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## File identification

Resolution of the rights protection procedure no. PT 150/2021, urged by Mr. (...) versus the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 29/11/2021 the Catalan Data Protection Authority received a letter from Mr. (...), who acted on behalf of Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right to delete his personal data that he had previously exercised before the Management General of Police (hereinafter, DGP). Specifically, the claimant requested the deletion of his personal data relating to police proceedings no. (...) (arrest for resistance and disobedience to authority) of the file in the area of the Information System of the Police of the Generalitat de Catalunya (SIP).

The person claiming certified that, by means of administrative mail dated 19/10/2021, he had requested from the DGP, the deletion of his data that appeared in the file of the Information System of the Police of the Generalitat Catalonia for Individuals (SIP). In this regard, he provided various documentation relating to the exercise of this right, such as a copy of the request to exercise the right of deletion (19/10/2021) sent by administrative mail to the DGP, and a court certificate (dated 05/10/2021) of the Abbreviated procedure no. (...), instituted by the Court of Inquiry (...) of Valls, in which an interlocutory order of provisional dismissal was issued.

2.- By official letter dated 03/12/2021 - which was received on 09/12/2021 -, this Authority required the person acting as representative of the person making the claim to amend the claim of protection of the right to deletion of personal data presented on 29/11/2021, and also informed him that, in order to consider the claim formally presented, it was necessary for him to prove his representation. In this request, a period of 10 working days was granted in order for this defect to be corrected, with the express warning that, in the event that the required documentation is not provided, within the period granted, the claim presented to this Authority would be considered inadmissible. On 12/20/2021, the Authority received a reiteration of the claim regarding the disregard of the right of deletion exercised by the person claiming before the DGP on 10/19/2021, but on this occasion, it was the claimant himself who made the claim in his own name. Given this, it was considered corrected the lack of representation.

3.- By means of a letter dated 10/01/2021, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

4.- On 02/14/2022, the DGP made allegations by means of a letter dated 02/09/2022, in which he stated the following:

- That on 21/10/2021, the person claiming requested the deletion of personal data related to police proceedings no. (...) (arrest for resistance and

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disobedience to the authority), and for these purposes, provided as supporting documentation a copy of the judicial certificate of the Abbreviated procedure no. (...), instituted by the Court of Inquiry (...) of Valls, in which an interlocutory order of provisional dismissal was issued.

- That on 01/18/2022 (with exit registration dated 01/21/2022) the claimant was sent a request for amendment or improvement of the application in which he was asked to provide *"substantiating documentation of the definitive file of the case, given that a provisional dismissal does not leave the process definitively closed, which can be reopened at any time if sufficient evidence appears to demonstrate the commission of a crime or the guilt of those prosecuted, and until the prescription of the facts"*.

- That *"When the interested party responds to the request, the processing of the file will continue"*.

In this regard, the DGP provided various documentation, in particular, a copy of the request for deletion (19/10/2021), a copy of the supporting documentation provided (judicial certificate of provisional dismissal dated 05/10/2021), and copy of the request for amendment or improvement of the application (18/01/2022) -with exit registration dated 21/01/2022)-.

#### 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 subject to treatment by the DGP referred to in the present claim relating to the request to exercise the right of deletion submitted to the DGP registry on 10/19/2021, fall within the scope of application 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 the execution of criminal sanctions (LO 7/2021), which entered into force on 06/16/2021.

3.- In accordance with the above, it is necessary to refer to article 23 of LO 7/2021, which in relation to the right of deletion provides the following:

*"2. The person responsible for the treatment, on his own initiative or as a consequence of the exercise of the right of deletion of the interested party, will delete the personal data without undue delay and, in any case, within a maximum period of one month from the date of knowledge, when the treatment infringes articles 6, 11 or 13, or when personal data must be deleted by virtue of a legal obligation to which it is subject.*

*3. Instead of proceeding with the deletion, the controller will limit the processing of personal data when any of the following circumstances occur:*

*a) The interested party doubts the accuracy of the personal data and its accuracy or inaccuracy cannot be determined.*

*b) Personal data must be kept for evidentiary purposes.*

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*When the treatment is limited by virtue of letter a), the person responsible for the treatment will inform the interested party before lifting the limitation of the treatment".*

*"(...) 5. When the personal data have been rectified or deleted or the treatment has been limited, the person responsible for the treatment will notify the recipients, who must rectify or delete the personal data that are under their responsibility or limit their treatment".*

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 de facto or derecho grounds on which the decision denying the exercise of the right of access is based. 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 resolved and notified, within the period provided for by the applicable regulations, the right of deletion exercised by the person making the claim, since precisely the reason for the person's complaint that 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 to deletion, subject of this claim, it is proven that, by means of administrative mail presented to the Postal Service office on 10/19/2021 - which was entered in the register of the DGP on 21/10/2021-, the claimant requested the DGP to delete his data relating to police proceedings no. (...) (for arrest for resistance and disobedience to authority).

In the case we are dealing with 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 request of deletion submitted by the person claiming. In relation to the question of

term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, of the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of 3 August, on the legal and procedural regime of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in proceedings initiated at the instance of a party (as is the case) 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, as explained in the background, it is proven that the DGP received the request for deletion from the person claiming on 21/10/2021, and that until 21/01/2022 it did not forward the request for amendment of the request to the person making the claim, that is to say, the resolution period of one month foreseen for the purpose has been exceeded by far, so it must be concluded that the DGP did not give any response to the appellant within the deadline, 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 deadline.

5.- Once the above has been settled, it is necessary to analyze the merits of the claim, that is to say whether, in accordance with the precepts transcribed in the 3rd legal basis, the deletion of the data in the terms that - legality of the person claiming.

As a preliminary matter, it should be noted that the right to delete data is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. Through the right of deletion, the person holding the data can request the deletion of data that is inadequate or excessive, without prejudice to the blocking duty, in the terms provided for in the precepts that regulate the right of deletion.

Likewise, with regard to the data registered for police purposes, the deletion proceeds when the circumstances provided for in article 23.2 of LO 7/2021 occur, that is, when the processing of the data infringes articles 6, 11 or 13 of this law, or when so determined by legal obligation.

However, LO 7/2021 itself foresees a series of limitations to the deletion of data, as is the case of those provided for in article 24 of LO 7/2021 in the area of police files. Specifically, article 24 of LO 7/2021 allows such a limitation to *"prevent inquiries, investigations or judicial proceedings from being obstructed, to avoid causing harm to the prevention, detection, investigation and prosecution of criminal offenses or the execution of sanctions criminal cases, protect public security, protect National Security, and protect the rights and freedoms of other people"*.

In order to justify the non-deletion of the claimant's data, the DGP, sent him -with exit registration 01/21/2022-, a request for amendment of the application in which he was asked to provide the judicial certification of the definitive file of the case, i

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he motivated his request in which *"a provisional dismissal does not leave the process definitively closed, which can be reopened at any time if sufficient evidence appears to prove the commission of a crime or the guilt of the accused, and until the prescription of the facts."*

Likewise, the DGP, in its allegations before the Authority, reaffirmed the need for the applicant to certify the definitive file of the case, for the reasons stated above.

In this regard, the statements made by the DGP in its response letter dated 02/09/2022 would be in line with the provisions of article 24.1 of LO 7/2021, specifically, in its wording b) *"Avoid causing harm to the prevention, detection, investigation and prosecution of criminal offenses or the execution of criminal sanctions"*, given that despite having proven the existence of a firm interlocutory in which the provisional dismissal of the judicial proceedings, there is an impediment to delete the data of the person claiming relating to the police proceedings no. (...), consisting of the fact that the process can be reopened at any time if sufficient evidence appears to demonstrate the commission of a crime or the guilt of those prosecuted, as long as its definitive file is not dictated, and whenever and wherever not the specific limitation period is exceeded, in accordance with the provisions of article 130.1.6 of Organic Law 10/1995, of November 23, of the Penal Code. In this regard, according to the documentation provided by the DGP, and also by the person making the claim, the facts investigated in the controversial police proceedings would have happened in 2018, which is why, given the nature of the facts investigated (crime for resistance and disobedience to authority), the applicable five-year statute of limitations would not have been exceeded.

That being the case, the pronouncement of this Authority on the substantive issue, that is to say, with respect to the claim to delete the data, it must necessarily be dismissed in relation to police proceedings no. (...), due to the fact that the judicial pronouncement of dismissal in the process that led to these police actions is provisional, in such a way that said judicial pronouncement does not therefore prevent the corresponding police investigation from being kept open, when it has not been exceeded the corresponding limitation period.

Finally, a final consideration must be made in relation to the present claim, taking into account the damage that could be caused to the person claiming here by keeping the data contained in the police proceedings in the police file without including the circumstance related to the provisional dismissal decreed by firm interlocutory.

Faced with this, the DGP should reconcile the right to data protection of the affected person and the needs derived from police investigations, specifically, to comply with the requirements of the data accuracy principle. Given this, and for the case that it has not yet done so, it is necessary to request the DGP in order to include in the file of the SIP scope, *"an annotation of the criminal procedure in which the police proceedings have resulted and from which an interlocutory order of provisional dismissal has been issued"*.

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For all this, I RESOLVE:

1. Declare the response given by the DGP to the claim made by Mr. (...), in relation to your request for the deletion of the data, and reject it as far as the fund in the terms provided for in the 5th legal basis.
2. Request the DGP so that, within 10 days from the day after notification of this resolution, certify the incorporation of an entry in the file of the SIP scope, as has been issued an interlocutory order of provisional dismissal, in relation to the criminal procedure in which the police proceedings no. (...), in accordance with the provisions of the 5th foundation of law.
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](http://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 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,