apdcat
Autoritat Catalana de Protecció de Dades

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File identification

Resolution of sanctioning procedure no. PS 53/2021, referring to Barcelona City Council.

Background

1. On 03/26/2021, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, complainant) for which he filed a complaint against the Barcelona City Council (hereinafter, the City Council), on the grounds of an alleged breach of the regulations on the protection of personal data.

The complainant stated the following:

That since 2006, he has owned a property located at (...) in Barcelona. That since the acquisition of the property, the IBI receipt has been domiciled in his bank account and he has paid it normally until December 2019. That in the month of March 2020, without having made any legal act that involving the transfer of the property or ownership of the IBI, he stopped receiving the receipt in his bank account.

The complainant asked the City Council why he had not received the charge from the IBI and he informed him, to his surprise, that the property was not in his name, but they did not want to identify the person listed as owner in its database, so as not to contravene data protection regulations. Finally, in April 2020, after several checks and procedures, the City Council informed him that the problem had been caused by an incident, but that it had already been resolved.

A year later, in March 2021, the same thing happened and again the City Council told him that the tax was not in his name and that he would have to justify ownership of the property. The reporting person believes that their personal data may have been disclosed to others.

The complainant provided the following documents:

- Email dated 04/20/2020 sent by the City Council to the complainant, the content of which is as follows:

> *"We are responding to your inquiry received on April 19, 2020 (...) We inform you that with the data provided, you are not listed as the holder of this tax in the databases of Barcelona City Council".*

- Email dated 04/27/2020 sent by the Barcelona Municipal Finance Institute to the complainant, with the following content:

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"In relation to your query, we inform you that the incident has been resolved by the IBI Department and they have replied that the 2020 settlement has been issued in the name of the interested party."

- Request dated 06/06/2020 addressed to the Barcelona City Council, through which the complainant set out the same facts reported to the Authority and requested, among others, that the City Council clarify the reasons for the incidence and whether your personal data had been exposed to third parties.

- Email dated 01/07/2020 sent by the City Council to the person making the complaint with the following content:

"We are responding to your inquiry received on June 9, 2020 (...). We inform you that, with the data provided, we check in our information systems that the tax you indicate to us is recorded as domiciled.

- Request dated 03/09/2021 addressed to Barcelona City Council, through which the complainant stated the following:

"In 2020, you did not give me the IBI receipt for the reference flat. After much research it appears that due to a computer error for some unexplained reason, this tax was in someone else's name. I finally made the payment in June 2020 all at once and then proceeded to direct it again. He had always paid the tax without any problem by direct debit to the same account, until the aforementioned incident.

This year I see that I am also not getting the partial tax receipt, even though I was told that the incident had been resolved. (...).
Petition: Clarify whether the IBI corresponding to the indicated property is domiciled or not. Clarify why the receipts are not being transferred to my account according to my instructions. (...)."

2. The Authority opened a preliminary information phase (no. IP 125/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 05/24/2021, Barcelona City Council was required to report on:

- The name of the person/entity who was currently listed as the owner of the property in question and the owner who was listed on the following dates: March 2020 and March 2021.

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- About the causes that led to the incident that caused the person complainant did not receive the receipt (in March 2020 nor in March 2021) to his bank account where the tax had been domiciled since 2006.
- If in March 2020 you adopted corrective measures to prevent the incident from happening again and specify, if applicable, what these measures consisted of.
- On the cause that would have caused the same incident to be reproduced in March of 2021
- If, as a result of the aforementioned incidents, the data of the reporting person were disclosed to third parties.

4. On 02/06/2021, the City Council responded to the aforementioned request in writing in which it pointed out that the information currently contained in its databases on the ownership of the property it was already the correct one - in the sense that the complainant was already listed as the owner of the property (B) - and explained, with respect to the IBI for the year 2020 corresponding to this property (B), that the erroneous information - which prevented the complainant from charging the IBI - was due to the fact that it was wrongly listed in the City Council's information system as owners of property B two other people, and that this was due to the fact that these two people in 2017 bought a property (A), and in the deed of sale of this property (A) it appeared an erroneous cadastral reference - the cadastral reference of property B of the complainant instead of that of property A actually transmitted-. In such a way that when the notary who drew up the deed of sale of property A sent it electronically to the City Council, the municipal computer application dragged the erroneous cadastral reference and automatically recorded the change of name of the holder of the property (B) - putting the names of the two buyers mentioned, where until then the complainant was listed -, so that these two buyers were linked to the property (B) owned by the complainant. For this reason, the IBI receipts for the year 2020 for property B were erroneously turned in the name of the buyers of property A. Regarding the mistake made by the City Council the following year (2021) -despite the measures taken by the complainant to correct the error with the collection of the IBI of his property-, the City Council points out that the same erroneous information was dragged in again, but that this time the system was erroneously "updated" following a tax adjustment for non-payment of the capital gain. Specifically, the City Council stated the following:

- Regarding the ownership of the property (B) of the complainant, he stated that:

> *"At this time, it is registered as the owner of the property* (cadastral reference) *(...) ((...)) Mr.* (the complainant) *because in relation to this property, the reported transmission (which documents the deed of sale attached to DOCUMENT NUMBER 1) did not actually take place. At the time of the issuance of the IBI tax records for the years 2020 and 2021, the owners of the property referred to were those who had been informed by virtue of the deed of sale, dated 10/25/2017 , granted before the notary (...) (protocol (...): The buyers, Mrs. (...) and Mr. (...)".*

- On the causes that would have led to the incidence of tax in the 2020 financial year:

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"On 25/10/2017, the notary of Barcelona, (...), authorized the deed of sale (protocol number (...)) of the property: (...). The deed identifies the property transferred with the cadastral reference (...). The public deed documents the mandatory cadastral certification that corresponds to this cadastral reference) and the sale was communicated to the City Council through the established electronic channel.
Our computer application is ready to make the name changes based on the data that the notaries inform us through this channel and, on 11.11.2019, perform the name change corresponding to the reported property (identified with the cadastral reference before mentioned). The City Council loaded the data reported through the e-notary platform into its system and, consequently, carried out the change of ownership that corresponded to the purchase and sale of the property (cadastral reference).
On 27.04.2020, in response to the citizen's claim, we re-incorporated the ownership of this property in the name of the complainant into the BBDD of the IBI; that is, we reverted ownership to its initial state.
We were able to verify that the public deed referred to reported a cadastral reference that did not correspond to the property subject to transmission. Consequently, Mr. (...) he did not receive the receipts from the IBI registers for the years 2020 and 2021 because at the time of their issuance he was not listed as the owner of the property".

- On the causes that would have led to the incidence of tax in the 2021 financial year:

"Subsequently, in relation to this same transmission, the Municipal Tax Inspectorate intervened to regularize the tax situation regarding the Tax on the increase in the value of urban land (which had not been self-assessed).
Again, there was a change of ownership associated with the transfer of ownership documented by the public deed, although, in this case, the change was triggered by the regularization of capital gains. We have set up a system that allows the automatic name change to be triggered from the capital gain. (...) which determined that the data incorporated in the aforementioned deed would again cause an automatic name change, in this case , based on a tax regularization".

- On the corrective measures taken in March 2020 to prevent the incident from happening again:

"Following the interested party's complaint and prior to the appropriate checks, the change of ownership in the real estate tax database was reversed.

The information that reaches us through the e-notary channel comes from the notary authorizing the deed of sale. It is up to the notary to ensure that the data he incorporates into the public deed he authorizes is correct. We have verified that no rectification deed has reached us to amend the data communicated and the department that manages the real estate tax has no competence, nor authorization, nor possibility to modify or alter the data legally communicated through the channel referred to".

The public deed documenting this transfer incorporates erroneous information and, consequently, any Administration could exercise the competence it is entitled to by considering the data included in the document that originates the transfer".

- *"The personal data of the taxpayer has not been communicated to anyone, although the real estate tax for the years 2020 and 2021 has been paid in the name of the holders who at that time were listed as owners in the BBDD of the 'IBI result of the deed of sale referred to. These receipts have been cancelled."*

- *"Our system performed the name change on the property that corresponds to the cadastral reference that was reported to us. The data that come from notaries regarding public deeds are data protected by the public registry faith (...).*
  The name changes that our processes carry out are based on the data reported by the corresponding authorities, in this case, by the notaries based on the public deeds they authorize. These data are communicated to us electronically through the e-notaris platform and, based on this information, a computer process performs the corresponding name changes. (...) the origin of the error is in the data they communicated to us and, therefore, it is not ours".

The Barcelona City Council provided the aforementioned deed, in which it was stated protocolized the cadastral certification corresponding to the property of the reporting person.

5. On 18/10/2021, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Barcelona City Council for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.d), both 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, RGPD). This initiation agreement was notified to said City Council on 19/10/2021.

6. In the initiation agreement, Barcelona City Council was granted a period of 10 working days to formulate allegations and propose the practice of evidence that it considers appropriate to defend its interests.

7. On 02/11/2021, Barcelona City Council made objections to the initiation agreement.

8. On 04/02/2022, the person instructing this procedure formulated a proposed resolution, by which it proposed that the director of the Catalan Data Protection Authority admonish the Barcelona City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1. d), both of the RGPD.

This resolution proposal was notified on 07/02/2022 and a period of 10 days was granted to formulate allegations.

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9. On 02/21/2022, Barcelona City Council submitted a statement of objections to the proposed resolution.

proven facts

In 2021, Barcelona City Council liquidated the capital gain corresponding to the transfer of property A using an incorrect cadastral reference (the one corresponding to property B), despite having prior knowledge that there was an error in the cadastral certification in the deed of sale of that property (A). Said cadastral reference corresponded to property B of the complainant and not to property A actually transferred. The fact of using an incorrect cadastral reference caused a change in the ownership of the property (B) of the reporting person and, consequently, in the IBI receipts, which were not issued in the name of the reporting person and they were also not sent to the reporting person for collection.

With respect to the previous events, it should be noted that in 2020, following the complaints that the complainant addressed to the City Council because he did not receive the IBI receipts that he had domiciled, the City Council warned of the error in the cadastral certification that it contained the aforementioned deed, which had caused the change in ownership of the property of the complainant. Once the error was noticed, the City Council modified, in its tax management system, the information that appeared regarding the ownership of the property (B), indicating the name of the person making the complaint, and issue the IBI receipts in the name of the person making the complaint, which did not prevent him from liquidating the capital gain of the property transferred with a cadastral certification again in 2021 with incorrect data.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. Barcelona City Council has made objections to both the initiation agreement and the proposed resolution. Given that before the resolution proposal it has reiterated a large part of the allegations made before the initiation agreement, the set of allegations formulated by the imputed entity are analyzed below.

2.1. On the responsibility of the notary who is responsible for ensuring the correctness of the data included in the public deed he authorizes.

In the 1st section of its statement of objections to the initiation agreement and the proposal, the City Council explains that it dealt with the data contained exactly in a public deed drawn up and provided by a public notary such as a notary That the writing of

sale was communicated to the City Council electronically from the platform and notaries. And that based on this information, the IMH computer application makes the name changes recorded in the deeds of sale.

It also states that it is the responsibility of the notary who authorizes the public deed to ensure the correction of the data recorded therein and to correct material errors, omissions and defects of form in the public documents he has authorised.

In this regard, it is necessary to refer to the Decree of 2 June 1944 which approves the Regulations for the organization and regime of the Notary, which establishes:

Article 153.

"The material errors, the omissions and the defects of form suffered in the inter vivos notarial documents may be corrected by the authorizing Notary, his substitute or successor in the protocol, on his own initiative or at the instance of the party that had originated or suffered them. Only the authorizing Notary will be able to remedy the lack of expression in the document of their judgments of identity or capacity or other aspects of their own

activity in the authorization".

Article 170.

"In the documents subject to registration, the notary will describe the goods that constitute their object expressing with the greatest possible accuracy those circumstances that are essential for registration.
(…)
In the case of immovable property, the description will include the cadastral reference that corresponds, as well as the descriptive and graphic cadastral certification, in the terms established in the cadastral regulations".

Article 173.

"In any case, the Notary will ensure that the document can be registered in the Registry of the Real estate, intellectual, industrial, commercial, water or any other property that exists Now or in the future, all the necessary circumstances for registration are noted, according to the respective provision applicable to each case, also taking care that such circumstance is not expressed with inaccuracy that gives rise to error or damage to third parties"

Having said that, below, the manifestations of the City Council are analyzed which considers that it cannot be imputed to it for violating the principle of accuracy of the data when these come from a public deed and, therefore, are protected by the notarial public faith, regarding which there is a presumption of accuracy and validity.

In this regard, it must be said that in the present procedure, the responsibility for the accuracy of the data entered in the deed, which has been found to be erroneous, is not attributed to the City Council, nor is it questioned who is responsible rectifying this deed is up to the notary. What is attributed to the City Council is the responsibility for data processing in the management of municipal taxes. Therefore, once he detected in the year 2020 that the writing

contained incorrect data, he should have avoided handling this incorrect data to manage council tax. Indeed, as provided in article 4.2 of the LOPDGDD, so that it cannot be attributed a violation of the principle of accuracy, the City Council should have adopted all reasonable measures to rectify the data in relation to the purposes for which they are treated. Well, in the 2020 tax year, when the City Council detected the error in the deed of sale and rectified the incorrect data, specifically, in the treatment activity related to the tax of the IBI, did not establish any mechanism to prevent the computer system that manages the taxes from re-entering the incorrect data. In summary, despite being aware of the error in the aforementioned deed of sale, the City Council did not prevent the erroneous cadastral reference from being entered into the computer system again in 2021, which caused that again the ownership of the property was incorrectly changed and, consequently, that of the IBI.

"

In this regard, it is necessary to take into account article 4.2 LOPDGDD which provides: *2. For the purposes provided for in article 5.1.d) of Regulation (EU) 2016/679, the person in charge of the treatment shall not be liable, provided that this has adopted all reasonable measures to eliminate or rectify without delay, the inaccuracy of the personal data, with respect to the purposes for which they are treated, when the inaccurate data: d) Were obtained from a public register by the person responsible".*

In this case, it cannot be considered that the City Council had adopted any reasonable measure in order to rectify the erroneous data regarding the purpose of the treatment relating to the management of municipal taxes. In fact, regarding the measures adopted, the City Council points out before the proposal that, with regard to the receipt of the IBI, *"on 27.04.2020, in response to the citizen's claim, the IMH re-incorporated into the BBDD of the IBI the ownership of this property in the name of the complainant; in other words, we reverted ownership to its initial state";* and as regards the receipt of the capital gain, he canceled that receipt.

These measures are unreasonable in the sense that they are not effective. Reversal of the capital gain receipt corrects the effects of processing inaccurate data, but not the inaccuracy of the data at issue. And with regard to the IBI receipt, the rectification that the City Council made in 2020 to its tax management computer system has proven to be ineffective, since it has not prevented the persistence of inaccuracy in the information on the ownership of property B of the complainant and in the cadastral reference of property A.

This assessment of the ineffectiveness of the actions carried out by the City Council is based on the statements made by the council regarding the fact that the computer software it has installed automatically changes the ownership of the properties from the public deeds sent through the e-notaris platform. Based on this, and the fact - not contradicted - that the public deed of transfer of property A held by the City Council continues to include the wrong cadastral reference (the one corresponding to the complainant's property B), it is it is clear that in the face of a municipal tax action in which information on the ownership of property A is required, the inaccuracy of the data entered will persist.

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On the other hand, the City Council claims that it is disproportionate to sanction him if he takes into account that the error came from a third person and that articles 109.2 of the LPAC and 74.2 of Law 26/2010 allow that an administration can rectify mistakes at any time.

This allegation cannot be favorably received either. As has been pointed out, the infraction that has been imputed to the City Council is not due to the inaccuracy of the data recorded in the deed, but due to the treatment of inaccurate data in the management of municipal taxes once the City Council detected that the deed contained erroneous data.

On the other hand, the legal provisions on the possibility of correcting material, factual or arithmetic errors do not prevent the City Council from being charged with an offense for breaching the principle of accuracy, when it has been proven that the council has persisted in the treatment of inaccurate data, despite knowing the writing error.

2.2. About the large number of ownership changes managed by Barcelona City Council's IMH and the existence of computer software that manages the changes automatically.

Next, the City Council alleges the high number of name changes it manages and, for this reason, it has implemented a computer system that allows changes in property ownership to be made automatically, when the notaries notify them of the transfer of the properties . On the other hand, the City Council states that, on a date subsequent to the rectification of the data relating to the erroneous ownership, in relation to the same transfer *"documented by the referred deed, the Municipal Finance Inspectorate intervened to regularize the tax situation regarding the Tax on the increase in the value of urban land (which had not been self-assessed). Again, there was a change of ownership associated with the transfer of property, although, in this case, the change is triggered by the regularization of the capital gain".* And he adds, *"that this receipt was subsequently canceled and that we adopted the reasonable rectification measures set out in Article 5 of the RGPD."*

However, the above contentions cannot be accepted for the following reasons.
The City Council: *i)* was aware that the deed in question contained erroneous data, specifically, the cadastral certification that did not correspond to the property actually transferred; *i)* he knew that the computer software automatically changes the ownership of the properties based on the public deeds sent through the technological platform that the notaries have established for this purpose; *iii)* when he first rectified the incorrect data (in 2020) he did not take into account the configuration of his computer system and did not take appropriate measures to prevent the erroneous data from being processed again and, consequently, a again the change of ownership; *iiii)* that after having made the first rectification, in 2021, when again there was a change in the ownership of the property and the complainant complained to the City Council that he did not receive the receipts from the 'IBI, the answer it received was the same as the previous year (2020), which was not listed as the owner of the property.

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In summary, it has been proven that the City Council did not take all reasonable measures to delete the inaccurate data from its system, since it did not make the necessary changes in the tax management system to prevent the incorrect data from being entered again in your system and automatically make changes in the ownership of the property of the reporting person. In accordance with what has been set out, it is estimated that this allegation cannot succeed.

2.3 On the absence of grief or guilt, the City Council's lack of responsibility and the principle of presumption of innocence.

The City Council cites article 28.1 of Law 40/2015, of October 1, on the Legal Regime of Public Administrations, which provides that sanctions can only be imposed for acts constituting an administrative offense to those who are found to be responsible as a result of negligence or guilt And he points out that in administrative law what is valued is the subjective responsibility of the offender, since he must be responsible for the administrative infractions by way of grief or guilt. And on the subjective element of culpability in the scope of the sanctioning procedure, he cites profuse jurisprudence. And it concludes that *"the acting Administration (the Catalan Data Protection Authority) has at no time certified that at the time of the facts the Barcelona City Council (Municipal Institute of Finance) acted with malice or guilt and therefore not has in no way proven a possible responsibility for the same."*

On the question of the responsibility of legal entities in matters of data protection, the Supreme Court in judgment no. 196/2021 dated 02/15/2021 in the rec.1916/2020 (ECLI: ES:TS:2021:705) includes constitutional doctrine and jurisprudence consolidated on this subject.

First of all, he cites the constitutional doctrine on the responsibility for sanctions of public legal entities such as the City Councils. In this regard, it cites STC 246/1991 of December 19, specifically FJ2:

"(...) In concrete terms, regarding guilt, this Court has declared that, in effect, the Spanish Constitution undoubtedly enshrines the principle of guilt as a basic structural principle of Criminal Law and has added that, however, the constitutional enshrinement this principle does not imply in any way that the Constitution has converted a certain way of understanding it into a norm (STC 150/1991). This principle of culpability also governs in the matter of administrative infractions, because to the extent that the sanction of said infraction is one of the manifestations of the ius puniendi of the State, a regime of objective or no fault liability is inadmissible in our system (STC76/1990). Even this Court has qualified as "correct" the principle of personal responsibility for own actions -principle of the personality of the penalty or sanction- (STC 219/1988). All this, however, does not prevent our Administrative Law from admitting the direct responsibility of legal persons, recognizing them, pues, infringing capacity. This does not mean, at all, that for the case of administrative infractions committed by legal persons, the element has been deleted

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subjective of guilt, but simply that this principle must necessarily be applied differently to how it is done with respect to physical persons. This different construction of the imputability of the authorship of the infringement to the legal person is born from the very nature of legal fiction to which these subjects respond. They lack the volitional element in the strict sense, but not the ability to infringe the rules to which they are subject. Ability to infringe and, therefore, direct reprehensibility that derives from the legal property protected by the rule that is infringed and the need for said protection to be really effective (in the present case it is the rigorous compliance of security measures to prevent the commission of criminal acts) and for the risk that, consequently, must be assumed by the legal entity that is subject to the fulfillment of said rule. All this leads us to the conclusion that the Judgment of the Supreme Court that is contested has not injured the right to the presumption of innocence of the applicant for protection. In this case, in effect, since it is certain and recognized that the alarm facilities are not functioning due to the negligence or convenience of the employees of the appellant entity, what the disputed Judgment carries out is a transfer of responsibility to the banking entity in question reasoning his judgment of reprehensibility in the need "to stimulate the rigorous compliance of security measures". Neither has there been a lack of probative activity of facts that no one disputes (so the presumption of innocence does not come into play nor has it been violated), nor does the transfer of the reprehensibility judgment in the terms described violate any other right or constitutional principle" .

And in STC (Second Chamber) 129/2003, of June 30, 2003, which, citing the previous sentence, points out in the FJ. 8th:

"(...) the admission in our Administrative Derecho sanctioning the direct responsibility of legal persons, recognizing them as such infringing capacity, means that the responsibility is configured on the capacity for infraction and the responsibility, "which derives from the legal property protected by the rule that is violated and the need for said protection to be really effective ... and for the risk that, consequently, must be assumed by the legal entity that is subject to the fulfillment of said rule" (STC 246/1991 FJ 2). In the present case, since there had been an evidentiary activity of the charge on the facts that were imputed to the mercantile, now the appellant, it was up to her to provide the administrative bodies that have intervened in the substantiation of the file a principle of proof, at least that it was, that would allow them to think that the infraction of the rule was not reprehensible. (...)".

Secondly, he cites the jurisprudence of the Supreme Court, the FJ. 2nd of the judgment of the Sixth Section of June 2, 2010 (rec. cassation 1008/2007) referring to an infringement in data protection, which declares that:

"(...) According to the context of the appealed sentence and the administrative resolution itself, the sanction imposed on the appellant was due to the negligence appreciated by her which gave rise to a clear violation of Organic Law 15/1999 , and which is, evidently, attributable to the appellant in its capacity as a legal person, without fear

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part of this can evade its responsibility on the basis of the statement that the facts from which the responsibility is derived result from the fact that the documentation was deposited in a container on the public road by a third party, which, in the end, in the cassational reason is identified with an administrative one of the appellant itself, which excludes that third-party qualification and entails the attribution of responsibility for the plaintiff, without being able, logically and seriously, to argue his lack of knowledge of the alleged facts in violation of the principle of responsibility."

Finally, the judgment of the Supreme Court no. 196/2021 dated 02/15/2021, to which reference was made above, concludes that the principle of presumption of innocence is not violated because in the case of legal entities the subjective element of the offense is plasma in a different way compared to how it happens in the case of natural persons.

Like this:

"The above does not mean, of course, that we are projecting on the appellant City Council a principle of objective responsibility, nor that the principle of presumption of innocence is being violated, nor that we are giving for good luck a reversal of the burden of proof. It simply happens that, being admitted in our Administrative Law the direct responsibility of legal persons, which are therefore recognized as infringing capacity, the subjective element of the infringement is shaped in these cases in a different way to how it happens with respect to natural persons, so that, as indicated by the constitutional doctrine that we have reviewed before -SsTC STC 246/1991, of December 19 (FJ 2) and 129/2003, of June 30 (FJ 8)- the direct reprehensibility derives from legal property protected by the rule that is infringed and the need for said protection to be really effective and by the risk that, consequently, must be assumed by the legal entity that is subject to the fulfillment of said rule".

In summary, based on the jurisprudential doctrine set out, the allegation of the imputed entity regarding the lack of culpability cannot succeed, since the lack of due diligence required in the processing of data concur on the part of the Barcelona City Council personal data (in this case, in the application of the principle of data accuracy) in the exercise of usual tasks, by not having adopted all reasonable measures to delete or rectify inaccurate data (as set out in the FD 2.1 and 2.2).

3. In relation to the facts described in the proven facts section, relating to the principle of data accuracy, it is necessary to refer to article 5.1.d) of the RGPD, which provides that *"1. The personal data will be: d) accurate and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed ("accuracy")."*

During the processing of this procedure, the fact described in the proven facts section, which is considered constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of *"a) the basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9".*

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The conduct addressed here has been included as a very serious infraction in article 72.1.a) of the LOPDGDD, in the following form:

> *"a) The treatment of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679".*

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

> *"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.*
>
> *The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."*

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

> *"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".*

By virtue of this power, Barcelona City Council must be required to, as soon as possible, and in any case within a maximum period of 15 days from the day after the notification of this resolution, in relation to the complainant's property, adopt the necessary changes in its tax management system to avoid dealing again with the incorrect data (the cadastral reference) contained in the disputed deed of sale.

Likewise, to inform the Authority if he has brought to the attention of the acting notary the error contained in the deed.

Once the indicated corrective measure has been adopted, within the period indicated, the Barcelona City Council must inform the Authority within the following 10 days, without prejudice to the authority's inspection powers to carry out the corresponding checks.

For all this,

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RESOLUTION:

1. Admonish the Barcelona City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.d), both of the RGPD.

2. To require the Barcelona City Council to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions carried out to comply with them.

3. Notify this resolution to Barcelona City Council.

4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

5. Order that this resolution be published 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 February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its 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, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,