File identification

Resolution of the rights protection procedure no. PT 23/2022, petition against the Catalan Health Institute.

Background

1. On 07/03/2022 the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right to delete his personal data, which he had previously exercised before the Catalan Institute of Health (hereinafter, ICS). The claimant submitted a letter from the ICS dated 23/02/2022, in response to two requests to exercise the right of deletion presented to the ICS on 10/02/2022 (Record Entry No. 0341 /883/2022 and 0341/885/2022), through which they communicated the following:

> We *inform you that in 2021 you already submitted the same request to delete data from your medical history. On October 8, 2021, departure registration number 0341/962/2021, the Citizen Service Area of the Corporate Center of the ICS sent you a response to the aforementioned request by certified mail and with notice of receipt. On November 4, 2021, Correus returned the aforementioned letter to us indicating that due to the absence of the holder at the time of delivery they had left a notice (...) and that after the deadline the interested person had not come to pick up the written Finally, we are sending you again, attached, the answer we sent you on October 8, 2021."*

The claim is also attached to the response that the ICS sent to the now claimant, on 08/10/2021, in response to two instances of September 20 and 27, 2021 (Register no. 0341 /3677/2021 and 0341/3758/2021) through which they informed him that " *according to the applicable regulations, there is an obligation to keep the clinical history for a minimum of five years from the date of discharge of each care process. In this case, we are not aware of the registration of the processes on which the deletion is requested, therefore, and for welfare reasons, we consider that your request cannot be granted".*

2. On 18/03/2022, the claim was transferred to the ICS so that within 15 days it could formulate the allegations it deemed relevant.

3. The ICS formulated allegations by means of a letter dated 03/28/2022, in which it set out, in summary, the following:

- " *In accordance with article 12.4 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and clinical documentation, without prejudice to the retention periods that may derive from other legal regulations, a minimum period of conservation of the most relevant documentation of the clinical history is established, of fifteen years from the date of registration of each care process. Therefore, and in accordance with current regulations, the most relevant health data cannot be deleted until 15 years have passed, from the date of another of these care processes. (...) It should also be borne in mind that in accordance with the applicable regulations, there is an obligation to keep the clinical history for a minimum of five years from the date of discharge of each healthcare process. In this case, the data subject's medical history does not record the discharge of the processes on which the deletion is*

requested, nor did the data subject provide any health information indicating that her mental health diagnoses were recorded. "

The response of the claimed entity was accompanied by the requests to exercise the right of deletion that on 10/02/2022, the now claimant, presented to the ICS (registration number 0341/883/ 2022 and registration number 341/885/2022) and which aimed to delete the following data:

- Request registration number 0341/885/2021: " *The deletion of the following personal data uploaded to the HC3 which is related below: F22 (2012) Delusional disorders. F05 (2019) Delirium."*
- Request registration number 0341/883/2022: *"I ask the Catalan Institute of Health to delete these erroneous personal data uploaded to my shared medical history HC3. F22 (2012) Delusional disorders. F05 (2019) delirium".*

4. On 03/29/2022, the Authority required the person making the claim to, within 10 days, send the documentation in accordance with the medical discharge of the reference mental health care processes, with the warning that, if you do not respond to the service, it would be understood that you have not been registered with these processes. On 04/01/2022, the claimant accessed the notification and, well past the deadline, has not submitted the documentation required by the Authority.

5. On 05/09/2022 the person making the claim submitted a letter to the Authority which, in literal terms, states: " *I again request that the personal data relating to my mental health be deleted from the shared history of the Catalan Institute of Health (...)".*

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 Catalan Data Protection Authority.

2. In relation to the rights regulated in articles 15 to 22 of the RGPD, which include the right to deletion, paragraphs 3 to 5 of article 12 of the RGPD, establish 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 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 when 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 carry out the requested action, or) refuse to act on the request.

The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request. (…)"

With regard specifically to the right to deletion, article 17 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 circulation of these (hereinafter, the RGPD), provides that (the bold is ours):

"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:

a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;
c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;
d) personal data have been processed illegally;
e) personal data must be suppressed for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person in charge of the treatment;
f) the personal data have been obtained in relation to the offer of information society services mentioned in article 8, section 1.

2. ***Sections 1 and 2 will not apply when the treatment is necessary*** *:*

a) To exercise the right to freedom of expression and information;
b) For the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of powers public conferred on the person in charge;
c) For reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;
d) For archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, to the extent that the right indicated in section 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or
e) For the formulation, exercise or defense of claims.

For its part, article 15.1 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD), determines that " *The right to deletion will be exercised by agreement with what is established in article 17 of Regulation (EU) 2016/679".*

Regarding the treatment of special categories of personal data, such as the health data that is the subject of this claim, article 9 RGPD provides the following:

1. *processing of personal data that reveal ethnic or racial origin, political opinions, religious or philosophical convictions, or trade union affiliation is prohibited, and the processing of genetic data, biometric data aimed at uniquely identifying a natural person, data relating to the health or data relating to the sexual life or sexual orientation of a natural person.*
2. *Section 1 will not apply when one of the following circumstances occurs:*

   (…)

   h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker's labor capacity, medical diagnosis, provision of health or social assistance or treatment, or management of health and social care systems and services, on the basis of the Law of the Union or of the Member States or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in section 3;

   3. The personal data referred to in section 1 may be processed for the purposes mentioned in section 2, letter h), when its treatment is carried out by a professional subject to the obligation of professional secrecy, or under his responsibility, in agreement with the Law of the Union or of the Member States or with the rules established by the competent national organisms, or by any other person also subject to the obligation of secrecy in accordance with the Law of the Union or of the Member States or of the rules established by the competent national bodies.

   4. Member States may maintain or introduce additional conditions, including limitations, with respect to the treatment of genetic data, biometric data or health-related data.

On the other hand, the health legislation applicable to the case, specifically, article 12.4 of Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the documentation clinic, in its wording given by Law 16/2010, of June 3, amending Law 21/2000, of December 29, on the rights of information concerning the patient's health and autonomy, and the clinical documentation, establishes, for what is of interest here:

" 4. The following documentation must be kept from the clinical history, together with the identification data of each patient, for at least fifteen years from the date of discharge of each care process:
a) Informed consent forms.
b) The discharge reports.

c) Surgical reports and birth registration.
d) Data relating to anesthesia.
e) The reports of complementary scans.
f) The necropsy reports.
g) Pathological anatomy reports.
5. The digitalization processes of the clinical history that are carried out must facilitate access to the clinical history from any point in the National Health System. To this end, the mechanisms must be established to make possible, through the individual health card, the link between the clinical histories that each patient has in the bodies, centers and services of the National Health System, and that allow the access of health professionals to clinical information, and the exchange of said information between the care devices of the autonomous communities, in accordance with the provisions on the protection of personal data.
6. The documentation that makes up the clinical history not mentioned in section 4 can be destroyed once five years have passed from the date of registration of each care process.
7. Notwithstanding what is established in sections 4 and 6, the documentation that is relevant to care effects, which must incorporate the document of advance wishes, and the documentation that is relevant, especially for epidemiological purposes, research or organization and operation of the National Health System. In the processing of this documentation, the identification of the affected persons must be avoided, unless anonymity is incompatible with the purposes pursued or the patients have given their prior consent, in accordance with current regulations on Protection of personal information. Clinical documentation must also be kept for judicial purposes, in accordance with current regulations.
8. The decision to keep the clinical history, in terms established by section 7, corresponds to the medical management of the health center, at the proposal of the doctor, with the prior report of the unit in charge of managing the history clinic in each center. This decision corresponds to the doctors themselves when they carry out their activity individually.

3 . Having explained the applicable regulatory framework, it is then necessary to analyze the substance of the claim, i.e. if, in accordance with the precepts transcribed in the 2nd legal basis, it is appropriate, in this case, to delete the data in the terms requested the person claiming

Specifically, the claimant requested the deletion of the medical data contained in their shared medical history, relating to the diagnosis " *F22 (2012) Delusional disorders and F05 (2019) Delirium* " and based the claim on the fact that the ICS it would not have deleted the reference data.

For its part, the ICS argued that the now claimant had not obtained the medical discharge from the healthcare processes in relation to which he is requesting the deletion of his data. In this regard, he pointed out that, in accordance with the article of Law 21/2000, of December 29, there is an obligation to keep the clinical history for a minimum of five years, from the date of discharge of each process assistance, which is why, at the discretion of the claimed entity, it was not appropriate to delete the reference data.

Given the allegations of the ICS, in the framework of this claim procedure, the Authority required the person making the claim to, within a period of ten days, provide the documentation as it had the medical discharge of the processes mental health services of reference, with the warning that, in the event of not answering, it would be understood that he does not have the medical discharge. After the aforementioned deadline, the person making the claim has not presented the required documentation, nor has he submitted allegations that argue any circumstance that prevents the presentation of this documentation to the Authority.

In this regard, it should be noted that article 12.4 of Law 21/2000, of December 29, establishes that, at a minimum, the most relevant documentation of the clinical history must be preserved for fifteen years, counting from of the registration date of each care process. Likewise, the fifth section of article 12 of the same Law provides that, in relation to the documentation that makes up the medical history and that is not mentioned in the fourth section of the article, the conservation period is limited to five years, counting from the date of registration of each care process.

In effect, the transcribed health legislation sets the retention periods for the documentation integrated into the patient's clinical history, at 5 or 15 years, depending on the type of document in question, without providing for its deletion, when medical discharge is not available.

In turn, article 17.2 c) of the RGPD provides that, constitutes an exception to the obligation of the controller to delete the personal data of the interested person *"reasons of public interest, in the scope of public health in accordance with article 9, section 2, letters h) and), and section 3".* In this sense, and for the case that concerns us here, article 9.2 h) RGPD refers, among other cases, to the processing of personal data necessary for the purposes of medical diagnosis, provision of assistance or treatment of a health or social type, or management of health and social assistance systems and services.

From the above it can be inferred that, in order to proceed with the deletion of data from the clinical history, it is an indispensable requirement that the person concerned has been registered with the healthcare processes in respect of which he exercises this right. And given that in the present case, it has not been proven that the claimant has the aforementioned medical discharge, the claim must be dismissed.

For all this, I resolve:

1. Dismiss the guardianship claim made against the Catalan Institute of Health.

2. Notify this resolution to the ICS 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 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,