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RESOLUTION of the rights protection procedure no. PT 28/2020, urged by Mr (...) against the General Directorate of the Police.

Background

1.- On 30/06/2020 it was registered with the Catalan Data Protection Authority, a letter from Mr. (...), for which he formulated a claim for the alleged neglect of the right of deletion, which he had previously exercised before the General Directorate of the Police (hereinafter, DGP). Specifically, the complainant requested that his personal data be deleted from the Generalitat Police Information System file (SIP PF), relating to police proceedings number (...), and complained about the lack of response from the DGP to his request for cancellation, which he had made by means of a letter dated 02/06/2020, and of which he provided a copy, together with the documentation that accompanied the exercise request of this right.

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 07/20/2020, the claim was transferred to the DGP, so that within 15 days it formulated the legations that he considered relevant.

3.- The DGP made allegations by means of a letter dated 07/24/2020, received at the Authority on 09/25/2020, in which it set out, in summary, the following:

• That "On June 2, 2020, Mr. (...) requested the cancellation of personal data related to the complaint for injuries, police proceedings no. (...) (and expansions (...))".

- That "On June 17, 2020 (departure record dated 03/07/2020), a request to amend or improve the application was sent to him since he did not provide supporting documentation."

- That "Once you respond to the aforementioned request by providing the supporting documentation requested, the file will continue to be processed."

The claimed entity provided, together with its allegations, a copy of the request for amendment or improvement of the application addressed to the person making the claim, dated 06/17/2020. Also, a copy of the request for deletion of police records submitted by the person making the claim on 02/06/2020, and of the Postal Service shipment locator code of the referenced request, according to which the request was notified to its addressee on 08/12/2020.

4.- On 06/10/2020, the Authority requested from the DGP information on whether or not the interested party responded to the amendment request, and in the event of an affirmative response, the supporting documentation of this response and the date it took place. Like this

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the same, the DGP was required to report whether it had resolved the deletion request, and in the event of an affirmative response, to provide the supporting documentation of said resolution and its notification.

On 10/30/2020, the deadline having passed without the DGP having provided the required information, the Authority reiterates the request with the warning that the lack of response may be subject to an infringement of the regulations on the protection of personal data

5.- The DGP, on 18/11/2020, responds to the request, presenting the following documentation:

- copy of the request for amendment or improvement of the application addressed to the person making the claim, dated 06/17/2020, and registered for departure on 07/03/2020;
- copy of the notice of receipt of the notification of said requirement, dated 08/12/2020 (as a result of being absent in the first attempt on 07/30/2020);
- copy of the form of the person claiming here addressed to the DGP, dated 04/08/2020, through which he provides a copy of the judicial certification relating to the misdemeanor trial number (...), derived from the police proceedings no. (...) (and extensions (...)), in which it is stated that on 01/03/2012 an acquittal was handed down, and that this became final, which is why the 'definitive archiving of the actions.
- copy of the resolution of the director general of the DGP, dated 12/08/2020, by which the request for the deletion of personal data made by the person making the claim here is estimated, and a copy of the notification of said resolution to delete personal data, dated 08/14/2020, and of the notice of receipt of your notification, dated 08/24/2020.

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 the person making the claim here made the request to exercise their right to cancel the personal data to which the request referred, the Directive was applicable to them (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 authorities for the purposes of prevention, investigation, detection or prosecution of 'criminal offenses or enforcement of criminal sanctions, and the free circulation of this data (Directive (EU) 2016/680), in accordance with what is established in its article 1, which provides in its article 16 the right of deletion, which replaces the previous right of cancellation.

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At the level of internal law, Organic Law 3/2018, of December 5, on the Protection of Personal Data and Digital Rights Guarantee (LOPDGDD), which repealed Organic Law 15/1999, of December 13, was already fully applicable. of personal data protection (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 what the aforementioned Directive provides comes into force. In this regard, it should be indicated that 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 the responsible for processing the deletion of personal data, compliance with this requirement must be understood as fulfilled in the terms established in article 16.1 of the LOPD, on the right of rectification and cancellation, which establishes that 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.

3.- Article 16 of the LOPD, relating to the right of cancellation, 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 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 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. (...)"

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In the cancellation request, the interested party must indicate which data they are referring to, and must provide the documentation that justifies it, 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, 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.

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. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may

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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."

4.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP has resolved and notified, within the period provided for by the applicable regulations, the right of cancellation exercised by the person claiming, 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.

In this regard, it is certified that on 02/06/2020 a letter was entered in the Registry of the DGP by the person here claiming, through which he exercised his right of cancellation with respect to personal data recorded in the files of the SIP scope.

In accordance with articles 16 LOPD and 32 RLOPD, the DGP had to resolve and notify the request for cancellation within a maximum period of ten days from the date of receipt of the 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 have occurred the duly accredited notification attempt (art. 40.4 LPAC).

Well, according to the proceedings, the DGP issued a resolution on 08/12/2020, which was notified to the person here claiming on 08/24//2020, in accordance with what the DGP has certified during the hearing procedure, so that the statutory term established for the purpose was exceeded by far. Likewise, indicate that the maximum term for the resolution and notification of the request would have already passed on the date on which the DGP registered the request for amendment to the interested party in order to provide the documents linked to your cancellation request (07/03/2020).

As a result, it has been established that the DGP did not resolve and notify the said request submitted by the affected person in a timely manner.

5.-Regarding the substance of the claim, as seen in the antecedents, the DGP has agreed in the dispositive part of its resolution, to consider the request to cancel the personal data presented by the person here claiming and which are contained in the SIP PF file managed by the DGP, with specific reference to the data relating to police proceedings number (...) (and extensions (...)). For this reason, and respect

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these personal data of the claimant, it is not considered necessary to carry out further considerations in this regard, nor to direct any other request to the DGP, without prejudice to the fact that in the event that the claimant considers that his right has not been fully exercised of cancellation with respect to the personal data recorded in the file of the SIP PF area, may bring this to the attention of this Authority.

For all that has been exposed,

RESOLVED

First.- Declare extemporaneous the resolution of the DGP, by which it considers the request for cancellation made by Mr. no requirement for the right to have been made effective, in accordance with what has been indicated in the foundation

of law 5th

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

Third.- 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,