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RESOLUTION of the rights protection procedure no. PT 19bis/2020, urged against the General Directorate of the Police of the Department of the Interior of the Generalitat.

Background

1.- On 28/04/2020 the Catalan Data Protection Authority received a letter from Ms. (...) (hereafter, claimant), for which he made a claim for the alleged neglect of the rights of access and cancellation, which he had previously exercised before the General Directorate of the Police of the Department of the Interior of the Generalitat (hereinafter, DGP), with respect to all your personal data that were recorded in two files in the area of the information systems of the DGP (SIP PF and SIP PFMEN). The claim for the alleged disregard of the right of access was assigned no. PT 19/2020, and the claim for the alleged disregard of the right of cancellation, no. PT 19 bis/2020. This resolution only refers to the alleged disregard of the right of cancellation.

In order to certify the exercise of the right of cancellation before the person responsible for the treatment (DGP), the claimant provides a copy of the cancellation request addressed to the DGP.

2.- By official letter dated 09/15/2020, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 9/10/2020 a letter of allegations from the DGP was entered in the Authority's register, through which it set out the following:

"1. On March 17, 2020, Ms. (...) requested the cancellation of personal data.

2. On August 13, 2020 (departure registration dated 08/19/2020), a request to amend or improve the application is sent to you, since it does not specifically indicate the data you are requesting to cancel, nor does it provide supporting documentation.

In this request, you are informed of the data contained in the file. Therefore, the right of access requested is effective.

This requirement is notified to you on August 31, 2020.

3. Once this person responds to the aforementioned request by providing the supporting documentation requested, the procedure will continue.

4. The request was sent to the interested party at the address indicated for notification purposes when the suspended administrative deadlines resumed in accordance with the additional provision 3a of Royal Decree 463/2020, of March 14 (...) and when the Register of entry and exit of documents at Les Corts resumed its activity.

Once processing was resumed, the files were dispatched maintaining the strict order of initiation (...)

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The DGP provided, with regard to the claim addressed here, a copy of the cancellation request submitted by the person making the claim and of the amendment request letter dated 08/13/2020, through which he stated the following:

"Regarding the request to cancel personal data contained in the files automated police systems managed by the Department of the Interior, we must tell you the following.

Article 32.1 of Royal Decree 1720/2007, of December 21, approving the development regulations of Organic Law 15/1999 (...) establishes that in the cancellation request: I The interested party must indicate which data he is referring to, and must provide the documentation that justifies it, if applicable (acquittal, conviction with execution of the sentence, dismissal and archive, etc.) as well as of the firmness of this resolution.

Article 27.2 of Law 39/2015 (...) establishes that authentic copies have the same validity and effectiveness as original documents (...).

In your request, you indicate that you want to cancel "All". However, it is not clear what data you are requesting to cancel.

For all of the above, we ask you to tell us which data you are referring to when you indicate "all". In case you do not know the number of the Police proceedings, ens you can indicate the facts that motivated them and the date they occurred, in order to be able to identify the data you request to cancel and provide us with judicial certification (original or certified photocopy), in which the judicial procedure is recorded initiated as a result of the police proceedings that you request to cancel, and the meaning of the resolution that put an end to the judicial procedure (acquittal, dismissal, archive, etc.) as well as the firmness of this resolution. In the event that a judgment of conviction had been issued, the judicial certification must also mention the exemption from criminal or civil liability arising from the conviction.

In accordance with article 68 of Law 39/2015, of October 1, of the common administrative procedure of public administrations, you have a period of 15 days to correct this defect or accompany the mandatory documents, with the warning that after this period has passed without the corresponding amendment having been made, the investigating body will consider that the interested party withdraws his request (...)."

The Authority is not aware that the person making the claim has provided the documentation required by the DGP, nor that the DGP has issued a resolution by which the person making the claim here is deemed withdrawn.

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.- 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, for what is now of interest, that the person responsible for the treatment has the obligation to make effective the right of cancellation of the interested party 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.

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.

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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 16.1 of Law 32/2010, of the Catalan Data Protection Authority, in line with article 18 of the LOPD, 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 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.

Regarding the alleged neglect of the cancellation request that is the subject of the claim, it is proven in the procedure that on 03/17/2020 a letter from the person here was entered in the General Electronic General Register of the Generalitat claimant addressed to the DGP, through which he requested the cancellation of all his personal data recorded on the occasion of all the police proceedings in which he appeared.

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

However, when the person now claiming submitted the request for cancellation (on 03/17/2020), Royal Decree 463/2020, of March 14, was in force, by which the state of alarm was declared for the management of the health crisis situation caused by COVID 19, whose DA 3a established the suspension of administrative deadlines, with effect from 03/14/2020, a suspension that remained in force until 05/31 / 2020, in accordance with the provisions of article 9 of Royal Decree 537/2020, of May 22.

Accordingly, the ten-day period available to the DGP to respond to the cancellation request did not begin until 06/1/2020, with the lifting of the suspension, and it ended on 06/12/2020. However, in the statement of objections, the DGP has acknowledged that the request for amendment of the cancellation request was notified to the person

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claiming on 31/08/2020, and, therefore, once the legal deadline had passed. And it is not known to the Authority - nor has the DGP alleged - that it had agreed to an extension or a suspension of the planned deadline.

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.

To all this it should be added that the person making the claim expressly requested in his application that the procedure be processed electronically, so that the DGP should have sent the request for amendment of the cancellation request electronically. For this reason, and taking into account that at this time there is no record of the notification of the office to the claimant, the suspensive effect provided for in article 22 of the LPAC would not be applicable.

4.- Regarding the substance of the claim, it is necessary to start from the fact that the person making the claim requested the cancellation of all their personal data, which are contained in the identified files, in relation to all the police proceedings of all the procedures processed on any date. Therefore, the request made by the DGP to determine which police proceedings referred to his request for cancellation is considered unnecessary.

Secondly, the Authority considers that the reason that founded the amendment request made by the DGP, would not be applicable to all the personal data that were the subject of the cancellation request. Thus, for example, in those cases, not few in number, in which the person making the claim was the victim or the informant of events with police relevance before the DGP, the request to cancel the data collected on the occasion of their complaint would not require any amendment, in the sense that they would not require the provision of any judicial certification. And it does not seem that with respect to these data there can be any reason for denying the request for the cancellation of those provided for in article 23.1 of the LOPD.

On the other hand, with regard to the personal data that do require the provision of judicial certification, it is obvious that the estimate of the cancellation is in any case conditioned on the provision of this documentation before the DGP. It is for this reason that the Authority cannot issue a statement on the provenance of the requested cancellation, without prejudice to the requirements to be made to the DGP in order for it to comply with the right of cancellation.

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 because:

5.1.- In relation to personal data whose cancellation requires the provision of court documents:

Within a maximum period of 10 days, counting from the day after the notification of this resolution, notify the person making the claim electronically of the corresponding office of amendment of the cancellation request, indicating those specific actions that require the provision of the corresponding judicial documentation.

Once the person making the claim amends their request for cancellation with the provision of the required judicial documentation, within the following 10 days make effective the right to cancel this personal data, including its notification to the claimant.

5.2.- In relation to other personal data:

Within a maximum period of 10 days, counting from the day after the notification of this resolution, cancel this personal data - including its notification to the person making the claim -, unless there is some reason that justifies its conservation, duly justified.

Once the actions required in these two subsections (5.1 and 5.2) have been carried out, i within the following 10 days, he must report to the Authority.

For all this,

RESOLVED

First.- Estimate the claim made by Mrs. (...), and recognize the right to cancel your personal data that appears in the police files, except in the cases in which there is a reason for denying the right of cancellation provided for in article 23.1 of the 'LOPD, duly motivated by the General Directorate of the Police of the Department of the Interior of the Generalitat.

Second.- Request the General Directorate of the Police of the Department of the Interior of the Generalitat so that, within the terms indicated in the 5th legal basis, it makes effective the right of cancellation of the person making the claim and accredit before the Authority.

Third.- Notify this resolution to the General Directorate of the Police of the Department of the Interior of the Generalitat and to the person making the claim.

Fourth.- 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.

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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 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,