

File identification

Resolution of sanctioning procedure no. PS 89/2022, referring to the Department of the Interior.

Background

1. On 10/13/2021, the Catalan Data Protection Authority received a complaint against the Catalan Tax Agency (ATC), on the grounds of an alleged breach of the regulations on personal data protection .

The person making the complaint stated that the ATC was seizing money from his current account, due to a debt not entered in the voluntary period (debt code in executive order: (...)), of which he was not the debtor. Regarding this, he argued that the data available to the ATC were not accurate, and that on 02/17/2020 " I went to the ATC in Vic to ask for explanations and there we made a series of calls and they verified that the debt they claim from me belongs to another person." Among these calls, one was made to the legal advice of the Police Region of Tarragona where, according to the complainant, "they confirmed that the debt does not correspond to my DNI but to a NIE, they asked me if I was a man Russian, and I am a Catalan woman."

The person making the complaint provided different images of documents as documentation, including an image of the appeal for reinstatement that he had filed on 02/17/2020, against the embargo process. Also, images of the notifications relating to bank account seizure procedures, issued by the ATC, where the reporting person is identified as the person obliged to pay.

2. The Authority opened a preliminary information phase (no. IP 412/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.
3. In this information phase, on 01/24/2022 the reported entity was required to report on the following:
 - If the ATC would have processed an attachment procedure against the reporting person, for not having paid an outstanding debt in a voluntary period
 - If inaccurate data would have been treated, by erroneously linking said debt to the DNI of the reporting person and, in this case, what was the origin or provenance of this inaccurate data and if the error had already been rectified.
 - The exact date on which should produced the last attachment to the reporting person , linked with the debt not paid in period volunteer _
4. On 07/02/2022, the ATC responded to the aforementioned request in writing in which, among other things, it stated the following:

- That " The ATC has among its powers that of managing the collection by executive means of non-taxable public law revenues of the Administration of the Generalitat and of the entities that make up the public sector of the Generalitat. For these reasons, several departments, including the Interior Department, periodically send to the ATC debts that have not been entered in the voluntary period so that, from the ATC, they can be managed through the executive route. "
 - That " On 9/21/2018, the ATC received electronically the list of debts (...), issued by the Department of the Interior, which contained a debt in the name of Mrs (...) for a principal amount of €601. This debt was processed, like all other executive debts, using the ATC's computer applications ."
 - That "On 2/17/2020 the lady (...) went to the ATC territorial office in Vic to state that she had been fined 294.00 euros for a penalty of Department of the Interior of which she was not the holder, but someone else. As he stated, he had contacted the Department of the Interior to request information about the sanction, with code (...), which had been the subject of the suspension and they replied that the sanction actually corresponded to a other person who had nothing to do with her."
 - That " Within the resolution process of the appeal - with reference to the appeal for reinstatement filed by the complainant, on 02/17/2020, against the embargo order - processed at the central services of the ATC, it was issued a request for information from the lady (...) given that in her letter she requested a refund for the amount of €294, and also attached some confusing bank statements."
 - That "On November 10, 2021, due to the appellant's lack of response, it was decided to file the appeal and to continue processing by executive means. At that time, there were €305.71 paid in and €295.29 outstanding."
 - That "On 4/20/21, Mrs (...) filed an economic-administrative claim against the embargo action and, on 5/14/2021, another economic-administrative claim against the constraint provision. The filing of this appeal has led to the suspension of the embargo process."
 - That "The Department of the Interior has provided two documents in relation to this case: a first report that certifies that the person reported in the file (...), is a citizen (...), with address in (...), and a second document showing that Mrs. (...) has a debt pending payment, for a principal amount of €100, derived from a file from 2017, for which she has exhausted the voluntary payment method."
 - That "On 7/2/2022, the Department of the Interior issues a report concluding that the lady (...) is not the interested party in the reference procedure (...), and that, therefore, they the circumstances to assess the appeal filed on 2/17/2020."
- 5.** On 05/09/2022, also during this preliminary information phase, the ATC submitted a supplementary letter to its response to the request, in which it adds, among other things, the following:
- That " The reference debt was included in the list of outstanding debts that the Department of the Interior sent to the ATC with the relation number (...), which was

incorporated into the collection management database of "this body on September 21, 2018, all causing the executive file number (...) and the voucher number (...)."

- That "Given that the debt was not entered within the aforementioned voluntary term, on September 24, 2018, the Central Collection Office of the Catalan Tax Agency issued a provision of constraint with debt code in executive number (...) for a total amount of 721.20 euros (601 euros of principal, plus 120.20 euros of 20% surcharge)"
- That "Once the deadline for payment in executive has expired and given that the debt was not registered within the aforementioned deadline, the Central Collection Office of the Catalan Tax Agency, at the headquarters of the embargo file number (...), has issued the proceedings for seizure of money in current accounts, with a positive result, detailed below:

No.	Diligence ID	Issue date	state	Amount to be seized	Amount admitted	Date of notification
9	(...)	23/12/2019	Entered-Finalized	€ 759.73	€3.60	02/17/2020
10	(...)	01/27/2020	Entered-Finalized	€758.29	€294	05/02/2020
24	(...)	04/12/2021	Entered-Finalized	€478.67	€3.11	08/06/2021
26	(...)	05/12/2021	Entered-Finalized	€476.50	€5	07/06/2021
34	(...)	06/10/2021	Entered-Finalized	€475.97	€199.14	01/12/2021

- That " On December 1, 2021, the person concerned was notified of the seizure of money in bank accounts number (...)."
- That "From the study of the documentation provided by the Department of the Interior for the processing of the appeal files for replacement and the economic-administrative claims filed, it is verified that there is information on two sanctioning files, one against the person concerned (ref . RP/Central (...)) and another, against a third person (ref. (...))."
- That "Following this contradictory information, this Office suspended the executive collection procedure followed with code number (...) and requested clarification from the Department of the Interior."
- That "On February 7, 2022, the Directorate General of Police of the Department of the Interior issues a report in which it concludes that Ms. (...) is not the infringing subject of the file (...) from which the executive debt derives with code (...)."
- That "Consequently, on February 11, 2022, the Catalan Tax Agency, at the request of the Department of the Interior, canceled the enforcement procedure processed on the debt with executive code number (...) in the computer system of this body."
- That " By resolution of February 21, 2022, this Central Collection Office has left without effect resolution number (...) and has estimated the appeal for replacement number (...), for annulment of the debt (. .). The reference resolution was notified to the interested person on March 28, 2022."

- That "In view of the facts presented, it remains certified that, on the date of issue of this report, the error linked to the NIF number of the person concerned and the debt with code in executive (...)." "
 - That "Regarding the origin of the error in the NIF number, once the appropriate checks have been carried out by the Executive Collection Service of the Central Collection Office - body competent to validate and accept the lists of debts sent by bodies external to the ATC -, it is concluded that when managing the transmission to the ATC of the debt with file number (...), the Department of the Interior stated in the report number (. ..) an incorrect NIF, the one corresponding to Mrs. (...) ((...)), which, according to the aforementioned report, is not the subject of the same."
 - That "this Central Collection Office is not competent to validate the correction of the identification data of the elements of the debts/sanctions contained in the lists sent by external organizations in order to manage their executive collection, this validation being the exclusive competence of the "managing or sanctioning body, prior to submission to the ATC."
- 6.** On 10/20/2022, following the response from the ATC in which it indicated the Department of the Interior as possibly responsible for the events, it was considered necessary to request information from said Department. Regarding this, among other things, he was required to report on whether, when the debt of the file " (...)" had been sent to the ATC is stated an incorrect DNI number of the debtor, a fact that would have led the ATC to proceed with an asset seizure procedure against the reporting person, and in this case, if the error in the file had already been rectified corresponding _
- 7.** On 04/11/2022 , the Department of the Interior complied with this requirement by means of a letter in which, among other things, it stated the following:
- That "once this request was received, the appropriate arrangements were made and it was detected that it was at the time of the computer download of the file of the General Directorate of the Police with the files that had to be referred to the ATC , to be susceptible to all of them going to the path of coercion, which was associated with the person denouncing a file coding and an erroneous amount to be seized, but the data of the denouncing person and his ID being correct."
 - That "the Department of the Interior will take the necessary measures to notify the ATC to proceed to return to the interested person the part seized that exceeded the debt he had outstanding with this Administration, (...). "
- 8.** On 29/11/2022, the Director of the Authority Catalana de Protecció de Dades agreed to initiate disciplinary proceedings against the Department of Interior , for an alleged violation provided for in article 83.5. *a* , in relation to article 5.1. *d* _ all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, regarding the protection of natural persons with regard to the processing of personal data and the free movement of such data (RGPD) . This initiation agreement was notified to the imputed entity on 01/12/2022.
- 9 .** On 12/20/2022, the Department of the Interior made objections to the initiation agreement.

With its letter, the accused entity provided the certificate issued on 12/19/2022 by the head of the Economic and Logistics Management Service of the General Directorate of the Police of the Department of the Interior, through which it is informed of the following: "The data of the procedure (...) have been deleted and there is no record of the reporting person's connection with the sanctioning procedure that was addressed to the ATC by mistake."

10. On 26/04/2023, the person instructing this procedure formulated a resolution proposal, for which he proposed that the director of the Catalan Data Protection Authority admonish the Department of the Interior, as responsible of an infraction provided for in article 83.5. a in relation to article 5.1. d , all of them from the RGPD.

This resolution proposal was notified on 04/26/2023 and a period of 10 days was granted to formulate allegations.

11. The deadline has passed and no objections have been submitted.

proven facts

At the time of the computer download of the DGP file with the files that had to be transferred to the ATC, which were likely to go to the constraint route, and the Department of the Interior associated the person denouncing an erroneous file coding and amount to be seized. This fact caused the ATC to seize money from the reporting person's current account, due to a debt not paid in a voluntary period for which she was not the debtor. The last garnishment order against the reporting person was issued on 06/10/2021 and notified on 01/12/2021.

Fundamentals of law

1. LPAC and article 15 of Decree 278/1993 apply to this procedure , according to the provisions of DT 2a of Law 32/2010, of October 1, of the Authority 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. The accused entity has not made allegations in the resolution proposal, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

In the statement of objections submitted to the initiation agreement, the Department of the Interior did not question the facts reported. On the one hand, it reported that at this moment "the personal identification data of the infringing person recorded in the Department of the Interior corresponding to the sanctioning procedure with code (...) are the correct ones ". In relation to this, he informed that the data of the person reporting that " were contained in the application that transferred the personal identifying data of the unpaid sanctioning procedures that followed the executive route and that were transferred to the Tax Agency of Catalonia for its enforcement , LIQUIDAS, have been deleted", and that "no evidence is preserved that links the reporting person to the sanctioning procedure with code (...)."

To certify these manifestations, the Department of the Interior attached a certificate, issued on 19/12/2022 by the head of the Economic and Logistics Management Service of the General Directorate of the Police of the Department of the Interior, which certified the following: The data of the procedure (...) have been deleted and there is no record of the reporting person being linked to the sanctioning procedure that was addressed to the ATC by mistake."

With regard to this, the action of the Department of the Interior, which has implemented measures to correct the personal data of the complainant that erroneously linked him to an unpaid debt of which he was not the debtor, should be positively assessed. However, it must be pointed out that the adoption of measures to correct the effects of the infringements do not distort the imputed facts, nor do they modify their legal classification.

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

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

The conduct addressed here has been included as a very serious offense in article 72.1. *a* of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) , as follows:

"*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 of the LOPDGDD provides that, in the case of infractions committed by the persons responsible or in charge listed in article 77.1 of the 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."

In this case, however, it is not appropriate to require any corrective measures, given that the Department of the Interior has already corrected the effects of the infringement. In this regard, it should also be noted that, as part of the actions carried out in the preliminary information phase of this procedure, the ATC confirmed that, at the request of the Department of the Interior, it had deregistered from its computer system the coercion procedure erroneously processed against the person here reporting.

resolution

For all this, I resolve:

1. Warn the Department of the Interior as responsible for an infringement provided for in article 83.5. *a* in relation to article 5.1. *d* , both of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to the Department of the Interior.
3. Communicate the resolution to the Ombudsman , accordingly with what he foresees article 77.5 of the LOPDGDD .
4. 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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the accused entity can file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after its notification , in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of the Law 29/1998, of July 13, regulating 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 under 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

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