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## File identification

Resolution of the rights protection procedure no. PT 86/2021, urged against Conselh Generau d'Aran.

## Background

1. On 07/30/2021, the Catalan Data Protection Authority received, by referral from the GAIP, a claim made by Mr (...) (hereinafter, the person making the claim) against the General Council d'Aran (hereinafter, CG d'Aran) for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before CG d'Aran. The claimant provided a document relating to the exercise of this right.

The person claiming, through the document "ALLEGACIONS CONCLUSIONS OF THE MEDIATION PROCESS in relation to the Agreement of February 25, 2021", requested "transfer of the mediator's written conclusions and the proposals addressed to the Aran Trade Union, and/or its agreement in relation to the service of (...) to Bausen town hall." Likewise, he provided evidence of the notification to the CG of Aran dated 30/06/2021, in which he exercised the right of access to his personal data before the CG of Aran.

On the same day 06/30/2021, he submitted a claim to the GAIP in which he specified that he had not received a response from the claimed administration. And in the information requested, he claimed the following information: "Writes presented in the year 2020/21, mediation process, and I am informed of the status of the files for the initiation of SERIOUS disciplinary proceedings urged by the General Council of Aran and sent to the General Directorate of the Public Service during the years 2015, 2016 and 2020 in relation to (...)."

2. On 08/11/2021, the claim was transferred to the CG of Aran so that within 15 days it could formulate the allegations it considered relevant.

3. The CG of Aran made allegations by means of a letter dated 29/11/2021, in which it stated the following:

- That the person making the claim presented a letter (Registry of Entry no. (...), of 23/12/2020) in which he requested the right of access to public information, as well as denouncing the literal publication of the minutes of the Plenary meeting of the Corporation dated (...), which contained his personal details (name, surname, positions, functions, appointment, etc.) as well as statements in relation to the alleged commission 'a serious offense
- In an extraordinary session of (...), the Governing Council agreed to rectify the publication of the minutes of the Plenary meeting of the General Council of Aran on the transparency portal of the General Council of Aran dated (...) through the publication of another on

the data corresponding to the name, surnames and imputed facts of the person making the claim are anonymized.

- In that same session, it was agreed to notify the Management of this agreement General of Local Administration of the Department of the Presidency of the Generalitat of Catalonia for the purpose of replacing the published minutes, since that department is responsible for the publication. Likewise, on 27/08/2021 the person claiming was notified of the agreement of the Governing Council of (...) referred to.

## 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. Article 15 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 movement of such data (hereafter, the RGPD), regarding the right of access of the interested person, provides that:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;
- b) the categories of personal data in question;
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;
- f) the right to present a claim before a control authority;
- g) when the personal data has not been obtained from the interested party, any available information about its origin;
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be

informed of the adequate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others.”

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.

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.

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:

a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or

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 13 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right to access:

"1. The affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.

When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before providing the information, that the affected person specifies the data or the processing activities to which the request refers.

2. The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right.

However, the interested party can request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that is not included in the remote access system.

3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it

4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay."

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 CG d'Aran resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person claiming.

In this respect, it is certified that, on 30/06/2021, the claimant's letter was received by the claimed entity through which he exercised the right of access to his personal data. And it is also certified that this person,

on 30/06/2021, he submitted to the GAIP a claim for lack of response to the exercise of the right of access in which he alleged that the CG of Aran had not responded to his request. Therefore, the claim for protection of his right of access was presented from

prematurely, that is to say, before the deadline of one month that the claimed entity had to resolve and notify the exercise of the right of access. However, given the time that has passed since the claimant exercised his right of access and, given that the claimed entity has not proven that it has complied with the right of access, in application of the principle of procedural economy, this resolution is issued.

In accordance with article 12.3 of the RGPD, the CG of Aran had to resolve and notify the request to exercise the requested right within a maximum period of one month from the date of receipt of the request. Well, the CG of Aran has not proven to have responded to the request for access made by the person making the claim, neither within the period of one month (extendable for two more months) provided for the purpose, nor later

It should be noted that the claims made by the claimed entity in its letter dated 29/11/2021 do not refer to the exercise of the right of access exercised by the person making the claim, but to the deletion of personal data of the person making the claim which, according to him, were contained in the minutes of the Plenary meeting of the Corporation dated (...) and which would have been published on the transparency portal of the CG of Aran. In this way, the claimed entity neither alleges nor proves that it has attended to the right of access exercised by the claimant, which is the object of its claim.

Once the above has been established, it is necessary to analyze whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms requested by the person making the claim.

In the case at hand, through the document "ALLEGATIONS CONCLUSIONS OF THE MEDIATION PROCESS in relation to the Agreement of February 25, 2021", the claimant requested from the claimed entity the "transfer of the letter of conclusions of the mediator and the proposals addressed to the Syndicate of Aran, and/or its agreement in relation to the service of (...) in the town hall of Bausen."

And in accordance with article 15.3 of the RGPD regarding the right of access, the data controller will provide a copy of the personal data subject to processing. And in this case the claimant requested specific documents relating to his personal data in relation to a mediation process in which he was a party.

It should be borne in mind that article 15 of the RGPD configures the right of access as the right of the affected person to obtain information about their own personal data that is the subject of treatment and, in such case, to access said data and the information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD. In addition, Article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of their personal data in respect of which access has been requested.

The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As it has already been done

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advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. The reasons for denying the right of access are found in article 23 of the RGPD, which must be provided for "through legislative measures" (art. 23.1 GDPR). None of these causes apply in the present case, so the interested person has the right to have his right of access enforced.

Well, as stated above, in its statement of objections, the CC of Aran has not proven to have complied with the exercise of the right of access in the terms formulated by the claimant, that is to say, access to "the mediator's written conclusions and the proposals addressed to the Aran Trade Union, and/or its agreement in relation to the service of (...) to the city council of Bausen". This is why the present claim for protection of the right of access exercised by Mr. (...), since in the present procedure it has been proven that he exercised the right of access before the CG d'Aran and it is also proven that the CG d'Aran did not exercise the right of access

exercise

4. 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 protection of rights, the person in charge of the file must be required so that within the term of 10 days to make the exercise of the right effective. In accordance with this, it is necessary to require the claimed entity so that, within 10 counting days from the day after the notification of this resolution, it makes effective the exercise of the claimant's right of access. Once the right of access has been made effective in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must report to the Authority.

For all this, I resolve:

1. Estimate the guardianship claim made by (...) against the General Council of Aran.
2. Request the General Council of Aran so that within 10 counting days from the day after the notification of this resolution the right of access becomes effective exercised by the claimant, in the manner indicated in the 3rd and 4th legal foundations. Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.
3. Notify this resolution to Conselh Generau d'Aran 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, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,