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RESOLUTION of the rights protection procedure no. PT 58/2019, urged against the Barcelona-Lleida Estate Administrators Association.

Background

1.- En data 14/11/2019 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, la reclamació que en data 09/10/2019 havia formulat la Sra. (...), for the alleged neglect of the right to rectification which he had previously exercised before the Barcelona-Lleida Association of Estate Administrators (hereafter, CAFBL).

In his claim, the claimant stated the following:

- That on 03/25/2019 he had filed a complaint with the CAFBL against (...), for alleged irregularities in its management.
- That on 02/09/2019 the CAFBL had informed him that the Ethics Commission had proceeded to file his complaint based - according to the claimant here - on "a mere verbal statement of the Property Administrator in the which says that I am delinquent on two occasions".
- That on 09/19/2019 he had submitted a letter to the CAFBL requesting the rectification of the information regarding his status as a defaulter, a request that had not received a response on the date of presentation of the claim (09/ 10/2019).

The claimant provided a copy of the claim he had made before the CAFBL on 09/19/2019, which contains the following text:

"The dispute is dated September 2, 2019, where it is said that I have been sued on two previous occasions for late payment (...). With this letter I request a rectification on my part. At present I owe nothing to anyone, and of course to my community of owners. If it is true that a monitoring judgment was brought against me by the Community of Owners, the judgment for which I have already paid everything, including the legal costs (...). Comisión Deontológica that bases the file of actions on a mere verbal statement from the Property Administrator in which he says that I am delinquent on two occasions. Precisely on these manifestations is where we request the rectification (...)."

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), by official letter dated 11/22/2019, the claim was transferred to the CAFBL, so that within 15 days it could formulate the allegations it deemed relevant.

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3.- The CAFBL made allegations through a letter dated 10/12/2019, in which it set out, in summary, the following:

- a. That on 03/25/2019 the claimant here filed a claim against his administrator
- b. That on 04/10/2019 the CAFBL Ethics Commission reported here claiming that his complaint was being processed.
- c. That on 09/02/2019, the resolution that put an end to the file was communicated to the claimant here and to the member against whom he had filed the complaint. In this resolution, *"a brief summary of the claim presented, as well as the allegations made by the administrator and the decision taken by the Commission, was presented. It can be seen from the simple reading that the Resolution is limited to reproducing the statement of the Administrator against whom Mrs. (...) indicating that "Having received a response from the responsible collegiate (...), in relation to the informative proceedings of a duly accredited reference, which states that: 1. It informs that the complainant has had a obstructionist attitude about any action that is carried out on the farm. It has been sued on two occasions for late payment". In the rest of the text of said resolution of the CAFBL file, no reference or allusion is made, nor - even less - is the applicant's alleged late payment mentioned in the argumentation of the 'agreed file'.*
- d. That on 09/19/2019 a letter was received from here claiming *"requesting the rectification of your data"*, specifically, the reference to your delinquency. e. That by means of a letter of 08/10/2019 a response was given to the claimant here, denying his request for rectification. In this letter, you are informed that the rectification does not proceed, since the CAFBL, when issuing the resolution that resolved the complaint that had been filed, simply limited itself to transcribing the statements made by the administrator against whom it was directed the aforementioned complaint; like this

therefore, "this transcription derives from what was expressed by him, without at any time having requested any information in this regard on the part of this CAFBL, because such a circumstance has no significance nor would it hypothetically be necessary for its resolution, as it has been".
- f. That, *"we consider that the action of the CAFBL has been appropriate to the legality at all times and cannot proceed to rectify a personal data of the applicant that she does not have and has never had"*.

Along with its letter, the CAFBL provided certain documentation, among others:

- Copy of the CAFBL resolution of 02/09/2019, through which the complaint was resolved formulated by the herein claimant against its administrator.
- Copy of the request for rectification presented by the person here claiming before the CAFBL on 09/19/2019.
- Copy of the letter dated 08/10/2019 that the CAFBL addressed to the claimant in response to his request for rectification, in the terms set out in letter e) above. This letter contains the stamp that certifies that it was notified electronically on 10/17/2019.

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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.- As a preliminary matter, it must be noted that the person making the claim lodged the claim with the AEPD for the CAFBL's failure to pay attention to their right to rectification before the expiry of the one-month period stipulated by the regulations so that the entity before which the right is exercised responds to the request (art. 12 of the RGPD). Indeed, it is stated in these proceedings that the person making the claim here exercised his right of rectification before the CAFBL on 09/19/2019, and that he lodged the claim with the AEPD on 10/09/2019. Bearing in mind that, in the case at hand, the claim is based precisely on the lack of response on the part of the claimed entity, the presentation of said claim before the end of the period that the entity has to answer, should entailed its inadmissibility (art. 88 of Law 39/2015, of October 1, of the common administrative procedure of public administrations -LPAC-). Notwithstanding the above, given that the claim was received by this Authority, by transfer from the AEPD, on 14/11/2019, therefore the period of one month previously indicated had passed, it was proceeded with processing in accordance with the principle of procedural economy.

Having established the above, it is necessary to analyze the claim made, relating to the lack of attention to the exercise of the right of rectification that the claimant had made before the CAFBL on 09/19/2019.

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 movement 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 16 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:

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"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:

"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 CAFBL has 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 regard, it is certified that on 09/19/2019 the letter of the person making the claim was entered in the CAFBL Registry, through which he exercised his right of rectification.

In accordance with article 12.3 of the RGPD, the CAFBL 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 deadline, it should be taken into account 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 procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the term maximum in proceedings initiated at the instance 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 resolve and notify (article 21 of the LPAC), so that before finalizing this

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deadline, the resolution must have been notified, or at least a duly accredited notification attempt must have occurred (art. 40.4 LPAC).

Well, it is certified that the CAFBL answered and notified the request of the person here claiming on 10/17/2019, therefore, before the expiration of the one-month period provided for the purpose.

Consequently, the claim is dismissed, which was based on the lack of response to the request to exercise the right of rectification, since the CAFBL resolved and notified in form and time the said request submitted on affected person

4.- Once the above has been settled, it is appropriate to analyze the substance of the claim, that is to say, if the response given by the CAFBL to the request of the now claimant, conformed to the precepts transcribed in the 2nd legal basis .

As a starting point, it should be borne in mind that articles 16 of the RGPD and 14 of the LOPDGDD regulate the right of rectification as the right of the affected person to have inaccurate or incomplete data modified.

The right of rectification regulated in the RGPD and the LOPDGDD is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. This is why the limitations to this right of rectification must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed.

As indicated in the antecedents, the claimant had requested the CAFBL to correct certain information relating to him, in particular, the qualification of "delinquent" that had been included in the resolution issued by the Commission Code of ethics of the CAFBL on 02/09/2019, which put an end to the file that had been initiated following the complaint that the claimant here had lodged against his administrator. The CAFBL dismissed the request on the basis that it had simply been limited to collecting in the resolution issued the allegations made by the administrator against whom the complaint had been made, together with the fact that it had not collected any other information related to the claimant's eventual delinquent status (precedent 3).

As has been said, the right of rectification embodies the principle of accuracy established by article 5.1.d) of the RGPD, according to which the data must be accurate in relation to the purposes for which they are processed . Well, in this respect it must be emphasized that, as the CAFBL has stated, this entity did not link the claimant here with the status of defaulter; rather, the disputed data was dealt with by the CAFBL in the context of the file initiated following the complaint that the claimant here formulated against his administrator, and it was dealt with by including in the resolution that put an end to said file the demonstrations made by the administrator; manifestations that, that is to say, were related to the subject matter of the procedure.

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Therefore, the one who linked the person making the claim here with the arrears was the administrator against whom the complaint was made, and not the CAFBL, which limited itself to collecting the person's statements in the aforementioned resolution. In this sense it must be said that the information of the person claiming here treated by the CAFBL met the requirement of accuracy regarding the purpose of the treatment, since it faithfully collected what the interested party (the administrator) had alleged in the procedure when exercising his right of defense. The person claiming here may not agree with the statements made about him by his administrator during the procedure substantiated in the CAFBL, but this is an issue that would fall outside the right of rectification that is analyzed here regarding the processing of information by the CAFBL.

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. (...) against the Association of Property Administrators of Barcelona-Lleida.

2.- Notify this resolution to the Association of Real Estate Administrators of Barcelona-Lleida and the claimant.

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 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,