

## File identification

Resolution of the rights protection procedure no. PT 28/2023, urged against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1. On 10/03/2023, the Catalan Data Protection Authority received a letter from Mr. (...) (henceforth, the claimant) for which he made a claim for the alleged disregard of the right to delete personal data that he had previously exercised before the Directorate General of Police (DGP).

The person claiming stated that he had submitted a request through the electronic registry of the Generalitat de Catalunya, in which he came to ask the DGP to delete his personal data that appeared in the file in the area of the information systems of the Police of the Generalitat (SIP PF), as a result of police investigations that had resulted in abbreviated procedure no. (...), processed by the Criminal Court no. (...) from Manresa.

To this end, he provided various documentation, which did not include the request to exercise the right of deletion.

2. On 03/27/2023, the Authority required the person making the claim to provide a copy of the documentation proving that they have exercised the right of deletion before the person in charge of the file or treatment before filing their claim.
3. On 03/28/2023, the claimant provided various documentation to the Authority, including the deletion request addressed to the DGP.
4. By official letter dated 03/30/2023, the claim and the attached documentation provided by the claimant were transferred to the DGP, so that within 15 days he could formulate the allegations he considered relevant.
5. The DGP made allegations in a letter dated 05/17/2023, in which it stated the following:
  - That, on 08/04/2022, the claimant requested the deletion of personal data related to certain police proceedings arising from the abbreviated procedure mentioned for sexual abuse (...), mistreatment in the field of home and regular physical/psychological violence in the family.
  - That, on 11/18/2022, the DGP notified the claimant by post of a request dated 11/11/2022, in order for him to attest to the firmness of the sentence handed down in the aforementioned abbreviated procedure.
  - That, as of 05/18/2023, the DGP has no evidence that the interested person "has responded to the aforementioned request, which is why it has not been possible to continue processing the file in order to be able to issue the resolution corresponding."

The DGP provided various documentation, including the following:

- The deletion request presented to the DGP on 08/04/2022.

- The request for amendment or improvement of the application dated 11/11/2022. In this request, he was given a period of 15 days to provide the judicial certification (original or certified photocopy) attesting to the firmness of the sentence of the abbreviated procedure mentioned, with the warning that, if he did not provide it, in agreement with the provisions of article 68 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (LPAC), it would be considered that he gave up his request in relation to the police proceedings derived from the abbreviated procedure no. (...).
- The acknowledgment of receipt of the notification of the amendment request, sent by post to the claimant on 11/18/2022.

### **Fundamentals of law**

1. The director of the Catalan Data Protection Authority is competent to solve 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 processing of personal data to which the claim refers falls 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 enforcement of criminal sanctions (LO 7/2021).
3. In relation to the right of deletion, article 23 of LO 7/2021 provides for the following in sections 2, 3 and 5:
  - "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.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 in charge of 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 and deletion of personal data and the limitation of their treatment, articles 24 and 25 of LO 7/2021 establish the following:

"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 legitimate interests of the affected person, it is necessary and proportionate to achieve the following goals:
  - 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."

Paragraph 1 of article 52 of LO 7/2021, relating to the regime applicable to procedures processed before the data protection authorities, provides 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 that their request to exercise the rights recognized in articles 21, 22 and 23 has not been attended to, 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 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. Next, it is necessary to analyze whether the DGP has attended to the right of deletion exercised by the person making the claim in accordance with the regulatory framework of application, given that in the letter of claim that he presented to the Ombudsman he complained about the lack of response from the DGP.

In accordance with article 20.4 of LO 7/2021, the DGP had to resolve and notify within a maximum period of one month, counting from the date of receipt of the deletion request presented by the person claiming

In this regard, it is certified that on 04/08/2022 the claimant submitted a request to the DGP, through which he exercised his right to delete the personal data recorded in the SIP PF file. It is not recorded that the DGP has responded to the deletion request. It is only known that on 18/11/2022 the DGP required the person making the claim to amend his request, which would have interrupted the deadline he had to respond if he had requested it before the end of the deadline. But the deadline for resolving and notifying the response is one month and ended on 09/05/2022, without the claimant having obtained any response from the DGP or having been required by the DGP. This entails the estimation of the claim, which was based on the lack of response to the deletion request, without prejudice to what is noted below.

5. With regard to the substance of the matter, that is to say, if the personal data of the person making the claim should be deleted, it must be made clear that through a letter submitted on 03/28/2023 to the Authority, and therefore once started this procedure, the claimant stated that the DGP had denied him the deletion of his data on the grounds that "the acquittal was not valid". With this expression, the claimant was referring to the sentence dated 12/27/2021 that he had provided with the deletion request, by which the Criminal Court no. (...) of Manresa acquitted him of the facts prosecuted.

Despite these statements by the claimant, it appears in the proceedings that the DGP has not yet responded to the deletion request that the claimant made, but only required him to amend the request. Specifically, it is proven that, on 11/18/2022, the DGP required the claimant to provide the judicial certification (original or certified photocopy) attesting to the firmness of the sentence handed down in abbreviated procedure no. (...) following the police proceedings in respect of which he requested the deletion of data. In the request office, it granted him a period of 15 days to provide the aforementioned documentation, with the warning that if he did not do so, he would be considered to have given up his request, in accordance with the provisions of article 68.1 of the LPAC.

And already at the seat of this procedure, by letter dated 05/18/2023 presented to the Authority, the DGP stated that the person claiming had not yet responded to his request for amendment, "the reason for which has been able to continue processing the file in order to issue the corresponding resolution." It follows from this statement that the DGP has not responded to the person making the claim.

In view of this conclusion, the claimant's complaint seems more aimed at questioning the underlying assessment in the amendment request of the DGP, according to which in order to delete the police data the acquittal must be accompanied by a certificate that n 'indicate firmness.

Regarding this, it should be noted that the firmness of the sentence becomes an indispensable requirement when what is involved is to certify the end of a judicial process and the judicial decision. Thus, for example, article 17.2 of Organic Law 6/1985, of July 1, on the judiciary (LOPJ), establishes the following:

"2. Public administrations, authorities and officials, corporations and all public and private entities, and individuals, must respect and, where appropriate, comply with the judgments and other judicial resolutions that have become final or **are** enforceable in accordance with the laws."

This requirement has its *raison d'être* in the fact that a final judgment is the one that is pronounced definitively on a legal dispute, given that no ordinary appeal can be brought. The judgment brought by the claimant before the DGP does not by itself allow this conclusion to be reached. More if we consider that it contains a resource footer in which the following is noted:

"Notify this resolution to the parties, warning them that against it may file an appeal before the Provincial Court of Barcelona, within ten days of its notification."

Therefore, the failure to provide the necessary documentation has prevented the DGP from evaluating the deletion request made by the person making the claim, which in turn prevents this Authority from making a pronouncement on whether the deletion of the data. But this does not prevent the claim from being appreciated, given that it was based on the lack of response to the deletion request, a matter that must be complied with, notwithstanding that the claim is denied for the reasons indicated.

6. In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, and the RGPD, if the claim for the protection of rights is estimated, the controller must be required to the period of 10 days makes the exercise of the right effective.

In accordance with this, the DGP should be required so that within 10 days, counting from the day after the notification of this resolution, it responds to the deletion request made by the person making the claim , and that report it to the Authority in the following 10 days.

## **resolution**

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against the General Directorate of the Police of the Department of the Interior, given that it has not given an express response to the request made within the period established for this purpose.
2. Request the Department of the Interior so that, within 10 counting days from the day after the notification of this resolution, it gives an answer to the person claiming in the form indicated in the 6th legal foundation, taking into account what it is indicated in the legal basis 5é, and that in the following 10 days he reports to the Authority.
3. Notify this resolution to the DGP and the person making the claim.
4. Order that the resolution be published on the Authority's website ( <https://apdcat.gencat.cat> ), in accordance with article 17 of Law 32/2010.

Against this resolution, which in accordance with articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, puts end of the administrative process, the interested parties may file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after their notification , in accordance with the provisions of article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after your notification, in accordance with articles 8, 14 and 46 of Law 29 /1998, of July 13, governing the contentious administrative jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate to defend their interests.

The director