

Carrer Rosselló, 214, Esc. A, 1r 1a
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File identification

Resolution of the rights protection procedure no. PT 14/2020, urged against the Management General of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 16/03/2020 the Catalan Data Protection Authority received a letter from Ms. (...) (hereinafter, the person making the claim), for which he made a claim for not having taken care of the right to delete or cancel his personal data, which he had previously exercised before the General Directorate of Police (hereinafter, DGP).

The claimant certified that, by means of a letter dated 10/02/2020, he had exercised before the DGP the cancellation of his personal data from the SIP PF file, relating to police proceedings numbers (...), (...), (...) and (...).

2.- On 30/06/2020 the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- The DGP made allegations by means of a letter dated 07/22/2020, in which it set out, in summary, the following:

- That on 10/02/2020, the person making the claim requested the cancellation of the data related to police proceedings numbers (...), (...), (...) and (. ..), contributing the supporting documentation of the resulting legal proceedings.
- That on 04/30/2020, the director general of the Police issued the resolution by which it was agreed to make effective the cancellation of the personal data recorded in the requested SIP files.
- That the resolution was sent to the person claiming at the address indicated for notification purposes, when the suspended administrative deadlines resumed in accordance with additional provision 3a of Royal Decree 463/2020, of March 14, by which state of alarm is declared for the management of the situation of the health crisis caused by the COVID-19 (hereinafter, RD 463/2020), and when the registration of entry and exit of documents from Les Corts resumed its activity.

The DGP provided various documentation.

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.- At the time when the affected person exercised the right of cancellation or deletion to the personal data that were the subject of treatment by the DGP and those that are

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referred to the request for cancellation or deletion, 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 authority for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of such data (Directive (EU) 2016/680), in accordance with what is established in its article 1, which foresees in its article 16 the right of deletion.

In this regard, it should be noted that Directive (EU) 2016/680 has not been transposed into national law within the period provided for that purpose (on 06/05/2018) and, consequently, individuals they can directly invoke European law before the courts, regardless of whether or not they have been transposed into national law. Thus, in accordance with the doctrine of the Court of Justice of the European Union, individuals may invoke the direct effect of the directive's precepts when they confer rights unconditionally and in a sufficiently clear and precise manner before public administrations.

The request for deletion analyzed here was submitted when Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), was already fully applicable, which repealed Organic Law 15/1999, of December 13, on the protection of personal data (LOPD). However, with regard to data processing that is subject to Directive (EU) 2016/680, it should be noted that transitional provision 4a of the LOPDGDD provides that these will continue to be governed by the LOPD, and in particular by article 22, and its development provisions, until the rule that transposes into Spanish law the provisions of the aforementioned Directive enters into force.

3.- In accordance with the above, firstly, it is necessary to refer to article 16 of the LOPD, which in relation to the right of cancellation determined 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 results in 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*

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contractual relations between the person or entity responsible for the treatment and the interested party."

For its part, article 31.2 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of the LOPD (hereafter, RLOPD), provides the following regarding the right of cancellation :

"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. 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 that is the subject of this resolution refers to a treatment carried out by the forces and security forces, it is necessary to refer to the specific regulation for these cases provided for in articles 22.4 and 23, sections 1 and 3, 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 refuse access, rectification or cancellation depending on the dangers that may arise for the defense of the State or public security, the protection of rights and

liberties of third parties or the needs of the investigations being carried out.

(...)

3. The affected person who is denied, in whole or in part, the exercise of the rights mentioned in the previous sections can bring this to the attention of the director of the Data Protection Agency or the competent body of each autonomous community in the case of files maintained by the police forces of these communities, or by the autonomous tax administrations, which must make sure of the origin or impropriety of the denial."

In line with the above, article 16.1 of Law 32/2010 provides:

"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."

4.- 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 deletion exercised by the person making the claim.

In this respect, it is certified that on 10/02/2020 the claimant submitted a letter addressed to the DGP through which he exercised his right of cancellation.

In accordance with articles 16 of the LOPD and 32 of the RLOPD, the DGP had to resolve and notify the cancellation or deletion request within a maximum period of ten days from the date of receipt of the request

In relation to this matter, 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, 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 request was entered in the register of the competent body for its processing. 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, even though the DGP has not certified the date on which the said letter of cancellation was entered in the DGP's register, it must be taken into account that article 16.2 of the LPAC establishes that the *"settlements they must note respecting the temporal order of receipt or output of the documents, and must indicate the date of the day they were produced. Once*

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once the registration procedure has been completed, the documents must be sent without delay to their recipients and to the corresponding administrative units from the register in which they were received."

In turn, article 5.3 of Decree 360/1994, of December 15, on the registration of entry and exit of documents of the Administration of the Generalitat of Catalonia provides that documents are registered upon entry, but that they are addressed to destinations of other bodies of the Generalitat Administration itself, must be sent to their addressee within a maximum period of 48 hours, after the date on which the 'send this document in order to control its delivery.

Therefore, it can be inferred that the request for cancellation was received by the DGP, a few days after it was presented and that the 10-day period available to resolve and notify said request would have been consumed before the 16 /03/2020, when the administrative deadlines were suspended in accordance with RD 463/2020.

Likewise, it is certified that on 04/30/2020 (when the suspension of the administrative deadlines was still in effect), the DGP issued the resolution of the cancellation request, which was notified to the person here claiming on 07/06/2020.

Consequently, since the claim was based on the lack of response to the request to exercise the right of cancellation, it is necessary to declare that the DGP did not resolve and notify in form and time the said request submitted by the affected person.

Regarding the merits of the claim, given that the DGP has agreed to consider the request to cancel the personal data presented by the person making the claim, it is not considered necessary to make further considerations in this regard, notwithstanding that in the case that the claimant considers that his cancellation right has not been fully exercised with respect to personal data recorded in the files of the SIP area, he may bring this to the attention of this Authority.

5.- 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 controller must be required so that in the period of 10 days makes the exercise of the right effective. However, in the present case there is no need to make any request to the DGP since it has already decided to cancel the personal data of the claimant here.

resolution

Therefore, I resolve:

1. Declare extemporaneous the resolution of the DGP, by means of which it considers the request for cancellation made by Mrs. no other pronouncement or any requirement regarding the fund once the claimant's right has become effective, in accordance with what has been indicated in the 4th and 5th legal foundations.

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2. Notify this resolution to the DGP and the person making the claim.
3. Order the publication of the Resolution on the Authority's website (apdcat.gencat.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 the LPAC or to directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, in the period of 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, interested parties may file any other appeal they consider convenient for the defense of their interests.

The director,