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RESOLUTION of the rights protection procedure no. PT 13/2020, petition against the General Directorate of the Police of the Department of the Interior of the Generalitat

#### Background

1.- On 03/03/2020 the Catalan Data Protection Authority received a letter from Mr. (...) (hereafter, claimant), 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 (in forward, DGP). Specifically, the claimant requested the cancellation of his personal data recorded in the SIP PF file, relating to police proceedings no. (...) /2019. The claimant provided a copy of the cancellation request submitted to the DGP, in order to prove the exercise of this right before the data controller.

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 an official letter dated 03/07/2020 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 07/10/2020, in which he stated the following:

*"On December 19, 2019, the representation of Mr. (...) requested the cancellation of personal data related to police proceedings no. (...) /2019, in which he was identified for theft/ theft of use of a vehicle, and reported in extension no. (...) /2019, and provided as interlocutory supporting documentation for provisional dismissal.*

*2. On March 5, 2020, a request for amendment or improvement of the application is sent to you in which you are asked to provide the final filing of the judicial procedure. This requirement is notified to you on March 10, 2020.*

*3. In response to the aforementioned request, the interested party provides a series of allegations. Once the relevant checks have been assessed and made with the training unit, it is decided to cancel the requested data.*

*4. On June 30, 2020, the Director General of the Police issues a resolution in which he agrees to effect the cancellation of the personal data recorded in the requested SIP files.*

*5. Finally, and as you requested, I am sending you a copy of the following documentation:*

*a) Copy of the request for cancellation, of the documentation that was attached to it, and of the resolution issued."*

The DGP provided all the documentation it mentioned in its letter, except for the resolution issued on 06/30/2020 in response to the cancellation request.

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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.- Regarding the legal regime applicable to the data cancellation request made by the person making the claim, it should be noted, first of all, that Regulation (EU) 2016/679 of the European Parliament and Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD) expressly excludes from its application the processing of personal data carried out by (art. 2.2.d RGPD): *"the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses, or the execution of criminal sanctions, including the purpose of protection and prevention against threats to the public security and its prevention"*, where the request for cancellation is framed which is the subject of the claim that is the cause of this resolution. Recital 19 of the RGPD expressly indicates that these treatments must be governed by 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 treatment of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of this data, which provides in article 16 the right of deletion, which replaces the previous right of cancellation.

However, Directive (EU) 2016/680 has not yet been transposed into 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 European Union that individuals can invoke the direct effect of the precepts of the directive when they confer rights in an unconditional and sufficiently clear and precise manner before public administrations, also is that the state legislator has expressly provided in transitional provision 4a of Organic Law 3/2018, of December 5, 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 the 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, as far as it is concerned, that the person in charge of

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treatment has the obligation to exercise the interested party's right of cancellation 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. The exercise of the right of cancellation results in the deletion of data that is inappropriate 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. After the deadline has passed without an express response to the request, the interested party can 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.*

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*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. The interested persons who are denied, in part or in full, the exercise of the rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established period, they can submit a claim to the Catalan Data Protection Authority Data."*

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

With regard to the alleged neglect of the cancellation request that is the subject of the claim, it is proven in the procedure that on 12/19/2019 a letter from the person here claiming, through which he requested the cancellation of his personal data recorded in the file of the SIP area, related to police proceedings no. (...)/2019.

In accordance with articles 16 LOPD and 32 RLOPD, the DGP had to resolve and notify the

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cancellation request 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 (hereafter, 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, the Authority does not know on which specific date the cancellation request was entered in the register of the DGP, which was the competent body to resolve it. In any case, it should be borne in mind that the Department of the Interior has implemented the electronic suitcase service (eValisa), through which the entry and exit of documents is carried out automatically and immediately. So it is likely that the cancellation request would have been entered in the DGP register on the same day 12/19/2019 or in the days immediately following.

So, the deadline to respond would end on 08/01/2020 or on one of the days immediately following. However, it is stated in the procedure that the first response from the DGP was a letter dated 2/03/2020 addressed to the person now claiming, by which he was required to amend or improve his request (the contribution of judicial certification certifying the definitive file of a judicial procedure). This office was notified to the claimant on 03/10/2020. According to article 22 LPAC, the procedure can be suspended: *"When any interested party must be required to correct deficiencies or provide documents (...), for the time that elapses between the notification of request and its effective compliance by the addressee"*.

So things are, even if the DGP had suspended the procedure, this suspension would have had effects from 10/03/2020, which is a date that is clearly extemporaneous, in the sense that the ten days legally provided for the DGP to respond to the cancellation request, which as noted ended on 08/01/2020 or on one of the days immediately following that date. It is worth saying, lastly, that the suspension of the administrative deadlines established by DA 3a of Royal Decree 463/2020, of March 14, by which the state of alarm is declared for the management of the situation of health crisis caused by the COVID-19, began on 14/03/2020, and therefore the suspension established by this royal decree would not affect the calculation of the analyzed period either.

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Consequently, the claim should be upheld, in terms related to the lack of response to the request to exercise the right of cancellation, since the DGP did not resolve and notify in form and time the request for cancellation of the claimant.

4.- Regarding the merits of the claim, the DGP has stated that through a resolution dated 06/30/2020, and in application of the applicable regulations - art. 22.4 and 23.1 LOPD and art. 18 of Instruction 12/2010 of the DGP- estimated the data cancellation request submitted by the person here claiming. Given the estimate of the cancellation request, according to the DGP, it is unnecessary to make further considerations in this regard.

However, it must be made clear that the DGP has not provided the Authority with a copy of the resolution dated 06/30/2020 estimating the cancellation requested by the claimant, nor has it certified before the Authority its notification to the claimant.

5.- In accordance with all the above and with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, the DGP should be required so that, within a maximum period of 10 days - starting from the following day of the notification of this resolution - submit before the Authority a copy of the above-mentioned resolution of 06/30/2020, as well as the document proof of notification to the person making the claim.

For all this,

RESOLVED

First.- Declare extemporaneous the resolution dated 30/06/2020 of the DGP, by which the cancellation request made by Mr. (...), for not having responded within the established period to the applicable regulations. Regarding the substance, declare that the DGP has satisfied the right, although this pronouncement is conditional on the accreditation before the Authority of the resolution and its notification to the person claiming, in the terms indicated in point Next.

Second.- To require the DGP so that within 10 days, counting from the day after the notification of this resolution, it provides to the Authority the supporting document (for example, the receipt from the Post Office if it has been this the means used) of the notification to the person claiming of the resolution dated 06/30/2020 estimate of the cancellation request submitted by this person, as well as a copy of this resolution.

Third.- Notify this resolution to the DGP and the person making the claim.

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Fourth.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://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,