File identification

Resolution of the rights protection procedure no. PT 40/2022, urged against the Institute of Health Care (IAS).

Background

1. En data 03/05/2022 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit de l'entitat ACM Legal, Asistencia Jurídica Especializada , SLP, en representació de Mrs. (...) (hereafter, the person making the claim), for which she made a claim for the alleged neglect of the deletion rights she had previously exercised before the CAP d'Amer and the CAP d'Anglès, both subordinates of the Institute of Health Care (hereafter, the IAS).

Specifically, the claimant complained that the IAS had denied him the exercise of his right, and for this reason he requested the *"supresión/bloqueo de los archivos, and the elimination of the information from the clinical history"* in relation to which *"Five years or more have passed since the date of registration of each care process, and access to information that is not susceptible to deletion is blocked, so that it does not appear visible in shared histories."*

The claimant provided various documentation relating to the exercise of this right, among others:

- Request of 28/12/2021 to exercise the rights of deletion (and opposition) before the CAP d'Amer, specifying that *"(...) results from the application of article 12.6 of Law 21/2000 , of December 29, on the rights to information concerning the patient's health and autonomy, and the clinical documentation, which allows interested parties to request the deletion of data from their clinical history five years after the date of discharge every care process" .* And added *"That in the event that my personal data have been communicated by that person in charge to other persons responsible for the treatment, this opposition and suppression be communicated"* . The person making the claim certified having submitted the request to the person in charge on 12/29/2021.
- Request of 20/12/2021 to exercise the rights of deletion (and opposition) before the CAP of English, formulated in the same terms. The person making the claim attests to having tried to present the request for deletion (and opposition) to the CAP d'Anglès by burofax, but that the delivery of the same was unsuccessful, and that a notice of attempted delivery was left on 10/01/2022.
- Letter of 04/02/2022, by which the IAS resolved the request to exercise the right of deletion made by the person claiming before the CAP d'Amer on 28/10/2021 (this request was not contributed). In the aforementioned letter, the IAS basically indicated that:
    - *"The centers sanitary they have the legal obligation to respect the Law Regulating Patient Autonomy which imposes on them the obligation to keep the clinical history of patients treated in them for a minimum period of fifteen years counted from the date of registration of each process care "*
    - The claimant *can request the deletion of unos concrete data and this request will be evaluated, from each health center , from the perspective of the criteria medical and of the patient 's therapeutic interest ".*

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2. On 05/26/2022, the Authority sent a request to ACM Legal in order to certify that the claimant had submitted the request to exercise the right of deletion before the English CAP; as well as in order to certify the representation that the claimant would have granted him.

3. On 08/06/2022, ACM certified the representation it held and provided a copy of the certificate certifying that it had attempted to notify, on 10/01/2022, the burofax containing the request for deletion (and opposition) in the English CAP. In that certificate, the courier company indicated that the result of the notification was: *"No entregado, dejado aviso."*

4. On 06/10/2022, the claim was transferred to the IAS so that within 15 days it could formulate the allegations it deemed relevant.

5. The IAS made allegations in a letter dated 07/04/2022, in which it set out, in summary, the following:

- That on 10/28/2021 the person making the claim requested the deletion of the data held by CAP d'Amer, basing this request on the withdrawal of consent to the processing of their personal data.
- That in the response given to the request on 10/28/2021, the right to deletion was not denied, but it was informed that he could request the deletion of specific data and this request legality would be assessed from the perspective of medical criteria and the patient's therapeutic interest.
- That on 12/28/2021 the claimant made a new request to the CAP d'Amer in which he requested the deletion of the data from his clinical history five years after the date of discharge of each care process . However, the authorities that received this request considered that it was an *"insistence of the initial request made on 10/28/2021"* , to which a response was given on 02/04 /2022.
- That the first visit of the claimant to the CAP d'Anglès (of which the CAP d'Amer is a part) was on 26/08/2020, and for this reason *"there is no data available prior to that date, being infeasible the request for the cancellation of the files and the deletion of the data from your clinical history five years after the date of registration of each care process carried out on 12/28/2022."*
- That *"There is no record of any request made to the CAP d'Anglès"* by the person making the claim.

The IAS provided the request of 28/10/2021 presented to the CAP d'Amer and the resolution of the request, notified to the entity representing the claimant on 04/02/2022 .

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 Catalan Data Protection Authority.

2. In advance, it is necessary to clarify the claim presented by the interested person to this Authority. Well, although the documents provided refer to the exercise of the rights of deletion and opposition , the claim presented by the interested person to the Authority only concerns the right of deletion. That is why the facts analyzed here are limited solely to the right of deletion.

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On the other hand, it should also be pointed out that the person making the claim has proven to have made two requests for deletion (and opposition), one to the CAP d'Amer, and the other to the CAP d'Anglès. The application to the CAP of Amer was indeed submitted on 29/12/2021 , while the application of 20/12/21 addressed to the CAP (in English), by means of burofax, was unsuccessful, since it could not be delivered, it was left behind but not picked up.

3. 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 movement thereof (in hereinafter, the RGPD), regulates the right of deletion in the following terms:

> *"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 treated unlawfully;*
> *e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;*
> *f) the personal data have been obtained in relation to the offer of information society services mentioned in article 8, section 1. (…)*
> *3. 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 public powers 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, paragraph 1, to the extent that the right indicated in paragraph 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 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 deletion:

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"1. The right of deletion will be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679.
2. When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge will be able to retain the identification data of the affected person necessary in order to prevent future treatments for the purposes of direct marketing."

On the other hand, article 32 of the LOPDGDD regulates the duty to block deleted data in the following terms:

"1. The person responsible for the treatment is obliged to block the data when carrying out the rectification or deletion.
2. The blocking of data consists of the identification and reservation of these, with the adoption of technical and organizational measures, to prevent their treatment, including display, except for making the data available to judges and courts, the Public Prosecutor's Office or the competent public administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the limitation period thereof.
After this period, the data must be destroyed.
3. Blocked data cannot be processed for any purpose other than that indicated in the previous section. (...)"

In relation to the rights contemplated in articles 15 to 22 of the RGPD, 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 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.

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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."

4. Having explained the applicable regulatory framework, it is then necessary to analyze whether the IAS resolved and notified, within the period provided for by the applicable regulations, the right of deletion exercised by the person claiming before the CAP of Amer on 12/29/2021 and before the CAP of English on 10/01/2022 .

In accordance with article 12.3 of the RGPD, the IAS 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 requests requests

The IAS considered that the deletion request of 12/28/2021 (submitted on 12/29/2021) was a reiteration of a previous request made on 10/28/2021, in which the person here, the claimant also exercised the right of deletion with respect to all his data that was the subject of treatment by CAP d'Amer, although in the subsequent request of 12/28/2021, he also requested the deletion of the data, but only with respect to 'those recorded in their medical history for more than 5 years from the date of discharge of the corresponding healthcare process.

Well, it is certified that the response to these deletion requests by the IAS was notified on 04/02/2022, once more than a month had already passed since the request of 28 /10/2021, as of the application submitted on 12/29/2021.

On the other hand, in its letter of allegations dated 07/04/2022, the IAS states that *"There is no record of any request made to the CAP d'Anglès"* by the person making the claim. In this regard, it should be borne in mind that the claimant has certified the attempt to deliver his application to the CAP d'Anglès by burofax, and that since said delivery was unsuccessful, the corresponding collection notice on 10/01/2022. In relation to this, it should be borne in mind that a burofax not delivered to be refused or not withdrawn does not imply a lack of knowledge on the part of the addressee, but what it proves is the waiver to be notified (Judgment no. 31/ 2012 of the AP La Rioja, Section 1a, 6/02/2012).

Well, the statements of the IAS in its statement of objections, in the sense that the CAP of English does not even have evidence of having received the request, imply its recognition that it was not collected the burofax for the presentation of said request despite the fact that he was given notice, and therefore, that he did not respond to the terms of this specific request. Given this, it must be concluded that the right exercised by the claimant in time and form has not been met.

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Consequently, it must be declared that the IAS has not responded within the legally fixed period to the requests that are the subject of this claim.

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 2nd legal basis, the deletion of the data in the terms requested by the claimant person Specifically, the claimant focuses his claim on the request for deletion of his data submitted on 29/12/2021 before the CAP d'Amer, and on the request for deletion of his data submitted on date 10/01/2022, both CAPs dependent on the IAS.

By means of these requests, the claimant asked the IAS, regarding the Amer CAP and the English CAP, to proceed with the *"supresión/bloqueo de los archivos, and the elimination of the information of the clinical history"* in relation to which *"five years or more have passed since the date of discharge of each care process, and access to information that is not susceptible to deletion is blocked, so that it does not appear visible in shared histories".*

Having said that, it is appropriate to set out the regulations applicable to the case being analyzed. Regarding the medical history, it is necessary to cite article 9 of Law 21/2000 of December 29, on the rights of information concerning the patient's health and autonomy (hereinafter, Law 21/2000), which defines it in the following terms:

> *"1. The clinical history collects the set of documents relating to the healthcare process of each patient while identifying the doctors and other healthcare professionals who have intervened. The maximum possible integration of each patient's clinical documentation must be sought. This integration must be done, at least, at the level of each center, where there must be a unique clinical history for each patient. (...) In any case, it must be guaranteed that all changes are recorded and the doctors and healthcare professionals who made them are identified."*

In addition, in relation to the purpose of the medical history, it is appropriate to quote the judgment of the National Court number 2412/2021, of 14/06/2021, which recognizes that the main purpose of the medical history is to *"guarantee an adequate provision assistance to the patient, keeping a record of all those data that, under medical criteria, allow accurate and up-to-date knowledge of the state of health . The care professionals of the center who carry out the diagnosis or treatment of the patient have access to the patient's clinical history as a fundamental tool for their adequate health care* .

It is worth saying that, in the response of the IAS, notified on 04/02/2022, a legal duty of conservation was alleged in accordance with article 12.4 of Law 21/2000 which imposes on health centers the obligation to keep certain information from the patients' clinical history for a minimum period of 15 years from the date of discharge of each care process.

Well, in relation to the terms applicable to the conservation of the documentation that forms part of the clinical history, article 12 of Law 21/2000 provides the following:

> *" 2. The clinical history must be kept under conditions that guarantee the authenticity, integrity, confidentiality, preservation and correct maintenance of the registered healthcare information, and that ensure its complete reproducibility in the future, during the time in which it is mandatory to keep it, regardless of the*

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medium in which it is found, which does not necessarily have to be the original medium.
(...)
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) The sheets of informed consent.
b) The discharge reports.
c) Surgical reports and birth registration.
d) Data relating to anesthesia.
e) The reports of complementary explorations.
f) The necropsy reports.
g) Pathological anatomy reports.
(...)
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 (...)
8. The decision to keep the clinical history, in the 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 clinical history in each center (...).
9. Those responsible for guarding the medical history, to whom paragraph 1 refers, are also responsible for properly destroying the documentation that has previously been decided to be seized."

In the present case, the claimed entity stated in its statement of objections, on the one hand, that *"in the response to the request of 10/28/2021, the right of deletion is not denied , but it is informed that you can request the deletion of specific data and that this request will be evaluated from the perspective of the medical criteria and the therapeutic interest of the patient"* , and on the other hand, that the claimant was treated for the first time on 08/26/2020 in the Basic English Area, of which the CAP d'Amer is a part.

Therefore, given the above, the claim regarding the deletion of data carried out on 12/29/2021 before the CAP d'Amer should be dismissed, since the data controller did not refuse to delete the data of the person making the claim , but instructed him to specify the specific data he requested to be deleted, given that the conservation of this data is subject to a certain period and its deletion, in any case, subject to medical criteria and therapeutic interest of the person claiming.

With regard to the request presented to the CAP d'Anglès, it must be concluded that the deletion of the data is not appropriate, given that not even 5 years have passed since the date of registration of the first process healthcare (art. 12.6 Law 21/2000), which would allow the deletion of data from the medical history that were not included in the information described in article 12.4 of Law 21/2000 and which must be kept for 15 years.

This is why, in accordance with article 17.3.b) of the RGPD, the deletion of the data is not appropriate, since these are necessary for the fulfillment of a mission in the public interest in accordance with Law 21/2000 .

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For all this, I resolve:

1. Declare that the IAS has not responded to the data deletion requests made by the person claiming before the CAP d'Amer and the CAP d'Anglès within the legal deadline set, in accordance with what is stated in the basis of law 4th

2. Dismiss the claim for protection of the right to deletion made by the person making the claim in relation to the said requests , when the fund , in the terms set out in the 5th legal basis .

3. Notify this resolution to the IAS 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.

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,

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