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File identification

Resolution of the rights protection procedure no. PT 130/2021, urged by Mr. (...) versus the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 02/11/2021 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim) -referred to this Authority by the Commission for the Guarantee of the Right of Access to Public Information (GAIP)-, for which he formulated a claim for the alleged neglect of the right to access to the personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

The person making the claim certified that, by means of a letter dated 31/08/2021 -with entry registration of that same date-, he had requested from the DGP the exercise of the right of access to his personal data that appeared in the files of the information systems of the Generalitat Police (SIP PF and PFMEN), where he indicated that he was interested *"in those documents and information that in the past would have been handled by the Catalan Autonomous Police, already out orally, como por escrito. Regardless of whether or not they are the subject of current treatment by the aforementioned police force. Since the day I was born, and even though the relationship or presence with respect to the Catalan regional police was minimal"*, and he also provided other documentation.

2.- By order dated 11/10/2021, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- The DGP made allegations by means of a letter dated 11/16/2021 -which was entered in the APDCAT on 11/19/2021-, basically setting out the following:

- That on 31/08/2021, the claimant requested access to their data personal data recorded in the files of the SIP scope.
- That on 09/11/2021, the Director General of the Police issued a resolution in which he agreed to make effective the access to the personal data contained in the SIP PF file, where the person making the claim was also informed *"of the status he held in the proceedings (reported, identified, visit, ...) of the date of the events, the number of police proceedings, or the identification, of the investigative unit and of the reason for the action."*
- That the aforementioned resolution and the service of notification had been sent to the address that the claimant had indicated in his application for notification purposes.

The DGP provided various documentation, including a copy of the access request (31/08/2021), a copy of the file documentation, a copy of the resolution

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dictated (09/11/2021) and also a copy of the notification office - without the date of departure registration -, but did not provide the document certifying that the notification of said documentation has been effective in the person claiming

4.- On 01/13/2022, the claimant submitted a new letter to this Authority, in which he expressed his disagreement with the information relating to the exercise of the right of access that the DGP had given him in its resolution dated (09/11/2021) - of which he enclosed a copy-. The complainant considered that the information provided to him by the DGP was incomplete, because, on the one hand, he had not been given any documentation regarding the data that the DGP had informed him were the subject of his treatment and, on the other hand, because there was a lack of information regarding his minority of age, also indicating that *"They do not explain in any way all the acts that this armed body carried out in reference to my person without me being present, because some of them are known to me in other ways that Yes, they exist, and I strongly suspect that they do*

more documentation about it. Acts are missing in which they acted in person in front of me, for example one of them between January and March of two thousand nineteen".

In this respect, the claimant asked for *"the obtaining of all the documentation, information and internal considerations of which no delivery or delivery has been made to me".*

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.- The personal data processed by the DGP referred to in the present claim relating to the request to exercise the right of access submitted to the DGP registry on 08/31/2021, fall within the scope of Organic Law 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and enforcement of sanctions penal laws (LO 7/2021), which entered into force on 06/16/2021.

3.- In accordance with the above, it is necessary to refer to article 22 of LO 7/2021, which in relation to the right of access provides the following:

"Article 22. Right of access of the interested party to his personal data.

1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him is being processed.

If the treatment is confirmed, the interested party will have the right to access said personal data, as well as the following information:

a) The purposes and the legal basis of the treatment.

b) The categories of personal data in question. c) The recipients

or the categories of recipients to whom the personal data have been communicated, in particular, the recipients

established in States that are not members of the European Union or international organizations. d) The retention period of personal data, when possible, or, if not, the criteria used to determine said period. e) The existence of the right to request from the controller the rectification or deletion of personal data relating to the interested party or the limitation of its treatment.

f) The right to submit a claim to the competent data protection authority and its contact details. g) The communication of the personal data subject to treatment, as well as any available information about its origin, without revealing the identity of any natural person, especially in the case of confidential sources.

(...)"

Likewise, it should be borne in mind that in the event of restrictions on the rights of information, access, rectification, deletion of personal data and the limitation of its treatment, it is necessary to refer to articles 24 and 25 of LO 7/2021, which determine what:

"Article 24. Restrictions on the rights of information, access, rectification, deletion of personal data and the limitation of its treatment.

1. The controller may postpone, limit or omit the information referred to in article 21.2, as well as deny, in whole or in part, requests to exercise the rights contemplated in articles 22 and 23, provided that, having taking into account the fundamental rights and the legitimate interests of the affected person, it is necessary and proportionate to achieve the following ends: a) Prevent inquiries, investigations or judicial proceedings from being obstructed. b) Avoid causing damage to the prevention, detection, investigation and prosecution of criminal offenses or the execution of criminal sanctions. c) Protect public safety. d) Protect National Security. e) Protect the rights and freedoms of other people.

2. In case of restriction of the rights contemplated in articles 22 and 23, the person responsible for the treatment will inform the interested party in writing without undue delay, and in any case, within one month from the date of knowledge of said restriction, of the reasons thereof, as well as of the possibilities of filing a claim before the data protection authority, without prejudice to the remaining judicial actions that can be exercised by virtue of the provisions of this Organic Law. The reasons for the restriction may be omitted or replaced by neutral wording when the disclosure of the reasons for the restriction may jeopardize the purposes referred to in the previous section.

3. The person responsible for the treatment will document the factual or legal grounds on which the decision denying the exercise of the

right of access This information will be available to the data protection authorities".

"Article 25. Exercise of the rights of the interested party through the data protection authority.

1. In cases where there is a postponement, limitation or omission of the information referred to in article 21 or a restriction of the exercise of the rights contemplated in articles 22 and 23, in the terms provided for in article 24, The interested party may exercise their rights through the competent data protection authority. The data controller will inform the interested party of this possibility.

2. When, by virtue of what is established in the previous section, the rights are exercised through the data protection authority, this must inform the interested party, at least, of the completion of all the necessary checks or the corresponding review and of his right to file a contentious-administrative appeal".

In paragraph 1 of article 52 of LO 7/2021, regarding the regime applicable to the procedures processed before the data protection authorities, it is foreseen that:

"1. In the event that the interested parties appreciate that the processing of personal data has violated the provisions of this Organic Law or their request to exercise the rights recognized in articles 21, 22 and 23 has not been met, they will have the right to file a claim before the data protection authority (...)"

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, deletion or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within 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 attended to the right of access exercised by the person making the claim within the period provided for by the applicable regulations, since the reason for the complaint of the person who initiated the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

With regard to the alleged neglect of the right that is the subject of the claim, it is proven that on 08/31/2021, the person making the claim presented a letter in the entry register of the DGP through which he exercised the right of access

In the case that concerns us here, in accordance with article 20.4 of LO 7/2021, the DGP had to resolve and notify within a maximum period of one month from the date of receipt of the

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request for access presented by the claimant. 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 instance 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 (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art. 40.4 LPAC).

Well, according to the documentation provided in this file, the DGP did not issue the resolution in response to the request for access presented to the DGP registry on 08/31/2021 until 09/ 11/2021, that is to say, well past the resolution deadline of one month provided for the purpose, so it must be concluded that the DGP resolved extemporaneously, and in this sense the estimation of the present claim proceeds given that this is based on the lack of response to the request to exercise the right within the legally fixed term.

5.- With regard to the substance of the request for access to the personal data listed in files in the SIP area (PF and PFMEN), the DGP issued a resolution dated 09/11/2021 in which access to the personal data contained in the SIP PF file was agreed upon, facilitating the claimant here the information he had, but without attaching the documentation related to the processed data or making any statement about whether or not his data was in the SIP PFMEN file.

Regarding the expression of disagreement with the response of the DGP made by the person claiming before this Authority on 13/01/2022, specifically, the one referred to that *"They do not explain in any way all the acts that this armed body carried out in reference me personally without me being present, because some of them are known to me by other means that they do exist, and I have a severe suspicion that there is more documentation in this regard. Acts are missing in which they acted in person in front of me, por ejemplo one of them between January and March of two thousand nineteen"*, it should be taken into account that the person making the claim states that it is a matter of suspicion and does not provide any evidence or any other data that distorts the veracity and completeness of the information provided by the DGP in response to the exercise of their right of access and the subject data of treatment

With regard to the request for access requested by the claimant in relation to his personal data relating to his minor age that could appear in the SIP PFMEN file, the DGP has not proven to have given any response in this regard . In relation to this, it should be borne in mind that the right of access also includes the right to know whether or not personal data is being processed. Therefore, and with regard to the case analyzed here, the claimant had the right to know whether the SIP PFMEN file contained his personal data, as he requested in his request for access to date data

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31/08/2022, and confirmed in his subsequent letter dated 13/01/2022, and in the event that this was not the case, that the DGP also inform him of the non-existence of his data in said file. In short, the DGP did not give a complete answer to the request made by the person making the claim.

In this regard, it must be said that, if the claimant was interested in accessing his personal data *"From the day he was born"*, in his resolution dated 09/ 11/2021, he should also have explained to the person claiming, whether or not he had his data in the SIP PFMEN file.

Finally, it should be made clear that, in accordance with article 22.1 of LO 7/2021, the claimant's right of access includes the provision of a copy of the data requests that are the subject of treatment by the DGP.

In view of all the above, the access claim should be upheld, given that the DGP's response was incomplete.

6.- 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 to make it effective the exercise of the right in relation to the claimant's data.

In the case at hand, although the DGP has not accredited the Authority with the notification of its resolution dated 09/11/2021 in response to the request for access that is the object of the claim, it is not appropriate to require the DGP in order to carry out this notification, given that the subsequent documentation and additional information presented by the person claiming before the Authority - indicated in the preceding 4th - has certified the notification of this resolution.

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, in accordance with the 'exposed to the 5th legal basis, regarding access to the data of the SIP PFMEN file, and which also includes providing a copy of all the requested data that is the subject of treatment by the DGP in the SIP PF file. 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 claim presented by Mr. (...) against the General Directorate of the Police, in the terms set out in the 4th and 5th fundamentals of law.
2. Request the DGP, so that within 10 counting days from the day after the notification of this resolution, the right of access exercised by the person becomes effective

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claiming in the terms indicated in the 6th legal basis. 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 the DGP and the person making the claim.
4. Order the publication of the Resolution on the Authority's website (apdcat.gencat.cat), from 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 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,