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File identification

Resolution of the rights protection procedure no. PT 18/2020, petition against the Catalan Health Institute.

Background

1. On 04/23/2020, the Catalan Data Protection Authority received a letter from Ms. (...) (henceforth, the claimant), for which he formulated a claim for the alleged disregard of the right of deletion that he had previously exercised before the Catalan Institute of Health (ICS). In his letter, the person making the claim explained that *"the cancellation of a clinical course superior to 5 years was requested 3 months ago.*

They haven't answered. Nor have they removed it".

2. On the date on which the claim was presented to this Authority, the suspension of the terms and the interruption of the deadlines for the processing of the administrative procedures decreed by Royal Decree 463/2020, of March 14, was in force declares a state of alarm for the management of the health crisis situation caused by COVID-19. Once the suspension was lifted with effect from 06/1/2020, the claimant was required on 06/10/2020 to amend his claim, providing

the documentation proving that you have exercised your right of deletion before the claimed entity.

3. On 07/15/2020 the claimant complied with the previous request, providing a copy of the standardized form - entitled *"Request for the exercise of the right of cancellation" -,*
through which he had exercised his right of deletion before the ICS on 02/26/2020.
In this form, the claimant here expressly requested that all the centers of the ICS of the Baix Llobregat delete their clinical data older than five years *"for no tener curso clínico 1986 a 2015 includas altas médicas".*
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4. On the same day 15/07/2020, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it considered relevant.

This deadline has been exceeded without the ICS having formulated allegations.

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.

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2. Article 17 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data (hereinafter, the RGPD), regulates the right of deletion in the following terms:

"1. The interested party has the right to obtain from the data controller, without undue delay, the deletion of the personal data affecting him. The person in charge must delete them without undue delay, when any of the following circumstances apply:

a) The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed.
b) The interested party withdraws the consent on which the treatment is based, in accordance with article 6, paragraph 1, letter a), or with article 9, paragraph 2, letter a), and this is not based on another legal basis.
c) The interested party objects to the treatment, in accordance with article 21, paragraph 1, and there are no other legitimate reasons for the treatment or the interested party objects to the treatment, in accordance with the article 21, section 2.
d) The personal data have been treated unlawfully.
e) The personal data must be deleted, to fulfill a legal obligation established in the law of the Union or of the member states to which the data controller is subject.

f) The personal data have been obtained in relation to the offer of information society services mentioned in article 8, paragraph 1.
2. If the person in charge of the treatment has made personal data public and, by virtue of the provisions of section 1, is obliged to delete this data, taking into account the available technology and the cost of applying it, the person in charge of processing must take reasonable measures, including technical measures, to inform those responsible who are processing this data of the data subject's request to delete any link to this personal data, or any existing copy or replica.

3. Sections 1 and 2 do not apply when the treatment is necessary:
a) To exercise the right to freedom of expression and information.
b) To fulfill a legal obligation that requires the processing of data imposed by the law of the Union or of the member states to which the data controller is subject, or to fulfill a mission carried out in the public interest or in the exercise of conferred public powers to the responsible

c) For reasons of public interest in the field of public health, in accordance with article 9, section 2, letters h) ii), and section 3.
d) For archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right mentioned in paragraph 1 may make it impossible or hinder seriously the achievement of the objectives of this treatment, or
e) To formulate, exercise or defend claims."

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In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establishes the following:

> *"3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.*
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> *4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.*
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> *5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:*
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> *a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or*
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> *b) refuse to act in respect of the request.*
> *The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.*
> *(…)"*

For its part, article 77 of the RGPD, entitled *"Right to present a claim before a control authority",* establishes the following:

> *"1. Without prejudice to any other administrative recourse or judicial action, any interested party has the right to submit a claim to a supervisory authority, in particular in the Member State in which he has his habitual residence, place of work or place of has produced the alleged infringement, if it considers that the processing of personal data affecting it infringes this Regulation.*
> *2. The control authority before which the claim has been submitted must inform the claimant about the course and result of the claim, including the possibility of accessing judicial protection under the provisions of the article 78."*

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 ICS resolved and notified, within the period provided for by the applicable regulations, the right of deletion exercised by the person making the claim, since precisely the reason for his complaint which started the present rights protection procedure, it was the fact of not having obtained a response within the period provided for the purpose.

First of all, it must be stated that the person making the claim presented to this Authority his claim against the ICS for the alleged neglect of his right to deletion on 04/23/2020, that is to say, before the expiry of a more than this entity had to respond to your request, in accordance with the provisions of article 12.3 of the RGPD. With regard to the calculation of the term, it should be remembered that Royal Decree 463/2020, of March 14, declaring the state of alarm for the management of the health crisis situation caused by COVID-19 provided the suspension of the terms and the interruption of the terms for the processing of the administrative procedures; suspension that was not lifted until 06/01/2020, in accordance with the provisions of Royal Decree 537/2020 of May 22, which extended the state of alarm. Taking into account this suspension of the administrative deadlines, the ICS had until 12/06/2020 to respond to the deletion request that the claimant had submitted on 26/02/2020, for which reason it would have proceeded the non-processing of the claim presented to this Authority for having been formulated prematurely.

However, given that the claimant amended his claim, at the request of this Authority, on 07/15/2020, a date on which - by now - the deadline set by the ICS to give response to the deletion request made; it is considered appropriate, based on the principle of procedural economy, to resolve said claim.

As explained in the background, the ICS has not made allegations to the claim made; and, therefore, it has not been proven that this entity has responded to the deletion request made by the person making the claim on 02/26/2020, nor within the one-month period provided for that purpose, nor subsequently.

Consequently, since the claim was based on the lack of response to the request to exercise the right of deletion, it must be declared that the ICS did not resolve and

notify in form and time the said request presented by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

4. Once the above has been settled, it is necessary to analyze the merits of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case the deletion of the data in the terms usually tender the person claiming. As indicated in the antecedents, the claimant requested the deletion by the ICS centers in the Baix Llobregat of his clinical data from 1986 to 2015, *"for fear of not having a clinical course".*

As a starting point, it should be borne in mind that the right to deletion regulated in Article 17 of the RGPD is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data; and that is why the limitations to this right must be minimal.

Article 17 of the RGPD conditions the right to delete personal data to the occurrence of one of the cases provided for in its section 1, and as long as one of the exceptions noted in section 3 of the same article does not apply. In the case at hand, to the extent that the person claiming requested the deletion of health data, it is necessary
refer to letter c) of the mentioned article 17.3 of the RGPD, which stipulates that the deletion will not proceed *"for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3".*

Article 9.2, letters h) ii) of the RGPD, which regulates the special categories of data, which include health data, states the following:

1. The processing of personal data that reveal ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation, and the processing of genetic data, biometric data aimed at uniquely identifying a person are prohibited physical, health data or life data
sexual or the sexual orientations of a natural person.
2. Section 1 will not apply when one of the following circumstances occurs: (...)

h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker's labor capacity, medical diagnosis, provision of health or social assistance or treatment, or management of health and social care systems and services, on the basis of the Law of the Union or of the Member States or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in section 3;
(...)
i) the treatment is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health, or to guarantee high levels of quality and safety of health care and medicines or sanitary products, on the basis of the Law of the Union or of them

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Member States that establish appropriate and specific measures to protect the rights and freedoms of the interested party, in particular professional secrecy.

Regarding the clinical history, article 12 of Law 21/2000, of December 29, on the rights of information concerning the health and autonomy of the patient, and the clinical documentation, in its wording given by the Law 16/2010, of June 3, sets mandatory retention periods for the documentation that forms part of the clinical history:

"(...) 4. The following documentation must be kept from the clinical history, together with the identification data of each patient, for at least fifteen years from the date of discharge of each care process : a) The informed consent forms. b) The discharge reports. c) Surgical reports and birth registration. d) Data relating to anesthesia. e) The reports of complementary explorations. f) The necropsy reports. g) Pathological anatomy reports. (...)

6. The documentation that makes up the clinical history not mentioned in section 4 can be destroyed once five years have passed from the date of discharge of each care process." [the underlines are from this Authority]
7. Notwithstanding what is established in sections 4 and 6, the documentation that is relevant to care effects, which must incorporate the document of advance wishes, and the documentation that is relevant, especially for epidemiological purposes, research or organization and operation of the National Health System. In the processing of this documentation, the identification of the affected persons must be avoided, unless anonymity is incompatible with the purposes pursued or the patients have given their prior consent, in accordance with current regulations on Protection of personal information.

Clinical documentation must also be kept for judicial purposes, in accordance with current regulations.
8. The decision to keep the clinical history, in the terms established by section 7, corresponds to the medical management of the health center, at the proposal of the doctor, with the prior report of the unit in charge of managing the clinical history in each center. This decision corresponds to the doctors themselves when they carry out their activity individually. [the underlines are from this Authority]

As explained in the background, the person making the claim here requested the deletion, by the ICS centers of Baix Llobregat, of their health data from 1986 to 2015. In view of the legislation previously transcribed, the ICS -always in relation to the data for which it is responsible for its treatment-, should have attended to the request made by the now claimant proceeding to the deletion of all that information of more than 5 years, unless it is information referred to in section 4 or sections 7 and 8

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of article 12 of Law 21/2000; which leads to estimate the claim made before this Authority.

5. In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the Royal decree 1720/2007, of December 21, approving the Deployment Regulation of the LOPD (RLOPD), in cases of estimation of the claim for the protection of rights, the person in charge of the treatment must be required to exercise the right within 10 days. In accordance with this, it is necessary to request the ICS so that, within 10 counting days from the day after the notification of this resolution, attend to the right to delete the personal data that is the subject of this claim in the terms set forth in the 4th legal basis. Thus, in accordance with what is provided for in the health legislation that has just been analyzed, the ICS should only delete that medical information relating to the person claiming here that exceeded the aforementioned 15 or 5 year terms - depending on the typology of the documentation according to what has been explained before-, counters from the date of registration of the corresponding care process, unless, based on medical criteria, the information was relevant for care purposes, in which case the deletion even after the periods of 15 or 5 years mentioned have passed, and this in accordance with the provisions of art. 12.7 and 12.8 of Law 21/2000, previously transcribed. In any case, in the event that the deletion of the data proceeds in accordance with what has been explained, the ICS must assess whether the blocking - and not the deletion - is applicable, in accordance with the provisions of art. 32 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD). Once the right to deletion has been taken care of in the terms set out and the person making the claim has been notified of what is appropriate, within the same period of 10 days the claimed entity must give an account to the Authority.

resolution

Therefore, I resolve:

1. Estimate the guardianship claim made by Ms. (...) against the Catalan Health Institute.

2. Request the Catalan Institute of Health so that, within 10 counting days from the day after the notification of this resolution, make effective the right of deletion exercised by the person making the claim, in the manner indicated in the foundation of law 4th and 5th. Once the right of deletion has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

3. Notify this resolution to the Catalan Health Institute and the person making the claim.

4. 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.

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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,