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RESOLUTION of the rights protection procedure no. PT 55/2019, petition against the Directorate General for Children and Adolescence, of the Department of Work, Social Affairs and Families of the Generalitat de Catalunya.

Background

1.- On 12/11/2019 the Catalan Data Protection Authority received the claim made by Ms. (...)(...) and Mr. (...)(...) (...) in his own name and on behalf of his minor daughter ((...)(...)) - against the General Directorate of Children and Adolescents (hereinafter, DGAIA), for the alleged disregard of the right to rectification in relation to their data included in a report that the Child and Adolescent Care Team (hereinafter, EAIA) - dependent on the DGAIA - had issued on 04/10/2019

(hereinafter, the report). Specifically, the complainants complained that the DGAIA had not responded to their request for rectification within the period provided for in the regulations, and provided the following documentation:

a) Copy of the request that on 09/10/2019 the people making claims here made to the DGAIA. In this request, they asked for the rectification of certain information contained in the aforementioned report prepared by the EAIA, following the following scheme in their writing: first of all, they transcribed the verbatim contained in the report (as "*incorrect data*"), and; then they indicated the information they considered should be included in place of the previous one (as "*correct data*"). Thus, the text of this request was as follows:

a.1) "*Incorrect data I (page 6)*

In these meetings, information is given on the complexity of family dynamics, the different incomes of (...) to mental health resources (UCA, Benito Meni, ITA,) and the difficulties of collaboration on the part of the mother and the conflicts that occur between Ms. (...) and Mr. (...) and different professionals.

Correct data I

In these meetings, information is given on the idiosyncrasies of family dynamics, on the different incomes of (...) in Mental Health resources (UCA Parc Taulí, HDA Mútua Terrassa, HDA Parc Tauli, USA Benito Menni, MAPA (...), ITA Argentona TC, URPI Hospital Clínic), of the collaboration according to the mother's own criteria and her legal advisor, and of the claims and denunciations presented by Mrs. (...) and Mr. (...) against different professionals and organizations".

a.2) "*Incorrect data II (pages 9-10)* [referring to

(...)] It presents decompensations at the behavioral level. It should be noted that on different occasions the mother has not agreed with the proposals or professional interventions, making complaints to different resources. The mother focuses on the genetic component of the problem of (...). Even so, it is appreciated that the family environment could influence the emotional and behavioral state of the adolescent. This is a little autonomous and vulnerable girl who needs a lot of supervision. Even so, he is currently more stable at a clinical level and Ms. (...)

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is in charge of their care and medical follow-up. He is currently home schooling.

Correct data II

It presents affective and defective clinical decompensations. It should be noted that on different occasions the mother and father have warned of negligence and malpractice in the actions of certain professionals, providing the relevant claims and denunciations, both formal and legal, to different resources. The mother, based on the scientific evidence provided by medical specialists, focuses on the unquestionable genetic component of the problem of (...), driven by the stressful environmental factor of the harassment suffered by the girl since the beginning of the school year 2016-2017 in the school (...). Even so, it is appreciated that the family environment could influence the emotional and behavioral state of the adolescent. She is a sufficiently independent but vulnerable girl who needs supervision. Even so, he is currently more stable at a clinical level and Ms. (...) and Mr. (...) are responsible for their care and medical follow-up. He is currently doing home schooling".

a.3) "Incorrect data III (page 11) (...)

has a 65% disability. It presents a limit OI. Mental disorder and conduct disorder: schizoaffective disorder bipolar subtype. Follow-up by the Incipient Psychosis program of the CSMIJ of (...). (...) has a diagnosis of dual pathology and follows up at the CAS.

Correct data III

(...) a recognized degree of disability of 65%. Has a last diagnosis of schizoaffective disorder, bipolar type (F250), other problems related to the social environment (2608), and other specified problems related to education (262898). Follow-up by the Incipient Psychosis Program of the CSMIJ of S del Vallès. (...) has a diagnosis of dual pathology (TUSS and BPD/mixed B) and follows up at the CSMA in (...) (Barcelona)".

a.4) "Incorrect data IV (page 13)

The lack of collaboration on the part of Ms. (...) makes family work and the professional intervention of different resources difficult. He tends to blame the services for a lack of support, although when it is offered he disagrees. Establishes, many times, a relationship of conflict with the resources, making complaints and complaints and showing disagreements with the proposals and technical evaluations. It is important to say that sometimes he presents a speech that is not coherent or ambivalent.

Correct data IV

The way of collaboration by Ms. (...) makes family work and the professional intervention of different resources difficult. He blames the services for lack of support, although when it is offered he disagrees, arguing its inadequacy. Establishes, many times, a relationship of conflict with the resources, making precise complaints and complaints and showing reasoned disagreements with the proposals and technical evaluations. It is important to say that sometimes he presents a speech that is not coherent or ambivalent".

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b) Copy of the report dated 04/10/2019 issued by the EAIA for the purpose of *"reporting on the family study carried out on the child (...) and their family"*, and *"Reporting on the conclusions and evaluations of the EAIA of Vallés Occidental after the study of the socio-familial situation"*.

The information regarding which the rectification was requested is included in the following sections of the report:

- The information transcribed in section a.1) above is included in the heading *"4. Professional interventions/ services and difficulties detected. 4.1. Prior to the referral [to the EAIA by the basic social services]"*.
- The information transcribed in section a.2) and a.3) preceding is included in the heading *"5. Current family situation"*, in the subsections *"5.1 Functioning and family dynamics"* and *"5.4 Health situation"*, respectively.
- The information transcribed in section a.4) above is included in the heading *"7. Assessment of the case"*.

c) Various and numerous documentation - medical and other - which, according to the claimants, would prove the inaccuracy of the information collected in the report.

2.- In accordance with article 5.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and article 117 of Royal Decree 1720/2007, of December 21, approving the Regulation implementing Organic Law 15/1999, of December 13, on the protection of personal data (hereafter, RLOPD), on 11/25/2019 it was transfer the claim to the DGAIA, so that within 15 days it formulates the allegations it deems relevant.

3.- On 11/02/2020, the claimants submitted a new letter to the Authority in relation to the rights protection procedure that had been initiated following their claim.

In this letter, the claimants here showed their disagreement with the response that the DGAIA had given to their request for rectification of 09/10/2019 and provided a copy of the letter that had been sent to them by this body - which includes a departure registration stamp of 04/11/2019-, with the following content:

"In relation to your request (...) we understand that you are referring to the opposition to processing said information. We inform you that we cannot attend to your opposition request given that according to art. 8.2 of Organic Law 3/2018 (...) said treatment is based on the fulfillment of a mission of public interest or in the exercise of public powers conferred on the person in charge, provided for in Law 14/2010 of the rights and opportunities in childhood and adolescence (...). However, we inform you that we will include your letter and accompanying documents in the administrative file in order to record your statement about the information (...)".

The claimants expressed their disagreement with the fact that the DGAIA had treated their request of 09/10/2019 as an exercise of the right of opposition when what had been exercised was a right of rectification.

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4.- On the same day 11/02/2020 the DGAIA was transferred to this last letter formulated by the claimants.

5.- On 03/09/2020 the DGAIA made allegations, stating that they were ratified in the content of the response it had sent to the claimants. They accompanied their office with a copy of the letter they had addressed to the people making claims here, which coincides with the one provided by them to this Authority on 02/11/2020 (3rd record).

6.- On 06/15/2020 the DGAIA provided this Authority with the acknowledgment of receipt from Correos, which certified that it had notified on 11/07/2019 the persons here claiming the office of response to their request for rectification

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 is formulated with respect to a request to exercise the right of rectification that was presented to the DGAIA on 09/10/2019.

Article 16 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 thereof (hereinafter, the RGPD), regulates the right of rectification in the following terms:

"The interested party will have the right to obtain without undue delay from the controller the rectification of inaccurate personal data concerning him. Taking into account the purposes of the treatment, the interested party will have the right to complete the personal data that are incomplete, including by means of an additional declaration".

For its part, article 14 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right of correction:

"When exercising the right of rectification recognized in Article 16 of Regulation (EU) 2016/679, the affected person must indicate in his request which data he refers to and which correction must be made. It must be attached, when necessary, the supporting documentation of the inaccuracy or the incompleteness of the data being processed".

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

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"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 DGAIA resolved and notified, within the period provided for by the applicable regulations, the right of rectification exercised by the person making the claim.

In this respect, it is certified that on 09/10/2019 the letter of the persons making claims was entered in the DGAIA Registry, through which they exercised their right of rectification.

In accordance with article 12.3 of the RGPD, the DGAIA had to resolve and notify the request to exercise the requested right 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. In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of the LPAC and article 41.7 of 7 of Law 26/2010, of August 3, on the legal regime and of procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in procedures initiated at the instance of a party - as is the case - starts from the date on which the sole 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, it is certified that the DGAIA answered and notified the request of the person here claiming on 07/11/2019, therefore, before the expiry of the period of one month provided for the purpose.

4.- Once the above has been settled, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, the rectification of the data requested in the DGAIA, specifically the rectification of certain information that

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the EAIA - dependent on the DGAIA - had collected in a report dated 04/10/2019 (letter a/ of the 1st antecedent).

Before entering into the substantive analysis of the claim, it is appropriate to refer to the response that the DGAIA gave to the claimants in the letter dated 04/11/2019 (precedent 3).

In accordance with this letter, the DGAIA considered that the right that the claimants here had exercised before this body on 09/10/2019 should be cataloged, not as a right of rectification (as the people had done interested parties), but as a right of opposition; and on that basis they denied his request.

Article 16 of the RGPD defines the right of rectification as that which the affected person has to modify data that is inaccurate or incomplete. For its part, article 21 of the RGPD, which regulates the right of opposition, attributes to the interested persons the ability to oppose the processing of their data in certain cases, for what is of interest here, when reasons related to your particular situation, your data is the subject of a treatment based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on those responsible. It is therefore about two rights - that of rectification and that of opposition - with different presuppositions and purposes and which exercise can give different results.

Well, without questioning the fact that the data of the people making claims here are dealt with by the DGAIA, and specifically by the EAIA, based on article 6.1.e) of the RGPD, the truth is that the people making claims here are right when they show their disagreement with what their letter of 09/10/2019 was considered by the DGAIA as the exercise of a right of opposition. Both from the express request made by the people here claiming in that letter, and from its content, it is clear that the right they exercised was that of rectification in relation to certain information contained in the report that the EAIA had drawn up on 04/10/2019.

Having said that, it is necessary to analyze whether the DGAIA had to attend to the request for rectification of the persons making claims in the terms requested by them. However, a preliminary consideration must be made before analyzing each of the rectifications concerned. As indicated, article 16 of the RGPD obliges the data controller to proceed with the rectification of personal data when these are inaccurate or incomplete. However, it should be noted that article 14 of LOPDGDD requires that the request for rectification clearly indicate which data it refers to and the correction that must be made, and must be accompanied by documentation justifying the inaccuracy or incomplete nature of the data subject to treatment. In short, to be able to demand the rectification of a piece of data, the error committed or its incomplete nature must be proven.

In the case at hand, it must be emphasized that in their writing the complainants do not indicate or specify which data would be inaccurate or should be completed - and, consequently, they also do not prove the allegedly erroneous or incomplete nature of the data -; rather, what they do is ask for the replacement of certain paragraphs contained in the report by others written by the complainants themselves; but as said

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without specifying what data they refer to and without it being possible to infer from the documentation they provide that the information collected in the report is inaccurate or incomplete.

Having said that and starting from this prior consideration, each of the rectifications interested by the claimants is then analyzed, in the terms transcribed in section a) of the preceding 1st.

4.1.- Regarding the rectification of the information collected in the report that has been transcribed in section a.1) of the 1st precedent [*In these meetings (...) professionals are informed*]. As indicated in the antecedents (letter b/ of antecedent 1), this information is collected in the report in the heading "*4. Professional interventions/services and detected difficulties. 4.1. Prior to the referral [to the EAIA by the basic social services]*".

This annotation, whose rectification is of interest, is preceded by the following literal report: "*During 2017, different advisory meetings were held between the EAIS and SSB [basic social services] as well as meetings multiprofessionals in a counseling context. In these meetings (...)*".

Well, it is clear from the text of the report that it does nothing more than collect the information that was discussed about the people making claims in those meetings between professionals. Therefore, in any case, it would be the people who attended these meetings who would know the topics that were discussed there and in what terms and, consequently, those who hypothetically they could question whether or not the data collected in the report reflect the content of said meetings. And it is in this sense that, to the extent that the report would be limited to collecting what was discussed in the meetings held between different professionals of the EAIA and the SSB, the requested rectification does not proceed. The people making claims here may not agree with the information that was discussed about them in those meetings, but this is an issue that would be outside the right of rectification that is analyzed here with regard to the treatment of the information by of the DGAIA.

4.2.- With regard to the rectification of the information collected in the report that has been transcribed in section a.2) of the 1st precedent [-referring to (...)- "*Presents decompensations at a behavioral level (...) home schooling*"]. As explained in the background, this detailed information in apparatus a.2) is included in the report under the heading "*5. Current family situation; 5.1 Functioning and family dynamics*"; and "*7. Assessment of the case*".

From the content of the annotations and from the section in which they are contained, it is clear that the information collected there relates to two of the people making claims here (Mrs. (...) and the minor(...) obeys the assessment and evaluation carried out by the professional people of the EAIA in the context of the action they carried out in relation to this family; evaluation they carried out in accordance with the functions attributed to them (without encouragement of completeness, article 103.4 of Law 14/2010, of 27 May, on rights and opportunities in childhood and adolescence and article 6.2 of Decree 338/1986, of 18 November, on the regulation of care in childhood and adolescence with high social risk).

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As has been said, the right of rectification consists of the right of the affected person to modify the data that is inaccurate. Therefore, only facts or information that are considered objectively incorrect can be subject to rectification, but opinions, judgments, evaluations or professional evaluations cannot be the subject of the right to rectification, even if these may disturb, or even harm to the person to whom it refers.

It should also be added that in relation to the minor, one of the medical reports provided by the claimants (the one drawn up by the center (...) dated 06/07/2018) uses terms such as "*behavioral changes*", "*T de conducta*" and "*behavioural deterioration*", in terms similar to those contained in the report prepared by the EAIA.

Therefore, in congruence with what has just been said, to the extent that the information whose rectification is requested obeys assessments and evaluations carried out by EAIA professionals, the requested rectification does not proceed.

4.3.- Regarding the rectification of the information collected in the report that has been transcribed in section a.3) of the 1st precedent (...), he *has a 65% disability (. . .) (...)* has a *diagnosis of dual pathology and follows up at the CAS*"]. This information is collected in the report under the heading "5. Current family situation; 5.4 Health situation".

First of all, it must be said that it is not appropriate here to analyze the information contained in this paragraph of the report referring to Mrs. (...), since this is a person of legal age who has not made - neither by himself nor by representation - any claim for the protection of rights before this Authority in relation to the rectification of these data

Focusing therefore on the information referred to the minor (...) it must be said that the documentation provided by the claimants does not show that the data embodied in the report are incorrect. What's more, in fact they collect in a summarized and complete form what the claimants ask to be included as "*correct data*". Of the fact that the report does not include absolutely all the minor's medical information (especially in a case like this, where it is voluminous), and only includes part of the medical information available to the/ professionals, it cannot be inferred that the information collected in the report is incomplete. What's more, the professionals include in the report only that information they consider relevant for the purposes for which this issue would result in an action in accordance with the principle of data minimization, enshrined in article 5.1.c) of the RGPD. In any case, the DGAIA decided to incorporate in the file the letter and all the additional information that the people here claiming had provided to this body together with their request for rectification of 09/10/2019, of which they were reported in the office dated 04/11/2019.

In accordance with the above, it is considered that the requested rectification does not proceed in relation to this information either.

4.4.- Regarding the rectification of the information collected in the report that has been transcribed in section a.4) of the 1st precedent [*"The lack of collaboration on the part of Ms. (...) on occasions*

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presents a speech that is not coherent or ambivalent"]. This information is collected in the report under the heading "7. Assessment of the case".

To the extent that the information whose rectification is requested includes evaluations and assessments of EAIA professionals, the argumentation included in section 4.1 of this legal basis is reproduced here.

In view of all the above, and from the perspective of the right of rectification regulated in the RGPD and the LOPDGDD, the present claim for protection of the right of rectification should be rejected.

For all that has been exposed,

RESOLVED

1.- Dismiss the guardianship claim made by Ms. (...)(...) and Mr. (...)(...) (...), on behalf of himself and his minor daughter, against the General Directorate of Children and Adolescence, given that the requested rectification does not proceed, for the reasons explained in the 4th legal basis.

2.- Notify this resolution to the General Directorate of Children and Adolescence, and to the claimants

3.- 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 the Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Protection Agency of Data, the interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with what is provided for in 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,