regard to the works submitted, the UOC informs that, in accordance with the provisions of the Order of the Minister of Culture, of October 18, which approves, among others, the TADD number 302, regarding the exams and students' work, *"the total destruction will be when the exam qualification report is firm and the exam models will be kept"*. Once the established terms have ended, the data must be deleted, but until then the data must be kept, properly blocked, during the terms of

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prescription in which some type of liability derived from the treatment can be demanded. On this, the UOC argues that, due to the processing of a disciplinary file against the person here claiming as the author of a serious infringement, consisting in the plagiarism of a work, said work was kept as evidence of the infringement *"until the termination of the disciplinary responsibility, on June of (...), in accordance with the Regulations on Rights and Duties of the Open University of Catalonia"*. However, as of today, the referenced work has already been deleted and they only retain the personal data of the claimant corresponding to their academic record, as regulated by TAAD no. 412.

In short, and from the perspective of the right to deletion regulated in the RGPD and LOPDGDD, proceed to dismiss the present claim for protection of the right of deletion, given that the right of deletion exercised by the now claimant became effective, without prejudice to the blocking of the data that was carried out to preserve the exams and works of the students, to comply with the data blocking measures provided for by the regulations. On the other hand, it should be noted that the request for the right of access could not be granted, given that when access was requested to information that does constitute the right of access, the UOC had already proceeded with the deletion of the data of the person making the claim, after which the right of access no longer applies.

For all that has been exposed,

RESOLVED

First.- Dismiss the guardianship claim made by Mr. (...) against the Open University of Catalonia.

Second.- Notify this resolution to the Open University of Catalonia 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.



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The director,

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