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File identification

Resolution of the rights protection procedure no. PT 93/2021, petition against the Catalan Health Institute

Background

1. On 08/27/2021, the Catalan Data Protection Authority received a letter from Mr. right of rectification that he had exercised before the Catalan Institute of Health (hereinafter, ICS).

The claimant provided the letter that he had presented to the ICS on 06/30/2021 in which he exercised the right to rectification regarding his personal data in the temporary employment exchange register, alleging :

- That "I have been excluded from the category Technician with a medium degree, specializing in IT systems (Group 2). However, I meet all the requirements, specifically the qualification, and it is duly accredited and validated".
- That in the event that your personal data had been communicated by the ICS to other data controllers, that "this rectification be communicated to them".

2. On 09/20/2021, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it deemed relevant.

3. The ICS made allegations by means of a letter dated 07/10/2021, in which it set out, in summary, the following:

- That "it is considered that the right of rectification should be denied given that the right of rectification provided for in the data protection regulations is not being exercised".
- That "the right of rectification is linked to the inaccurate or incomplete nature of the data", but that "in this case, once analyzed and reviewed by the entity's HR, it has considered that the grading done is correct and therefore no error has been made that allows for rectification".

4. On 15/10/2021, this Authority sent a letter to the ICS so that, within a period of 10 days, "to resolve the present procedure from the perspective of the regulations on data protection", information on "what is the qualification provided by the claimant that is documented in the job exchange managed by the ICS".

5. On 10/27/2021, he had an entry in the register of the written Authority of the ICS in which he stated that "The data that he requested to modify, the exclusion of Borsa de Treball, was a consequence of Mr. (...) reported the degree incorrectly in the application

(HRMS). She is now well informed and at the next evaluation (scheduled for the end of this week or the beginning of next week) it will be related to the score corresponding to the merits that she has reported on her curriculum".

6. In view of the response made by the ICS, on 04/11/2021 the Authority sent a letter to the person claiming to express, if this was the case, their eventual disagreement with the same, warning - the express statement that, once the 5-day period granted has passed without having made any statement, it would be considered that the ICS had satisfactorily resolved its request for rectification.

7. On 05/11/2021, the claimant submitted a letter to the Authority in which he stated the following:

- That the statement of the ICS according to which "The data that requested to be modified, the exclusion from Borsa de Treball, was a consequence of Mr. (...) informed the degree incorrectly in the application (SGRH)" "it is false since as stated in the SGRH in the register with code (...) I submitted on 06/21/2012 all the documentation of my COMPUTER ENGINEERING DEGREE degree", and attached a screen copy of the application.
- That "I had no impact on any grading until 2019 when I was excluded without any motivation".
- That the statement of the ICS according to which "It is now well informed and in the next grading (scheduled for the end of this week or the beginning of next week) will be related to the score corresponding to the merits that it has been informed about in his curriculum" "is also false" and that "in the last grading on 15/10/2021 the category Technician with a half degree in Information systems (Group 2) does not appear in the consultation, while previously it did it came out with the legend category excluded" and that "in addition, now I am also unjustifiably not classified in the category Technician with a higher degree and specialization in IT systems (Group 1)".

8. On 11/09/2021, in view of the claimant's letter, the Authority sent a new letter to the ICS so that within 10 days it would provide information on "what is the qualification of the person making the claim that is currently documented in the job exchange managed by the ICS, and in the event that it is not the one corresponding to the "Computer Engineering Degree" indicate the reasons.

9. On 11/15/2021, he had an entry in the ICS written Authority register stating that "Mr. (...) is registered both in the category of Technician with a higher degree, majoring in IT management and services (Group 1), and in the category of Technician with a mid-level degree, majoring in IT in management and services (Group 2)", and provided a copy of the application screen.

10. On 10/18/2021 the Authority forwarded the ICS response to the claimant and, on 11/22/2021, he submitted a letter stating the following:

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- That "it seems that what the ICS has done has been to combine two professional categories into a new one called Technician with a semi-specialty degree Computer management and systems (Group 2)"
- That "I have no evidence that this category and specialty exists in the ICS, but if with this action the ICS has eliminated the category Technician with a degree in Computer Systems (Group 2), I would appreciate it if closed this file, the ICS should answer the question of whether it has eliminated the category Technician with a degree in Computer Science (Group 2) and whether this category will now be included in the new category Technician with a degree in half a specialty Computer management and systems (Group 2), and I also ask you to prove it with some supporting document (union agreement, administrative resolution, etc.)".

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 16 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 (hereinafter, the RGPD), regulates the right of rectification in the following terms:

"The interested party will have the right to obtain without undue delay from the controller the rectification of inaccurate personal data concerning him. Taking into account the purposes of the treatment, the interested party will have the right to complete the personal data that is incomplete, including by means of an additional declaration.

For its part, article 14 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 of correction:

"When exercising the right of rectification recognized in article 16 of Regulation (EU) 2016/679, the affected person must indicate in his request what data he is referring to and the correction that needs to be made. It must accompany, when necessary, the documentation justifying the inaccuracy or incompleteness of the data being processed."

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 of

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 requests. 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.

(...)"

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 rectification exercised by the person making the claim, since precisely the reason for his complaint which 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 06/30/2021 he entered the ICS a letter from the claimant through which he exercised the right to rectify his personal data.

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In accordance with article 12.3 of the RGPD, the ICS 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 legally. 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 the 7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in procedures initiated at the instance of a party (as is the case) it begins from the date on which the request was entered in the register of the body competent for its processing.

Well, in this case the ICS did not respond to the rectification request made by the claimant on 06/30/2021 within the one-month period provided for the purpose.

Consequently, since the claim was based on the lack of response to the request to exercise the right of rectification, the present claim should be upheld. 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 substance of the claim, that is to say, if in accordance with the precepts transcribed in the 2nd legal basis, in this case the rectification of the data in the terms that usually tender the person claiming. Specifically, in his letter of request submitted to the ICS on 06/30/2021, the claimant claimed to exercise the right of rectification due to having "been excluded from the mid-level Technician category, Systems Computing specialty (Group 2)" despite meeting the requirements and that his qualification was, as he claimed, "duly accredited and validated".

It should be borne in mind that article 16 of the RGPD regulates the right of rectification as the right of the affected person to have inaccurate or incomplete personal data modified, thus complying with the principle of accuracy regulated in article 5.1.d) of the RGPD.

As a preliminary consideration, it is necessary to specify the object of the claim. Although the claimant claimed, in his letter of request submitted to the ICS on 06/30/2021, to exercise the right of rectification in relation to his exclusion from a category of the labor market of the ICS, this request would not fit into the right of rectification provided for in the applicable regulations described in the 2nd legal basis, for the simple fact that the decision to exclude it is an administrative matter that should be resolved in accordance with the civil service regulations and not from the perspective of data protection regulations.

On the other hand, the fact that in this case the ICS, with regard to the category "Technician with a medium degree, specializing in IT systems (Group 2)" where the claimant was registered, was not duly accredited the required qualification, as stated by the ICS in its letter of 10/27/2021, while the claimant claimed to have properly accredited it, does fall within the scope of the right to

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rectification provided for in article 16 of the RGPD, when inaccurate personal data is recorded in the job board.

For this reason, the claim lost its object when the ICS proceeded to rectify the qualification of the person making the claim that was listed in the labor exchange.

Specifically, when the ICS on 11/15/2021 communicated the fact that from that moment it was stated in the Human Resources application that "Mr. (...) is registered both in the category of Technician with a higher degree, majoring in IT management and services (Group 1), and in the category of Technician with a mid-level degree, majoring in IT in management and services (Group 2)".

Finally, the requests of the person making the claim made in his subsequent letter of 22/11/2021 before the Authority, in the sense that "the ICS should answer the question of whether it has eliminated the qualified Technician category half specialization in IT systems (Group 2) and if this category will now be in the new category Technician qualified with a half specialization in IT management and systems (Group 2), and I also ask that you prove it with some supporting document (agreement trade union, administrative resolution, etc.)", do not fit the right of rectification provided for in the data protection regulations, for the reasons stated above.

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 protection of rights, the manager of the file must be required so that within the term of 10 days to make the exercise of the right effective. However, it is considered that in the present case it is not necessary to make any request, given that the estimate is based solely on the formal issue of not having given an answer within the deadline.

For all this, I resolve:

1. Appreciate the guardianship claim made by Mr. (...), given that the Catalan Health Institute has extemporaneously made effective the claimant's right to rectification, without requiring the ICS to make it effective the right of rectification exercised, nor make other considerations regarding the fund.
2. Notify this resolution to the Catalan Health Institute 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 Law 39/2015

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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 the administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

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