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RESOLUTION of the rights protection procedure no. PT 51/2019, petition against the General Directorate of the Police of the Department of the Interior of the Generalitat

Background

1.- On 08/10/2019 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 of the Department of the Interior of the Generalitat (hereinafter, DGP). Specifically, the claimant requested the cancellation of his personal data recorded in the SIP PF file, relating to various police investigations. The claimant provided various documentation relating to the exercise of 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 official notice dated 17/10/2019 the claim was transferred to the DGP, so that within 15 days it could formulate the allegations that I thought relevant.

3.- The DGP made allegations by means of a letter dated 07/11/2019, in which he stated the following:

"1. The person concerned submitted several requests for the cancellation of personal data which resulted, in turn, in different files. We list below those requests that are the subject of a complaint:

- Request dated June 8, 2017, deriving from the file AP (...)/2017.
- Request dated February 11, 2019, deriving from the file AP (...)/2019.
- Request of February 11, 2019, deriving from the file AP (...)/2019.
- Request dated May 20, 2019, which gave rise to AP (...)/19.
- Request dated May 31, 2019, in AP (...)/19.

2. One of the requests dated May 20, 2019 that the interested person indicates is a contribution of documents in response to the third request for amendment or improvement of the request of June 8, 2017.

3. The processing of these files has entailed carrying out numerous internal procedures, including with the Lofoscopic Identification Unit to verify identities. These arrangements have led to a delay in the resolution of the files, which have been worked on together.

4. On October 14, 2019, the request corresponding to the file AP (...)/2017 was resolved, in which the request dated June 8 and the requests of February 11, 2019 (AP (...)/19 and AP (...)/19).

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5. On October 15, 2019, the request corresponding to file (...)/2019 was resolved in which the request dated May 31, 2019 is resolved.

6. On October 15, 2019, the request corresponding to file (...)/2019 was resolved in which the request dated May 20, 2019 is resolved.

7. Lastly, and as you requested, I am sending you a copy of the resolutions issued and the letters sent to the interested person, specifying which resolution responded to which request."

The DGP provided the following documentation along with its allegations:

- Copy of the three resolutions of the Director General of the Police, one is dated 10/14/2019 and the other two are dated 10/15/2019, for which the cancellation requests made by the person herein claiming.
- Copy of the two notification offices of these data cancellation resolutions personal, dated 10/15/2019 and 10/16/2019, respectively.

A copy of the proofs from the Post Office, certifying the notification of the aforementioned resolutions to the person making the claim, will not be attached.

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.- Regarding the legal regime applicable to the five data cancellation requests made by the person making the claim, it should be noted, first of all, that the material object of these cancellation requests falls within the scope of application of the 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 the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses or enforcement of criminal sanctions, and the free circulation of this data (Directive (EU) 2016/680), which provides in article 16 the right of deletion, which replaces the previous right of cancellation.

This Directive, however, has not yet been transposed into domestic national law, although Article 63 of the Directive established a deadline for adopting and publishing the legal, regulatory and administrative rules to comply with the Directive, which ended on 06/05/2018. And while it is true that it is a doctrinal criterion of the Court of Justice of the Union

European that individuals can invoke the direct effect of the directive's precepts when they confer rights unconditionally and sufficiently clearly and precisely before public administrations, it is also that the state legislator has expressly provided

in the transitional provision 4a of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD), that data treatments that are subject to Directive (EU) 2016/680 (as is the present case) will continue to be governed by Organic Law 15/1999, of December 13, on the protection of personal data (LOPD).

This is how things are and for what is now of interest, 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 from the data controller the deletion of personal data, compliance with this requirement must be understood as fulfilled in the terms provided for 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.

Apart from this, article 16 of the LOPD 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 leads to 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 he is referring to, and must provide the documentation to justify this, 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. Elapsed on

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term without expressly responding to the request, the interested party may 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 and bodies, 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."

3.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP resolved and notified, within the period provided for by the applicable regulations, the right of cancellation exercised

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by the person making the claim, since precisely the reason for the complaint of the person who started the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

With regard to the requests that the claimant mentions in his letter of claim, it is proven in the procedure that on 11/02/2019 he had entry to the Department of the Interior (registration office no. 0261 of the DGP) two writings from the person here claiming, through which he exercised his right to cancel his personal data ("*police records*") recorded in the file of the SIP area.

It is also certified that on 05/20/2019 another request for the cancellation of personal data recorded in the same file was received at the same DGP registration office. And on 05/31/2019, the person making the claim would have submitted a last request to cancel data from the same file, of which, although he has not provided proof of his submission to the DGP, reaches this conclusion based on the statements made by the DGP during the hearing procedure, as well as the resolution referring to this request, which this Directorate has provided during this procedure.

Apart from these cancellation requests, the DGP has referred in its letter dated 7/11/2019 to another cancellation request that the claimant would have submitted on a date prior to all of them, in particular, on 08/06/2017, and that, as explained later, the DGP would have now responded together with the four cancellation requests referred to by the claimant .

In accordance with articles 16 LOPD and 32 RLOPD, the DGP had to resolve and notify each of the cancellation requests within a maximum period of ten days from the date of receipt of each 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 (hereinafter, 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).

In this regard, it is stated in the proceedings that, in response to the cancellation requests submitted by the claimant, the DGP issued several resolutions on 14/10/2019 (one) and 15/10/2019 (two). Although this Authority does not have a record of the date of notification of these resolutions to the claimant, it is sufficient to take into account the date of presentation of each of the requests before the DGP claim

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(11/02/2019 and 20/05/2019), to conclude that the legally established deadline for responding was far exceeded.

The allegations made by the DPG to justify the delay in its response, relating to the carrying out of *"numerous internal procedures, among them with the Lophoscopic Identification Unit to certify identities"*, are reasons that would certainly prevent solving the sol- cancellation requests in a short period of time, but are not considered sufficient reasons to justify such a late response as the one made. It cannot be considered that the DPG has given an answer *"without undue delay"*.

Consequently, the estimate of the claim proceeds, which was based on the lack of response to the requests to exercise the right of cancellation, since the DGP did not resolve and notify in form and time the only cancellation requests submitted by the affected person.

4.- Regarding the substance of the claim, the DGP has agreed to estimate the data cancellation requests presented by the person making the claim, through three resolutions dated 14/10/2019 (one) and 15/10/ 2019 (two).

With regard to the object of these resolutions, it cannot be overlooked that in the letter of claim the person making the claim did not specify which data were the subject of their cancellation requests. He only provided evidence of the submission of some of his cancellation requests, in which several numbers are written in my handwriting, most of which correspond to the reference of informative police proceedings, where personal data would appear of the claimant.

For its part, the resolutions of the DGP make explicit reference to numerous information proceedings that are cited below, among the numbering of which are the numbers that the person making the claim would have indicated in handwritten form on the aforementioned receipts (with the punctuations that are indicated below): (...)/2005, (...)/2005, (...)/2005,(...)/2005, (...)/2005, (...)/2007, (...)/2008, (...)/2007, (...)/2007, (...)/2007, (...)/2008, (...)/2008, (...)/2008, (...)/2008, (...)/2008, (...)/2010, (...)/2010, (...)/2011, (...)/2011, (...)/2011, (...)/2012, (...)/2012, (...)/2012, (...)/2013, (...)/2014, (...)/2014, (...)/2014, (...)/2014, (...)/2015, (...)/2015, (...)/2016 and (...)/2016.

Exceptionally, some differences are observed between the numbering indicated by the person making the claim and those appearing in the resolutions of the DGP, which lead to the following considerations, on the basis of which this Authority has resolved:

- The reference (...)/2004 that appears handwritten in the cancellation request submitted by the claimant on 11/02/2019 (entry entry (...)/2019), would correspond to a certificate that is part of proceedings no. (...)/2005 mentioned in the Resolution dated 14/10/2019 (file AP (...)/17), and therefore, with regard to the data to which the claimant would refer, it is necessary to understand have been canceled together with the others in the file.

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- Regarding the reference (...) /2006 that appears in the cancellation request submitted on 02/11/2019 (entry settlement (...) /2019), in the office dated 10/15/2019 by the DGP addressed to the claimant, it is pointed out that the data it refers to was already canceled by means of the Resolution dated 03/26/2019. And there is no element that leads this Authority to question such manifestations of the DGP.

- The reference (...) /2014 that appears in the cancellation request submitted on 05/20/2019 (entry entry (...) /2019), seems to contain a transcription error, and which would refer to police proceedings no. (...) /2014, whose personal data have been canceled by Resolution dated 14/10/2019 (file AP (...) /17). This conclusion is reached based on the joint assessment of the documentation and allegations made by both parties.

- With regard to one of the letters that the claimant submitted on 05/20/2019 before the DGP, this Directorate has pointed out that it is not a request for cancellation, but refers to the contribution of documents "in response to the third request for amendment or better of the request of June 8, 2017", statements that agree with the content of the proof of presentation of the letter provided by the person making the claim.

From the analysis of all the documentation provided, it appears that the DGP would have responded - albeit late - to the five cancellation requests submitted by the person making the claim. And since in all cases it is about estimated resolutions of the requests presented by the person making the claim, it becomes unnecessary to make further considerations in this regard.

4.- 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 estimation obeys the fact that the DGP has not attended to the right of cancellation within the legally fixed term, but has done so extemporaneously by estimating the right to the person making the claim. And as for the substance, as can be seen from the notification offices of the resolutions, the cancellation would have been effective on the date of signature of the resolutions, that is to say, 14/10/2019 and 15/10/2019. Now, given that the DGP has not certified before the Authority the notification to the claimant of the three estimated resolutions of the requested cancellation, the DGP must be required so that, within the maximum period of 10 days - to be counted from the day after the notification of this resolution - submit to the Authority the proofs of the Post Office - or equivalent documents - certifying the notification to the person claiming the three aforementioned resolutions.

For all that has been exposed,

RESOLVED

First.- Declare extemporaneous the three resolutions of the DGP, by means of which the five cancellation requests made by Mr. (...), for not having responded within the period established in the applicable regulations, are estimated. Regarding the substance, declare that the DPG has satisfied the right, although this pronouncement is conditional on the accreditation before the Authority of the notifications of the resolutions to the claimant, in the terms indicated in the following point.

Second.- To require the DGP so that within 10 days, counting from the day after the notification of this resolution, it provides the Authority with the proofs of the Post Office - or equivalent documents - certifying the notification to the person claiming the three estimated resolutions of the five cancellation requests presented by that person.

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,