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BARCELONA CITY COUNCIL'S NEIGHBOURHOOD DOCUMENT: REAL OR SYMBOLIC SANCTUARY?*

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Abstract

This article analyses the legal system covering the municipal "neighbourhood document" *(document de veïnatge*) created towards the end of 2017 by Barcelona City Council in the aim of protecting immigrants with irregular status against potential deportations and/or pre-removal detention in Barcelona's detention centre. Based on the context of the sanctuary cities of the United States and after analysing the policies developed traditionally by Barcelona City Council in the field of immigration, the paper describes how the neighbourhood document was created and studies different aspects of its legal framework: the powers underlying the document, the requirements to apply for it, the steps involved in the application procedure, the criteria for issuing the document and its legal effects and effectiveness. The main conclusion of the article is that the neighbourhood document is a protection measure for immigrants with irregular status that is more symbolic than effective and that its likely impact is more political than legal.

Key words: immigration; local administration; pre-removal detention of immigrants; sanctuary city; immigration policy.

EL DOCUMENT DE VEÏNATGE DE L'AJUNTAMENT DE BARCELONA: SANTUARI REAL O SIMBÒLIC?

Resum

L'article analitza el règim jurídic del document municipal de veïnatge creat a finals de l'any 2017 per l'Ajuntament de Barcelona amb la voluntat de protegir els veïns i veïnes de nacionalitat estrangera en situació irregular de possibles expulsions i detencions en el centre d'internament d'estrangers. Partint del context de les ciutats santuari que des de fa anys estan sorgint als Estats Units i del repàs de les polítiques desenvolupades tradicionalment per l'Ajuntament de Barcelona en l'àmbit de la immigració, es descriu la creació del document i s'aborda l'estudi dels diferents elements del seu règim jurídic: el fonament competencial del document, els requisits dels sol·licitants, la tramitació del procediment, els criteris d'emissió del document i els seus efectes jurídics i eficàcia. La conclusió principal d'aquesta anàlisi és que el document de veïnatge constitueix una mesura de protecció de les persones estrangeres en situació irregular més simbòlica que real i que el seu impacte previsible és més polític que jurídic.

Paraules clau: immigració; Administració local; internament d'estrangers; ciutats santuari; estrangeria.

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Summary

1 Introduction

Since December 2017, immigrants with irregular status registered as residents of the city of Barcelona may request that the City Council issue them the so-called "neighbourhood document" (*document de veïnatge*) if they meet a number of requirements.[1] According to the regulations governing this document,[2] its goal is "to demonstrate foreign migrants' rooting in the neighbourhood based on their local administrative status and an assessment of their degree of integration in the city through family, employment or social links, in the framework of procedures for expulsion and/or detention in immigrant pre-removal detention centres (*centres d'internament d'estrangers*, CIE)". Leaving aside for the moment any doubts raised by this definition,[3] the fact that the document is not mentioned in immigration legislation and seeks to have an impact on procedures that do not fall within the scope of municipal powers raises a number of legal issues that require analysis. What is the legal nature of this document? Is Barcelona City Council competent to develop it? What requirements have to be met, how are applications processed and what are the criteria for issuing the document? Lastly, what are the legal effects of the neighbourhood document and what impact can it be expected to have on procedures for expulsion and pre-removal detention, which do not fall within municipal powers? These are some of the questions that will be addressed in this article. However, it is clear that the neighbourhood document also has a political dimension, as an action of a city as important as Barcelona, that seeks to "interfere" in Spanish state policies against illegal immigration, as it is acknowledged by some strategic documents.[4] Notwithstanding the differences between the two countries' legal systems, the neighbourhood document also falls within the debate taking place particularly in the United States with regard to the so-called "sanctuary cities",[5] a term encompassing a number of measures which all have the goal of being supposedly inclusive or coming into tension or conflict with national policies on the deportation of undocumented persons.

The debate on these policies encompasses a number of issues around the very nature of "sanctuary", the limits and enforceability of the protection measures they propose, and around their true impact. However, it is not the intention of this paper to take an in-depth look at all these matters, but rather to analyse one specific measure—Barcelona City Council's neighbourhood document—the first of its type in Spain,[6] and which, in its first year of existence (2018) was requested by almost 2,000 people and obtained by almost 900

1 Being of full legal age, having stayed in Spain for at least twelve months and having been continuously registered as a resident in Barcelona for at least six months immediately prior to the application.

2 Article 1.2 of the Government Commission Decree of 30 November 2017, governing the procedure for issuing the neighbourhood document. *Butlletí Oficial de la Província de Barcelona* (Official Journal of the Province of Barcelona, 1 December 2017, pp. 1-4). This Decree was partially amended in May 2018 to extend the document's term and establish the requirements to be met for its issuing, *Butlletí Oficial de la Província de Barcelona* (25 May 2018, p. 1). The consolidated text of the Decree can be found in the *Gaseta Municipal de l'Ajuntament de Barcelona* (Barcelona City Council Municipal Gazette, 9 August 2018, pp. 3-8).

3 As will be seen throughout this article, what is accredited by the document is not related to its holder's identity, but rather to a status (*veïnatge*, belonging to / rooting in a neighbourhood), which, despite the chosen name, is not related to the Spanish concepts of administrative or civil neighbourhood (*vecindad administrativa/civil*) but to a new circumstance, associated with integration within the city, and arising from being registered there and a series of indicators assessed in the application procedure and not in the neighbourhood document, but which are reflected there.

4 This is actually the expression used in the Government measure promoting access to regular status and preventing supervening irregularity, which is the strategic document contemplating the creation of the neighbourhood document, to refer to some of the contemplated actions (p. 24). The document's introduction (p. 37) also refers to the wish to "impact" upon legal expulsion and/or detention procedures and "prevent" committal to immigration detention centres (http://www.bcn.cat/novaciutadania/pdf/mgrregularitat.pdf). 5 Although the concept of "sanctuary" does not formally appear in any of the documents referring to this measure, the ideas of protection against and interference with exclusionary Spanish state policies lies close to the heart of Barcelona City Council's political decision to promote the neighbourhood document.

5 Although the concept of "sanctuary" does not formally appear in any of the documents referring to this measure, the ideas of protection against and interference with exclusionary Spanish state policies lies close to the heart of Barcelona City Council's political decision to promote the neighbourhood document.

6 Since July 2018, the city of Madrid has been carrying out a pilot scheme in its Distrito-Centro neighbourhood with the so-called *tarjeta de vecindad* (neighbourhood card). This document has different features and is for a different purpose, associated above all with active registration, but which, like Barcelona's neighbourhood document, also aims to highlight how irregular immigration also has a clear local dimension.

immigrants with irregular status,[7] and which is a document that has been almost unstudied to date,[8] despite the interest it has generated in Spain and even abroad.[9]

Analysis of a document of this type requires the consideration of a number of academic standpoints and the use of not only qualitative and quantitative but also legal methodologies. This is why, in April 2018, a group of lecturers from the universities of Barcelona and Amsterdam, as well as the *Fundació Carles Pi i Sunyer d'Estudis Autonòmics i Locals*, initiated a research project[10] to analyse the political context within which the document was created, its legal system, the profile of those applying for it, as well as its true impact not only on expulsion and pre-removal detention procedures, but also on its applicants. The research included the study of the legal and political documents providing the basis for the document, interviews with persons involved in its development and in the application procedures, and fieldwork allowing for analysis of all the neighbourhood documents (727) issued between January and September 2018.[11] Nevertheless, it proved impossible to study the document's true impact, since, as yet, few issued documents have been used in expulsion or pre-removal detention procedures. However, it has been possible to discuss the legal effects of the documents with some judges taking part in an advanced training course under the aegis of Spain's General Council of the Judiciary, at which the issue of the document's effects was raised.[12]

However, this article will focus on a legal analysis of the neighbourhood document. Without forgetting the project within which it is framed and the aforementioned activities, the goal is to provide a response to the legal questions raised above. To perform this analysis, the article is organised in six sections: Section one looks at the debate around sanctuary cities, given that the concept of sanctuary is present in the document's origins. Section two carries out a (necessarily brief) analysis of policies on irregular immigration implemented to date by Barcelona City Council, with special emphasis on the Government measure promoting access to regular status and preventing irregularity,[13] the City Council's strategic document within which the neighbourhood document is framed. Section three analyses the document creation process, to understand the political motivations and the context within which it arose. Section four studies the different elements of its legal system. Section five looks at the document's effects and effectiveness. Lastly, Section Six offers a number of conclusions on the neighbourhood document, and also includes some suggestions for improvements.

2 Sanctuary cities vs. the fight against irregular immigration

Immigration is a reality that in all of Spain's neighbouring countries tends to fall within the remit of national powers.[14] Although there may be some administrative differences depending on each country's territorial organisation, from a legal standpoint immigration remains a matter closely linked to the concept of sovereignty,

7 Source: Directorate of Immigrant Support and Reception Services, Barcelona City Council.

8 The neighbourhood document has particularly been the subject of articles in the press, with the only exception being the work of Esbert-Pérez (2018).

9 Cf., for example, Delvino (2017: p. 32 et seq.). This international interest is partly due to the active role played by Barcelona City Council in international forums such as the Eurocities and United Cities and Local Government networks, as well as in international research projects on immigration-related issues, including the City Initiative on Migrants with Irregular Status in Europe (C-MISE), headed by Oxford University's Centre on Migration, Policy and Society (COMPAS).

10 *New Documents, New Realities? A study of the social and legal impact of the "neighbourhood document" on the situation of irregular migrants in Barcelona and beyond*. This research, funded by the lecturer Barak Kalir's project *The Social Life of State Deportation Regimes: a Comparative Study of the Implementation Interface*, funded by the European Research Council (ERC-Starting Grant 336319), is being carried out by lecturers Markus González Beilfuss and Joan-Josep Vallbé (University of Barcelona) and Barak Kalir (University of Amsterdam).

11 I must place on record my thanks to the director of Barcelona City Council's Immigrant Support and Reception Service, as well as the director of its Rooting Reports Point for their support in carrying out the fieldwork and for allowing it, as well as the advisor to the third assistant mayor, responsible for the Department of Citizen Rights, Participation and Transparency, for the information provided on the document's origins. Participating in the fieldwork were Néstor Garcia and Alba Viñas (database design) and students Oriol Nieto, Maria Huguet, Sara Castilla, Ivan Hortal and Aïda Ibrahim (analysis of case files).

12 More specifically, in the course *Extranjería e inmigración. Una aproximación desde el* ámbito *internacional* (*Immigration law and immigration: an approach from an international standpoint*), held at the *Escuela Judicial* on 19 and 20 November 2018.

13 *Mesura de govern per afavorir l'accés a la regularitat i prevenir la irregularitat sobrevinguda*.

14 With regard to the powers and local policies of EU Member States involving immigrants with irregular status, see Delvino (op. cit., pp. 2-7), as well as the different documents produced by PICUM (the *Platform for International Cooperation on Undocumented Migrants*; https://picum.org/publications).

meaning that decisions in this field continue to be taken by central authorities. However, while municipal authorities may not possess powers in the field of immigration, they are nevertheless forced to respond to the needs of immigrants living in their territory. In the case of immigrants whose status is irregular, this imbalance is even greater, given that national policies are based on the fight against irregular immigration, while municipal authorities have to handle the needs of people who have not left their home of their own volition, who cannot be deported and who remain in the municipal area in a situation of administrative irregularity that hampers their integration.

As Delvino has noted in general terms[15] with regard to immigrants with irregular status, some municipalities have developed restrictive or exclusionary policies in line with national policies, in the aim of discouraging their presence in their towns and cities. Others have backed inclusive measures, based on respect for human rights, but also on the basis of ethical or efficiency-based considerations, or even the interests of the native population themselves. These inclusive measures vary widely and make use of very different instruments. Nevertheless, in almost all cases, they cause tension with national policies of excluding irregular immigration.

In the United States, this tension has been made clear for some time with the case of the so-called "sanctuary policies" implemented by a growing number of cities.[16] The sanctuary movement was born in the 1980s in North American churches to protect people of Central American origin who were fleeing internal conflicts. The movement quickly spread to some cities with the aim of limiting the collaboration of local civil servants with the enforcement of federal regulations on the identification and expulsion of undocumented persons. Thus, one of the initial goals of these local policies was to guarantee that such people could make complaints or act as witnesses before the police without the fear of being deported. Some municipalities imposed a "don't ask" obligation upon their civil servants with regard to the legal status of immigrants, as well as "don't tell" the federal authorities about their situation and, in some cases, of not detaining irregular migrants for infringements of immigration laws ("don't enforce").[17] Over the course of the years, these protection measures were broadened and have become political statements in a growing number of sanctuary cities, spreading to states, universities and even private companies and citizen collectives. This "sanctuary movement" has not only come into contact with the federal authorities, but has also led to the appearance of an "anti-sanctuary" movement encompassing cities, states and private individuals.[18]

Clearly, this is neither the time nor the place for wading into the impassioned debate that these movements have caused in the US.[19] However, the debate has highlighted some issues worth noting. Firstly, the concept of sanctuary itself, with its religious origin,[20] whose content is not always clear from a legal perspective.[21] Also, although it tends to refer to measures opposing federal policy, in some cases it has been used to describe programmes aimed at improving the exercise of rights already recognised in the legal system.[22] Second, the debate in North America furthermore shows that the sanctuary concept does not necessarily provide effective protection for irregular migrants;[23] however, and above all, the sanctuary concept not only provides a graphic description of measures designed to provide protection, but furthermore has an essentially legitimising role for actions expressing resistance, opposition and a wish to defeat national policies against irregular immigration.

15 Delvino (op. cit., pp. 4-10).

16 With regard to these policies and their evolution, see Villazor & Gulasekaram (2018a, pp. 13-31) and Villazor & Gulasekaram (2018b, pp. 553-560).

17 With regard to this issue, cf. Kittrie (2006, pp. 1466-1474).

18 Cf. Villazor & Gulasekaram (2018b, pp. 560-566).

19 From a legal standpoint, it should be noted that the debate has largely focused on the scope of the principles underlying federalism in the US, as well as interpreting the 4th and 10th Amendments to the Constitution. From a political one, the two movements have fed off each other, to the point that the current Trump administration has threatened sanctuary cities not only with a withdrawal of federal funding, but also with transferring persons with an irregular status to their municipalities.

20 Rabben (2017, p. 39 et seq.).

21 Cf., in this regard, Villazor (2008, pp. 151-153) and Bander (2017, pp. 174-187).

22 This would be the case, for example, of the municipal identity cards issued by an increasing number of cities, particularly to provide access to certain local services for all their inhabitants. The same can be said of public or private services and bodies advising immigrants on their rights.

23 Cf., in this regard, Kittrie (op. cit., pp. 1480-1484), who questions the effectiveness of local policies design to encourage immigrantswith irregular status to report crimes without the fear of being deported.

3 Barcelona City Council policies on immigrants with irregular status

Despite the fact that the Spanish state has exclusive powers over immigration, per Article 149.1.3 of the Spanish Constitution (CE), Barcelona City Council has for many years been responding to the needs of members of its immigrant population irrespective of their legal status. Firstly, because municipal registration regulations require anyone living in the city, whatever their legal status, to register and to be regarded as a resident of the city.[24] Secondly, because rulings of Spain's Constitutional Court have traditionally recognised that immigrants possess the majority of fundamental rights and that it is not possible to differentiate in the rights that are essential for guaranteeing human dignity.[25] And, lastly, because constitutional jurisprudence has also repeatedly stated that Article 149.1.3 CE is not a cross-cutting provision displacing the powers of other territorial authorities, but rather one that must be integrated with sector-specific provisions of both autonomous communities and local authorities, which are of particular importance in the field of integration.[26]

Barcelona's Municipal Charter (*Carta municipal*) does not assign the city any specific powers over immigration. Nevertheless, municipal sector-specific powers encompass all its residents, and, in the case of those regarding social services, the guarantee of social cohesion and integration policies have a particular impact on vulnerable immigrants and, therefore, those with irregular status. In this regard, it should be noted that Spain's Immigration Law itself regards the integration of immigrants as one of the guiding principles for the exercise of the powers of all public administrations.[27] The Immigration Law (Organic Law on rights and freedoms of foreigners in Spain and their social integration) and its regulations also contemplate the possibility of the participation of municipal councils in the processing of two residence authorisations that are of great practical importance: that of family reunification, in which municipal councils must report on the requirement of having suitable housing,[28] and "social rooting" (*arraigo social*), for which they have to issue the so-called "rooting report" (*informe de arraigo*),[29] confirming that its holder has social roots. In the case of the city of Barcelona, both reports are processed by the Directorate for Immigrant Support and Reception Services.

On the other hand, immigration regulations do not contemplate any form of municipal participation in expulsion or detention procedures for immigrants with irregular status. Firstly, the cases are handled by civil servants belonging to the National Police Force (*Cuerpo Nacional de Policía*) and are resolved upon by the central Spanish government's representative (*delegado*) or deputy representative (*subdelegado*). Under no circumstances do they contemplate the involvement of municipal councils, either in the imposing or the enforcement of the expulsion. In detention procedures, which are initiated by police civil servants, but which are resolved upon by investigating courts (*juzgados de instrucción*), regulations again do not contemplate any municipal involvement in procedures for this precautionary custodial measure.

However, beyond the formal allocation of powers, it should be noted that the city of Barcelona has a long tradition of policies in the field of immigration. The arrival in recent decades of a significant number of immigrants, the history of the city itself, and the political will to meet the needs of these people, have all contributed to the passing of a series of strategic and working plans since 1997 (in many cases arising from consensus between its different political forces) in the field of immigration. From 1997's Municipal Plan for Interculturality, through the Municipal Immigration Plan of 2002, the Working Plans on immigration for the periods 2008-2011 and 2012-2015, to the recent Citizenship and Immigration Plan (2018-2021) and the Municipal Immigration Council of Barcelona's Working Plan 2016-2019, the city has produced many strategic documents with the aim of designing objectives and instruments for municipal policies that have been adapted in line with changes in migratory flows and the real-life situation of immigrants in the city of Barcelona. In this regard, while policies initially focused on immigrant reception and acknowledging

24 Articles 15-17 of Law 7/1985, of 2 April, on the bases for local government.

25 Cf., amongst others, Constitutional Court Rulings (STC) 107/1984, of 23 November, FJ 4; 236/2007, of 7 November, FJ 3; and 17/2013, of 31 January, FJ 4.

26 Amongst others, cf. STC 31/2010, of 28 June, FJ 83; 26/2013, of 31 January, FJ 5; 154/2013, of 10 September, FJ 5; and 87/2017, of 4 July, FJ 4.

27 Art. 2 bis 2 c) of Organic Law 4/2000, of 11 January, on the rights and duties of immigrants in Spain and their social integration.

28 Art. 55 of Royal Decree 557/2010, of 20 April, approving the Immigration Regulations.

29 Art. 124.2 c) of Royal Decree 557/2010, of 20 April, approving the Immigration Regulations.

cultural diversity, in recent years there has been a move towards policies prioritising the integration of the immigrant population and strengthening the intercultural society. In any case, the City Council's policies have often gone beyond the formal scope of municipal powers, often encompassing those with irregular status, but have never openly challenged Spanish state-wide legislation.[30]

The 2015 municipal elections caused a change in this regard, as the new city government is made up of organizations and leaders with close ties to social activism and, specifically, movements critical of immigration policies. Thus it was that the political objectives of the *Barcelona en Comú* group's manifesto for 2015 included recognition of basic citizens' rights for all of the city's residents, the active promotion of their registration to ensure immigrants' effective access to municipal services, and pressure for the closure of Barcelona's immigrant detention centre (CIE).

During improvement works at the CIE in November 2015, the city government took advantage of the closure of the centre to undertake a political, administrative and judicial offensive to achieve its permanent closure. This offensive received political support from the agreement between the *Tancarem el CIE* ("We Will Close the CIE") platform and a range of municipal groupings to present an institutional declaration in favour of the closure and from the Manifesto of the Barcelona Municipal Immigration Council for the closure of the CIE of 25 October 2016. It found concrete form, from an administrative standpoint, in a municipal order to cease activity at the centre due to defects in its activity permit and pursuant to fire prevention regulations, as well as the compulsory enforcement of the subsequent sealing off order. However, none of these measures could prevent the reopening of the centre, which recommenced its activities in June 2016, despite the fact that the dispute has yet to be resolved in the courts. In any case, the next step in this offensive was to try to prevent the possibility of detaining immigrants who reside in Barcelona in the CIE.

This strategic shift by the city government compared with previous Barcelona Council policies has been made crystal clear in the so-called "Government measure promoting access to regular status and preventing irregularity" (presented in May 2017) and in the Barcelona City Citizenship and Immigration Plan (2018-2021).[31] The two documents depart from a position of open criticism of Spanish and European immigration policies (which are accused of institutionalising irregularity, breaching immigration regulations themselves and transferring those with irregular status to the city and, consequently, encouraging the informal economy and the exclusion and social segregation of these people) and reclaiming the role of the city in the recognition and guaranteeing of full citizens' rights for immigrants with irregular status.

The concept of enjoyment of full citizens' rights, which had already appeared in Barcelona's 2010 Interculturality Plan,[32] is presented in both documents as a way of moving beyond the integration paradigm and is based on recognising diversity and the so-called "city of rights", which includes not only those rights inherently held by city residents, but also social and legal/political rights linked with belonging to society. The foundation for this approach is far from clear, as it combines considerations of the effective enjoyment of rights already held by residents with general references to respect for human rights and the principle of non-discrimination, as well as implicit recognition of the limits of the competence to strengthen so-called "citizens' rights". However, aside from legal issues with this foundation, the wish to criticise and counter Spanish state policies is explicitly acknowledged where the Government measure references the requirement to "implement public policies that interfere with current legal forms creating stratified exclusion, which acknowledges various levels of rights for immigrants".

As with the sanctuary policies in the United States (which are not mentioned in the documents, even though the sanctuary idea is present in the political discourse and also in the definition of Barcelona as a "city of refuge"), the underlying premise is open criticism of Spanish state immigration policies and a definition of the urban space as a space for diversity, interculturalism and full enjoyment of rights. However, the majority

30 One clear example of this wish to meet the needs of the immigrant population, irrespective of its legal status, is the current Immigrant, Emigrant and Refugee Support Service (Servei d'Atenció a Immigrants, Emigrants i Refugiats, SAIER), which, over the course of its 30 years of existence, has dealt with people with irregular status without any problem, to the extent that, according to its most recent reports, half of its current users are in this situation.

31 Pla de ciutadania i immigració de la ciutat de Barcelona (2018-2021).

32 Pla Barcelona interculturalitat 2010.

of the proposed policies do not directly oppose the central government authorities, but rather promote the more effective exercise of existing rights. Thus, the lines of action proposed in the Government measure and elaborated in the Citizenship and Immigration Plan refer to guaranteeing access to municipal public services through active registration, fostering regularisation processes for persons with irregular status through improved information and active employment policies, detecting and preventing situations of irregularity with better information and inter-institutional coordination, and promoting legislative proposals at the national and European level for the adoption of inclusive policies.

The case of the municipal neighbourhood document is, however, distinct: firstly, because its origin is connected to the failed attempt to close Barcelona's detention centre, as can be gathered from the facts and as acknowledged by the persons interviewed; secondly, because it is a new instrument designed to have an impact in a field (the expulsion and pre-removal detention of immigrants with irregular status) where, as we have seen, the relevant legislation does not acknowledge any role for municipal authorities, and finally, because the political aim of the document is clear: it aims to "interfere" with Spanish state policies, as acknowledged by the Government measure itself, and, more specifically, "to prevent" pre-removal detention in the CIE. Unlike the sanctuary policies initially developed by some US cities, the aim is not to prevent the collaboration of local civil servants in the enforcement of national immigration legislation – in part because this legislation is enforced by Spanish state civil servants. However, the concept of sanctuary provides a fairly apt description of a document that seeks, in theory at least, to protect immigrants with irregular status who are integrated in the city from expulsion and detention. Specific analysis of the document will help us establish whether this protection is realistic or more symbolic in nature.

4 The creation of the municipal neighbourhood document

Barcelona City Council created the neighbourhood document on 30 November 2017 with the adoption of a Decree by the Government Commission that regulates its issue. As noted above, a few months earlier, it had included this document as one of the objectives of the Government measure promoting access to regular status and preventing irregularity. According to this strategic instrument, the neighbourhood document is a "complementary document that may affect judicial expulsion and/or detention procedures" in two ways: firstly, by providing evidence of "rooting" to prevent imposition of the penalty of expulsion and forcing the choice of a fine as a more proportionate penalty for the situation of "administrative irregularity" and, secondly, demonstrating that the document's owner has a known address, is integrated in the city and, therefore, cannot be detained in a CIE as a precautionary measure prior to his or her expulsion. On a secondary basis, the Government measure furthermore considers that this document will support the reporting of potential infringements of fundamental rights in cases where expulsion or detention is ordered.

Evidently, the political decision to create a document of this type was due to a number of reasons: on the one hand, the aforementioned political decision of the new city government to impede the use of pre-removal detention after the attempt to close Barcelona's detention centre had failed. On the other hand, the decision to implement the neighbourhood document was also influenced by the proposal of representatives of the CUP (Candidatura d'Unitat Popular) party to create an identity document for all immigrant residents in Barcelona. This proposal, inspired by the local identity cards that have in recent years been promoted by a number of US cities,[33] was rejected by the city government for being too broad, as the City Council has no powers over the documentary identification of persons and because passports were regarded as already fulfilling this function. However, the idea of providing recognition and visibility for immigrants with irregular status was supported by the two political forces and was, from the very beginning, an important factor behind the decision to create the document. So, documentary recognition of such persons as city residents was regarded as not only symbolically and politically important, but also as an instrument for immigrants with irregular status to enter into a relationship with the municipal authorities, break out of anonymity and putting themselves in a position to receive advice on exercising their rights and, amongst other things, beginning to prepare for their regularisation as soon as possible. Therefore, besides drawing attention to the situation of those with irregular status and putting pressure on Spain's central government to change its policy, the neighbourhood document was also created as a tool for empowering persons with irregular status.

33 Cf., amongst others, De Graauw (2014, pp. 309-330).

However, it appears that the actual implementation of the neighbourhood document has failed to achieve its objectives and the intended paradigm shift away from previous municipal policies. There is no indication, for example, that any estimate was ever made of the number of people who could benefit from the document. Despite the difficulty of making such an estimate, subsequent studies have indicated that, at the end of 2016, some 41,000 people could be of irregular status in the city of Barcelona.[34] Although it could not be calculated how many people could have applied for this document, it does seem clear that there was a need to carry out a promotional campaign for the document, not only to raise awareness but also to clarify its purpose. The submission of 1,200 applications in the document's first month of existence alone, the fact that—in most cases—applicants came from just a few countries (primarily Pakistan, India and Bangladesh) and the fact that their objective was often to regularise their administrative situation all go to show that the implementation of the document suffered from problems that had a great impact on its applications during the first six months of its existence.[35]

Similarly, it must be pointed out that, despite the fact that the document's approval was preceded by meetings with associations defending immigrants' rights, the Barcelona Bar Association, some judges from different jurisdictions (the Dean of Barcelona's investigating courts, one of the two judges overseeing the CIE and the contentious jurisdiction courts' coordinating judge), as well as with the director of the Barcelona Immigrants' Office, most of these meetings were to present the document and were not followed up. Although there was no legal obligation to hold this kind of meeting, greater continuity in institutional dialogue could have been useful to prevent some of the problems regarding the actual effects of the document, as commented below.

Lastly, it must be noted that one year after its entry into force, there still exists misinformation on the neighbourhood document not only amongst the immigrant population, but also amongst municipal civil servants. During our fieldwork on the document and other related research, it was observed that senior *Guàrdia Urbana* (municipal police) officers and other city civil servants working in the field of immigration had little information on the document. Without going as far as New York, where the implementation of the local identity document was accompanied by almost one year of preparations,[36] better groundwork could have prevented some of the aforementioned procedural and content-related issues, in addition to being more in keeping with a symbolic and strategic instrument like the neighbourhood document.

5 The document's legal system

The Government Commission Decree of 30 November 2017,[37] governing the procedure for the issue of neighbourhood documents, outlines the basic regulation of the document. This Decree, which saw minor amendments in May 2018, consists of ten articles setting forth the general legal system governing the document, and is complemented by Law 39/2015, of 1 October, on the common administrative procedure for the public administrations of Catalonia. Despite plans for the publication of instructions on aspects that need specific attention, the criteria for the implementation of the Decree have not yet been made public.

5.1 Legal nature

The first issue requiring clarification with regard to the neighbourhood document is its legal nature. Despite the impression that its chosen name may give, it should be stressed from the very beginning that this is not

34 Cf. Esbert-Pérez (op. cit., p. 14). This estimate is based on the number of non-EU citizens registered in the city as at 1 January 2017 (199,055) and the number of residence authorisations in force as of 31 December 2016 (160,517). It must be stressed, however, that this is an estimate, given that the updating of the municipal registry is not automatic and there may be doubts as to the number of family members of European citizens and of EFTA nationals, who are subject to regulations on EU citizens, even though they are not nationals of EU Member States. Also to be noted are the difficulties in calculating how many of these people met the requirements for time lived in Barcelona and Spain set forth in the document's regulations.

35 In this regard, it should be noted that it was not possible to issue the first document until February 2018 and that the processing of applications was not normalised until the middle of the year.

36 There are very significant differences between the two documents, particularly bearing in mind that the New York ID card is aimed at all the city's inhabitants and that, in its first year of existence, it has been issued to more than 850,000 people. However, implementing this document involved the mobilisation of a significant number of local civil servants and many public and private organisations, as well as being accompanied by a powerful promotional campaign, even involving the UN Secretary General. See the evaluation report on this document published by the city of New York itself (IDNYC, 2016).

37 Decret de la Comissió de Govern, de 30 de novembre de 2017.

an identity document. This was never the intention of the city government, amongst other reasons because it acknowledges that the power to issue identity documents lies with the National Police Force.[38] So, although a photograph may be added to it in the future, under no circumstances does the neighbourhood document prove the identity of its holder.[39]

Naturally, the document's name was the subject of broad political debate. The idea of a "card" appeared to be most consistent with the goal of promoting the inclusion of immigrants with irregular status. Additionally, there was discussion as to whether the term *ciutadania* (citizenship or citizens' rights) was more appropriate than *veïnatge* (belonging to or rooting in a neighbourhood), particularly given the idea of basing the document on citizens' rights. However, in the end, a name was chosen (*document de veïnatge* / neighbourhood document) that was more in line with the applicable legal framework, although it is actually confusing in two ways: firstly, the *veïnatge* (in Catalan, *vecindad* in Spanish, "pertaining to a neighbourhood") is neither the *vecindad administrativa* that is derived from being registered in the municipal register of inhabitants (the *padrón*), nor the Spanish civil law concept of *vecindad civil*, but is instead a new and broader concept, principally linked with the integration of immigrants with irregular status in the city. The document does not provide proof of the *vecindad administrativa* of these people (for which the *volante de empadronamiento* document already exists), but rather their integration, based on a series of requirements and indicators contemplated in the Decree and which are assessed by the City Council. Secondly, and as a result of this fact, it should be noted that the document is, above all and from a legal standpoint, a municipal report designed to confirm the holder's integration in the city of Barcelona.

The political wish to raise the profile of immigrants with irregular status and to differentiate this document from other municipal reports issued in the field of immigration (the social rooting report and the housing suitability report in the case of family reunification) help explain why the name was chosen. However, from a legal viewpoint, the only conclusion possible is that this is a municipal report. A report that, as we shall see immediately below, is requested by the interested party; processed on the basis of procedural regulations contemplated in the Government Commission Decree regulating it; and which provides information on factual matters (for example, the municipal registry status of the holder) and on whether or not, in the City Council's opinion, the applicant meets the different integration indicators that are contemplated in the document's regulations and assessed as part of the procedure.

The physical form of the neighbourhood document (a sheet of paper signed by the Head of Citizens' Rights, Participation and Transparency that identifies its holder and that confirms whether the different requirements and integration indicators contemplated in the governing regulations have been met), as well as the body that processes it (the Barcelona Rooting Reports Point, *Punt d'Informes d'Arrelament de Barcelona*), which handles the social rooting reports contemplated in immigration regulations, corroborate the conclusion that we are dealing with a municipal report.

5.2 Underlying powers

Having clarified the legal nature of the neighbourhood document, the second issue that needs to be analysed are the powers underlying it. The preamble to the Government Commission Decree repeatedly refers to municipal powers in the field of the integration and reception of immigrants. What is noteworthy, however, is that no mention is ever made of the Barcelona Municipal Charter[40] (which does not explicitly assign any powers in this area to the city), but rather refers to Catalonia's Statute of Autonomy or "EAC" (Articles 42.2, 42.6 and 84.2 m EAC), the Organic Law on Immigration (Article 2 b), the Law on the Bases for the Local Authorities (Articles 15 and 18.1 c) and to the Law on the Reception of Immigrants and Returnees to

38 Articles 12 of Organic Law 2/1986, of 13 March, of security forces and bodies, and Article 210 of Royal Decree 557/2010, of 20 April approving the Immigration Regulations.

39 This is also the case of the *tarjeta de vecindad*, which, as previously noted, is now being issued in the city of Madrid. Although it includes a photograph, the capital's city council itself acknowledges that it cannot be used to prove its holder's identity. Indeed, this is one of the main differences with the municipal identity cards of US cities. Given the absence of an obligatory federal identity document, the main purpose of the latter municipal cards is to identify all residents, irrespective of their nationality or legal status, in the aim of providing them with access to municipal services and facilities, and so that they might be able to deal with banks and other private enterprise players.

40 Law 22/1998, of 30 December, on the Barcelona Municipal Charter.

Catalonia (Article 21.2). However, all these normative references are generic and regarding issues associated with integration, reception or municipal public services.

In some cases, the regulations invoked are generic mandates aimed at all public authorities (Article 42 EAC and 2 b or the Law on Immigration). In others, they deal with the right of access to all municipal public services (Article 18 of the Law on the Bases for the Local Authorities) and, in still others, on municipal powers for the provision and promotion of support, reception and integration services (Articles 84.2 EAC and 21.2 of the Law on Reception). Although Article 1.3 of the Decree states that the procedure for issuing the neighbourhood document is intended to "provide a service to contribute to the social cohesion of the population and the reception and integration of migrants", no effort is ever made to clarify the extent to which Barcelona City Council has powers to create and issue a report that is designed to have an effect on procedures (those of expulsion and detention) which are solely the power of the Spanish state and which are not contemplated in immigration regulations.

The express purpose of the document and the fact that constitutional jurisprudence has traditionally linked initial reception and integration with social support[41] make it difficult to argue that the City Council has powers to issue the document based on its right to arrange municipal public services in this area. The nonbinding nature of the document, which is never claimed, and the fact that the issue of reports is an instrumental activity may counter these doubts. But the legal basis of the document presented by the City Council is not clear.

One different possibility would have been to link the neighbourhood document with the general clauses on powers contemplated in Article 58.3 of the Catalan Law on the Municipal Charter and to Article 3 of the Spanish state Law on the special regime for the municipality of Barcelona.[42] Aside from the debate on the applicability of these clauses,[43] it might indeed be argued that the document is an activity or service affecting the general interest of citizens or which complements an activity pertaining to the Spanish state (in this case, expulsion and/or detention proceedings). However, there are problems with both arguments: firstly, the protection of general interest should be linked to the protection of document holders and the necessary proportionality of the measures against irregular immigration. Secondly, in the case of the complementary power, which is normally associated with the provision of a public service by another authority, it should be argued that the neighbourhood document offers complementary information that can be provided within the framework of other proceedings. This latter possibility would appear to be more suited to the neighbourhood document, given that, as we have seen, it is a report that provides complementary information, as the Government measure points out, for expulsion and detention procedures. However, it should be noted that the document is designed to have effects not on administrative proceedings, but rather judicial ones, which is not common in the case of complementary powers.

In any case, from a powers perspective, the general jurisdiction clauses could provide a more adequate legal basis than generic references to integration and initial reception for the justification of the neighbourhood document. From a broad conception of local autonomy that allows municipal authorities to intervene in areas such as irregular immigration that have a clear impact upon municipal life, it would indeed appear possible to defend sanctuary measures such as the neighbourhood document, which is limited to providing complementary information that can be submitted to proceedings that do not fall within municipal powers.

However, as we shall see later on, the other side of the coin is the fact that the document is non-binding in nature and that other public authorities (and particularly judicial bodies) are free to interpret its content and scope.

41 Cf., in this regard, STC 87/2017, of 4 July, FJ 3, whose very object was the Catalan Law on Reception.

42 Law 1/2006, of 13 March, governing the special regime for the municipality of Barcelona.

43 The abrogation, by Law 27/2013, of 27 December, on the rationalisation and sustainability of local administrations, of the general clause on complementary powers included in the Law on the bases for local authorities led to the well-known issues of its effects on the special legislation on the municipality of Barcelona.

5.3 Requirements

Article 4 of the Decree Governing the Neighbourhood Document states that it may be requested by immigrants (or their legal representatives) fulfilling the five following personal requirements: a) being an immigrant; b) being at least 18 years of age; c) having remained at least 12 months in Spain; d) having been continuously registered in the city of Barcelona for at least six months preceding the application, and e) having irregular status. As we shall see later on, the way in which the meeting of these requirements is demonstrated varies. However, before analysing them, it is worth making some observations on the content of some of them.

The regulation does not exclude the possibility (although it rarely occurs in practice)[44] that applicants be European citizens, EFTA nationals or immediate family of European citizens. The possibility that said persons' status may be irregular, and that they be punished with expulsion and, if applicable, be subject to detention proceedings,[45] would provide justification for this.

For its part, the requirement to be of full legal age appears logical bearing in mind that the expulsion and detention of minors is only possible if they affect the entire family, and the repatriation of minors follows a completely different procedure. In 2018, only one application, which was not accepted for further processing, was submitted by a minor.[46] The requirements of remaining in Spain and being registered in the municipality of Barcelona appear obvious, given that the document is designed to show real integration in the city. The minimum stipulated time in each case (one year in Spain and six months of being registered in the *padrón*) might be debatable, given that, in such a timeframe, one could hardly expect more than simply having embarked upon a reception period. In practice, however, it should be noted that, for the neighbourhood documents issued between January and October 2018, the average registry period was 3.7 years, albeit with moderate variations.[47]

Lastly, the requirement of having irregular status is fully consistent with the document's aim of specifically protecting such people, and with the political decision of not seeking to prove the identity or *vecindad administrativa* of all the city's immigrants.

When submitting an application, a signed declaration confirming that all these personal requirements are met must be provided. It should be stressed, however, that although these requirements are logical and reasonable, as things currently stand, they would lead to the exclusion of most people detained in the Barcelona CIE, who come from the Spanish coasts, are subject to return orders after reaching Spain by boat or via the African enclaves of Ceuta and Melilla and who meet neither the requirement of time of stay in Spain nor or being registered in Barcelona. This is important, as it calls into question the real effects (in the case of detention, at least) of a document that was created, as we have seen, in response to the failure to close the Barcelona CIE down and thus to prevent the detention of city residents. Figures for recent years emphasise, nevertheless, how requests for detention by the police in the Province of Barcelona have fallen significantly,[48] such that the number of actual beneficiaries of the neighbourhood document is increasingly small. So, with regard to detention, the neighbourhood document appears to have arrived too late (in light of the current status of the Barcelona CIE), such that one should expect it to have political and symbolic rather than any other effects.

Aside from the requirements that applicants have to meet, the regulations governing the neighbourhood document establish the criteria that need to be considered in order to demonstrate that the person in question is integrated into the city. These indicators, for which documentation should be provided throughout the procedure, are described in Article 2 of the Decree as follows: a) family links of the applicant with other

44 According to information provided by the unit responsible for processing applications, in 2018 only one application was submitted by a EU citizen.

45 This possibility is very controversial from a legal standpoint, given that detention is not contemplated in the regulations governing the system applicable to European citizens. However, practice shows that the pre-removal detention of European citizens actually happens (albeit infrequently) and should not be ignored by the neighbourhood document.

46 Source: Barcelona Rooting Report Point.

47 Source: project fieldwork per Note 10. Detected deviation stands at 2.6.

48 Cf. González Beilfuss, Kalir & Vallbé (2018, p. 66). The annual reports issued by the Barcelona Prosecutor's Office highlight this significant reduction in the number of police applications for detention. From 2011 to 2016, there was a drop from 1,534 to 389 applications for the entire province, meaning that the figure is even lower for the city of Barcelona.

people living in Spain; b) understanding of the Spanish and Catalan languages; c) completion of courses, workshops or modules of a social, employment, language and/or cultural nature; d) level of education and profession; e) financial situation, of both the applicant and their family, and employment history; f) social participation, with special emphasis on any situation involving links with the surrounding environment; g) if applicable, the situation of irregularity; h) documented possibility of obtaining residency and/or work permit, and i) other factors and/or circumstances considered relevant and applicable to the nature of the neighbourhood document. As can be seen from even a cursory glance at these indicators, the concept of integration and of being "rooted" that is used is broad and based more on the *possibility* of integrating and having made efforts in this regard rather than actual integration. As with reports on rooting and integration effort that are used in the field of immigration law, the goal is not to prove any real integration, something that is difficult – if not impossible – to define legally, but rather to demonstrate a situation of coexistence and normality within the context of a diverse and plural society such as that of Barcelona. The minimum registration period in Barcelona required of neighbourhood document applicants (six months) underlines how it is based on a low level of requirements and that the goal is not to demonstrate clear roots in the city, but rather a set of circumstances that should be borne in mind so as not to punish a person in an administratively irregular situation with expulsion or not to detain them in a CIE as a precautionary measure prior to their expulsion.

Although the document's name may lead to confusion, one should not forget the goals it pursues and its protective purpose. In this regard, noteworthy are both the lack of normative criteria on how to evaluate the different indicators of integration and also the absence, initially at least, of any regulation on the grounds for acceptance or rejection of applications; in other words, of any minimum indicators that have to be demonstrated in order to issue the neighbourhood document. It is true that from the beginning it was difficult to regulate such matters in detail. The situation has improved with the May 2018 amendment to the Decree governing the document, which has clarified what minimum information must be provided to obtain the document. However, before analysing this amendment and the manner in which cases resolved so far have been processed, it seems useful to highlight how the normative description of some of the indicators that are used raises doubts as to their suitability for their intended purpose.

For example, the fact of having family links with people anywhere in Spain makes it clear that the basis is a broad concept of rooting or integration that is linked to the likeliness of having a support network not just in the city, but in Spain as a whole. The indicator of having studied or holding a profession appears to be associated more with the possibility of working rather than any real integration, unless it would be required that the schooling was carried out in Barcelona. Moreover, the generic reference to the person's financial situation or means of support (which does not only refer to the applicant, but also to their family), also highlights a willingness to issue the document. On the other hand, the absence of any option to take into account indicators regarding a lack of integration (for example, any criminal record for offences seriously threatening peaceful public coexistence),[49] which *are* assessed by judges when authorising detention, also shows how the neighbourhood document is not neutral in nature. Aside from it not being possible to demonstrate this fact without the applicant's collaboration, it should come as no surprise that a measure typical for sanctuary city has been developed in line with this aim. Nevertheless, the political costs arising from the possible issuing of the neighbourhood document to a holder who is not clearly integrated must be considered, as well as, in particular, the possibility that judges and tribunals attach less importance to the document than is desired.

5.4 Processing the document

The regulations regarding the neighbourhood document contain simple rules on how applications for the document should be processed. In line with the goals of normalising relationships between immigrants with irregular status and the city administration, empowering them and informing them, as well as of protecting them against possible expulsion and/or detention orders, a procedure was chosen that facilitates the

49 Obviously, it is not easy to define such cases, particularly if there is no wish to attach excessive importance to any type of criminal record. In turn, monitoring of this factor would require the demanding of a criminal record certificate issued by the Spanish authorities, when such a factor would appear better monitored by the judicial authorities responsible for ruling on detention. However, the absence of any reference to this issue is mostly due to the political desire to protect those with irregular status and not to stigmatise them.

submission of applications, gives great importance to face-to-face interviews and does not explicitly provide any grounds for rejecting the application.

The application, which is free of charge, can be submitted at any Council Citizen Help and Information Office (*Oficina d'Atenció* Ciutadana) or post office by completing a simple form based on sworn statements. The application is forwarded to the City Council's Directorate for Immigrant Support and Reception Services, which is the body responsible for processing and preparing the issue of neighbourhood documents. Once the application is reviewed, and any potential errors have been corrected, and if there is no declaration of inadmissibility of the application due to non-fulfilment of personal requirements,[50] the applicant is called to a face-to-face interview, during which he or she must present the documentation demonstrating compliance with these requirements and, as far as possible, providing evidence of the aforementioned integration indicators.

This interview is a key part of the document's application procedure and is carefully performed by service staff. In addition to providing information from the very beginning regarding the documentation that can and should be provided, and carrying out a structured interview to obtain detailed information on different integration indicators, in practice, second interviews are performed, if necessary,[51] with applicants being encouraged to withdraw and the case being shelved when it is considered that the requirements for issuing the document are not met.[52] This latter practice took place particularly during the early months of the document's application procedures in response to a significant number of applications that, as already mentioned, clearly failed to comply with the personal requirements stipulated by the Decree. This continues to occur and, in 2018, a total of 233 applications were withdrawn and subsequently shelved.

In short, the aim is not to expressly reject any submitted applications, but rather to use withdrawals as a way of resolving cases of ineligibility. In remaining cases, the interview becomes the most important moment of the procedure, not only because it is useful in order to gather a lot of information, and, with respect to knowledge of Catalan and Spanish, directly verifies the fulfilment of this requirement, but also because it is a key moment of acknowledging, informing and, ultimately, empowering those with irregular status who normally, for this very reason, tend to avoid contact with the public administrations.

The examination of applications is finalised by Council staff with a recommendation that is, in practice, either positive, or for the inadmissibility or the shelving of the application.[53] Resolutions that expressly reject an application are not foreseen; instead, attempts are made to secure the withdrawal of the application and shelving of the case file in cases where there is no proof of meeting the main integration requirements. The May 2018 amendment, which establishes that, for the document to be issued, it is necessary to provide information to be able to assess at least some indictors, did not formally introduce the possibility of rejecting applications. Once again, we need to bear in mind the protective purpose of the document and the negative consequences, not only from a legal but also and most particularly from a political standpoint, that could arise from resolutions rejecting applications for a neighbourhood document.

Lastly, it should be pointed out that the procedural regulations make no reference to any deadline for issuing a resolution nor to the implications of administrative silence. By application of Law 39/2015, the deadline is three months. After having overcome the avalanche of applications during the first few months of the document's entry into force, which in many cases led to delays in issuing resolutions, the length of the document's application procedure does not currently cause any problems.[54] With regard to the practice of

50 Although not expressly contemplated, during the document's first year of existence (2018) 180 of the 2,013 applications submitted were rejected on receipt, mostly due to non-compliance with the requirement to be registered as resident of the city of Barcelona for at least six months. Source: Directorate for Immigrant Support and Reception Services, Barcelona City Council.

51 The year 2018 witnessed 1,718 first and 411 second interviews. Source: Directorate for Immigrant Support and Reception Services, Barcelona City Council.

52 This took place particularly during the early months of processing the document in response to a significant number of applications that, as already mentioned, clearly failed to comply with the personal requirements stipulated by the decree. This continues to occur and, in 2018, a total of 233 applications were shelved due to withdrawal of the application.

53 In addition to withdrawals of applications, case shelving orders can also be issued because it is impossible to find the applicant or because he or she does not attend the interview. These circumstances occurred on 349 and 139 occasions, respectively, in 2018, representing almost 25% of applications. Source: Directorate for Immigrant Support and Reception Services, Barcelona City Council.

54 By the end of December 2018, the appointment for the interview tended to take two to three weeks and the decision on issuing the

administrative silence, the fact that the application is for a report that is neither positive nor negative but that certifies a certain piece of information makes it pointless for the procedure to end due to positive silence.

5.5 Criteria for issuing the document

The Mayor is responsible for issuing the document, but this power is conferred upon the Head of Citizen Rights, Participation and Transparency.[55] The issuing of the document is dependent on whether the personal requirements for applying are met and whether proof has been provided, in the Council's view, of a series of integration indicators provided throughout the procedure, which implicitly demonstrate the applicant's rooting in the neighbourhood. It is important to note that the issuing of the document (and, therefore, the recognition of rooting in the neighbourhood) does not only take place when the compliance with *all* the aforementioned integration indicators is demonstrated. Indeed, from the very start, documents have been issued that do not correspond to some or indeed quite a few of these indicators. Which of them are required and which is their minimum content is not clearly regulated. Only since the amendment of the Decree on the Neighbourhood Document of May 2018 has it been established that the issue of the document is dependent upon two conditions: compliance with the personal requirements stipulated by the regulations, and having submitted the information and documents required to properly assess at least one of the indicators contained in Sections *b*, *f* or *h* of Article 2.1 (family links, financial situation or irregularity), or, simultaneously, the contents of Sections *d* and *g* of the same Article (taking part in courses and social participation).

This attempt to specify the criteria for issuing the neighbourhood document is certainly an improvement over the initial situation, when it was impossible to know what criteria were employed for its issue. The fieldwork referenced at the start of this paper on documents issued between January and October 2018 (to which the original regulations applied) means that information can be provided on the criteria used during the first stage of the document's existence. In any case, a preliminary review of the data obtained shows how, in 64.5% of the documents issued in said period, no family links were demonstrated, in 76.4% financial means were not attested, while in 82% of documents the existence of a social network was demonstrated and in almost all cases attendance of courses, modules and workshops was confirmed. Exhaustive analysis of the information obtained will undoubtedly provide highly relevant information on the socio-demographic profile of those who have obtained the document, as well as the criteria based on which it was issued. In any case, it seems clear that, in order to positively resolve the applications submitted, restrictive criteria were not used; that the criteria for issuing the document were not established on an *a priori* basis, but were rather adapted over the course of time; and that the existence of internal coordination networks probably did not prevent the use of different criteria in certain cases.

In any case, that fact that, during the document's first year, a total of 894 neighbourhood documents were issued (46% of cases resolved),[56] that 180 applications (9%) were ruled inadmissible, 622 (32%) shelved due to a lack of documentation, signature or non-appearance of the applicant and 233 (12%) were shelved due to withdrawal by the applicant clearly shows that the criteria for issuing the document have not been restrictive.[57]

The same conclusion can be reached when analysing the criteria that are used to examine the different integration indicators. As seen above, the regulations already define these indicators in a broad manner. The family links that can be registered with the neighbourhood document are not limited to the immediate family, but include any degree of kinship; the economic means are not just those of the applicant but also of family members, and the remaining indicators are generic and the method of attesting them unspecified, nor is there any indication as to whether there are minimum requirements for issuing the document. Once again, fieldwork on the documents issued between January and October 2018 helps show what criteria were used in practice. In any case, everything seems to indicate that the issuing of the document is not based on an *a priori*

document one to one and a half months following the interview, if all the documentation had been submitted. However, in the early months of the year, it could take up to six months to hold the first interview.

55 Mayor's Decree of 4 December 2017.

56 Source: Directorate for Immigrant Support and Reception Services, Barcelona City Council.

57 Source: Directorate for Immigrant Support and Reception Services, Barcelona City Council.

concept of what integration in the city entails, but on a wish to demonstrate facts that are considered relevant and in some way indicative of true integration in the city. Actual practice also shows that the neighbourhood document is, above all, a municipal report that aims to demonstrate a number of facts in order to facilitate their use in expulsion and/or detention procedures.

As a result, accreditation of this information is a key element of the neighbourhood document from a legal standpoint. That raises the question of which form of accreditation is used regarding the information that is provided for each of the requirements and integration indicators. Obviously, the forms of accreditation are not the same in all cases, and do not always cause issues. For example, personal data and municipal registration data come from the documentation that is submitted by the applicant as well as from information verified *ex officio* by the City Council. Information on language proficiency does not give rise to important issues either, as this is derived from the personal interview with Council staff. In regard to information accredited by means of documentary support, this requires submission of the original and of a valid copy with administrative validity. Bearing in mind the sheer range of documents that can be submitted in support of aspects such as identity, family links and/or economic status, there would appear to be a clear need for proper training for the staff processing the document to guarantee the authenticity and validity of the documentation submitted. However, aside from this requirement, it does not appear that any particularly significant problems are raised.

On the other hand, it does not seem acceptable that verbal testimonies by the applicant can be used as a means of proof. While this practice is uncommon, detected in certain examples issued in the first months of the neighbourhood document's existence, its usage completely undermines the purpose of the document.

Aside from the method of accrediting the information referred to in the neighbourhood document, another issue may be found in the data used in some cases to deem certain integration indicators accredited. In line with the philosophy of the regulations governing the document and its protective purpose, in some cases the registered information included links with distant family members, sources of income based on the receipt of welfare payments, or the possession of a library card as sole proof of the existence of a social network and of participation by the applicant. This once again highlights how issuing the neighbourhood document is not made dependant on the achievement of a certain degree of integration, but rather on meeting the personal requirements for the application and on providing information regarding some of the integration indicators set forth in the governing regulations. Barcelona City Council is therefore limited to attesting by means of a report the information that is included in the neighbourhood document. As a result, it is up to other legal actors to evaluate the effects and consequences arising from this report.

6 Legal effects and enforceability of the document

According to the Decree governing the neighbourhood document, its function is to "prove" its holder's rooting in the neighbourhood "within the framework of expulsion and/or detention procedures". As we have seen, this rooting goes beyond the concept of *vecindad administrativa* and is associated with the document holder's integration in the city of Barcelona. Accreditation of this status basically consists of issuing a municipal report which reflects compliance with the document's requirements and certifies a series of facts connected to the different integration indicators contemplated in the Decree governing the neighbourhood document. However, from a legal point of view, it is crucial to determine the effects and enforceability that can be expected of a municipal document of this type.

The regulations merely state that the neighbourhood document is valid for a period of 24 months[58] and that the holder must be notified of the issuing of the document, who has to collect it at the office of the body that processed the application. The document's effects are not explicitly regulated, although, in line with its legal characteristics, they should be those of a municipal report providing information on a number of circumstances. Neither does the Decree specify which expulsion and/or detention-related procedures the neighbourhood document is intended to affect. However, from the explanatory statement of the Decree and of the Government measure promoting access to regular status and preventing irregularity it can be

58 Initially, the term was twelve months, but the May 2018 amendment extended this to ensure that it could have effects in practice.

deducted that it is designed in particular for use in judicial procedures on expulsion and/or detention of the document's holder; more specifically, the administrative procedure of the administrative court to resolve a challenge of a hypothetical expulsion order and the procedure that is followed by the investigating court to order preremoval detention. In both cases, the neighbourhood document is designed to point out the disproportionate nature of the expulsion penalty and of the precautionary custodial measure, respectively, by demonstrating the document holder's integration in the city of Barcelona.

Despite the document's specific aim of "interfering" with Spanish and European policies against irregular immigration and, more specifically, expulsion and/or detention procedures, it should be stressed that the neighbourhood document is far from representing a break with these procedures, in the sense that it is not based on arguments that deviate from the legal logic of the system. Indeed, proportionality is the key principle underlying and limiting expulsion and detention measures, as a result of which integration or roots in the city are commonly used as defence by persons affected by either of these two decisions. From a legal point of view however, the main problem lies in determining the effects that the neighbourhood document may have on the aforementioned judicial proceedings, bearing in mind its content and application procedure.

If the City Council's power to issue the document is accepted, the first point that should be emphasised regarding the neighbourhood document is that it is a non-binding municipal report. Indeed, it could not be otherwise, given that it is a report from a local administration that is not provided for by immigration legislation and which is intended to affect the judicial control of decisions made by the general administration of the Spanish state. Barcelona City Council itself appears to be aware of this fact, as the oft-mentioned Government measure promoting access to regular status and preventing irregularity refers to the neighbourhood document as a "complementary report" that "may affect" judicial expulsion and/or detention procedures.

In the reasoning of the City Council, however, the goal is for this impact to be standard and decisive, in the sense that submission of the neighbourhood document in judicial procedures challenging an expulsion or pre-removal detention order leads to a replacement of the penalty of expulsion with a fine or to a dismissal of the precautionary custodial measure, respectively. Nevertheless, this expectation does not appear to take into account two considerations that are by no means insignificant from a legal standpoint: first, that in judicial proceedings, the court is free to decide on the relevance of elements submitted to the proceedings and, secondly, that the elements that have to be taken into account by courts do not depend on each judicial body or upon a public administration, but rather on the jurisprudence of higher courts, which establish the doctrine to be followed by lower courts to resolve the dispute at hand.

As of yet, not much time has passed since the first neighbourhood documents were issued, and it has therefore not yet been possible to ascertain the real impact of these documents on the aforementioned judicial procedures. Nevertheless, these two considerations do not leave much room for optimism with regard to the real legal effects of the neighbourhood document.

Firstly, it appears that one cannot take for granted that the information contained in the neighbourhood document will be accepted as a proven fact by the common courts. The presumption of truthfulness that has sometimes been claimed in defence of the document's effectiveness in judicial proceedings does not take into account, among other matters, that this presumption is linked to documents drawn up by civil servants whose authority status is recognised.[59] Additionally, although it is a public document, the neighbourhood document would not appear able to enjoy in contentious proceedings the full probative value that is reserved by Spain's Law on Civil Proceedings (*Ley de enjuiciamiento civil*, LEC) for the documents listed in its Article 317. Neither is there any other law that, as contemplated in Article 319.2 LEC, assigns probative value to the neighbourhood document as a public document. Therefore, the information attested by the City Council is subject to evidence to the contrary and does not dismiss the judicial body's freedom to evaluate the information that parties submit to the procedure, particularly when, as we have seen, in some cases there are doubts regarding the way in which information recorded in the document has been verified, or regarding discrepancies in matters such as family links or means of support when trying to prove the existence of roots in the city. As a result, it would not be surprising if courts would demand that the neighbourhood document be accompanied by the documentation used during the procedure to verify the different integration

59 Article 77.5 of Law 39/2015, of 1 October, on the common administrative procedure for public administrations.

indicators. Despite the professionalism and dedication of Council staff and the way in which applications for the neighbourhood document are handled, it therefore does not seem likely that judicial bodies will regard themselves as bound by the content of the document's different sections, with the exception of the report on municipal registration in the city, which is solely dependent on Barcelona's municipal administration.

Nevertheless, aside from this fact, one should also bear in mind that the neighbourhood document does not exist in a vacuum, but is instead designed to have effect within the framework of judicial procedures (challenging expulsion or detention orders) that are held in the city of Barcelona and with regard to which there already exists jurisprudence which, for some time now, has defined the principle of proportionality as posing a limit on expulsion penalties and detention decisions. Without detailing all of them, we should note the general lines of this doctrine to see to what extend the neighbourhood document might affect the application of this doctrine.

In the case of the penalty of expulsion, it should be noted that the traditional doctrine on the requirement of replacing it with a fine has been modified by the Judgement of the Court of Justice of the European Union of 23 April 2015, which highlighted that the choice between fining or expulsion contemplated in Spanish legislation is incompatible with the so-called *Directiva de retorn* (return directive).[60] So, following this judgement of the court in Luxembourg, the Administrative Chamber of the Catalan High Court has regarded the penalty of expulsion as the general rule and that its replacement by a fine should be limited to cases in which the court holds that it would affect the best interests of the child, family life or the state of health of the immigrant with irregular status.[61] The occurrence of said cases may be open to debate, but more recent jurisprudence is strict in the sense, for example, of not accepting generic arguments with regard to "rooting".[62] Apart from the issue of the reliability of the neighbourhood document, it cannot be expected that the administrative courts will agree to replace expulsion with a fine in cases other than those arising from this jurisprudence for the mere fact that the person concerned is a holder of this document.

Something similar can be expected in a different case, not mentioned in the Government measure, but which may occur when the neighbourhood document is submitted, in particular when requests are made for the precautionary suspension of expulsion orders based on economic, social and family rooting of the person concerned. With regard to this matter, the Catalan High Court has also consolidated jurisprudence that stresses the need to weigh up the circumstances of the case based on the evidence submitted by the plaintiff, which must be directly evaluated by the judicial bodies.[63] According to this jurisprudence, "rooting" is not derived from mere permanence in the territory, or from the fact of having economic resources of any kind, but is restricted to two situations: actually living with parents, children or registered or married partners with regular status (in the case of family links) or awaiting a decision on an application for resident status. So, neither in these cases can it be expected that the neighbourhood document be of help in the precautionary suspension of an expulsion order in different circumstances.

Lastly, in the case of detention procedures, the jurisprudence of the Catalan High Court also stresses the need to assess the specific circumstances of each case and in particular the existence of a fixed abode and a rooting or integration that would allow for the precautionary custodial measure to be considered disproportionate.

As in the previous cases, the actual application of these undefined legal concepts leaves the judicial bodies with a substantial margin of discretion. However, the neighbourhood document cannot claim to interfere with the judges' freedom to interpret these requirements and decide whether they are met in a specific case. The neighbourhood document may be expected to facilitate the application of the existing case law doctrine, but not to modify or replace it, such that the judicial body shall only take into account the content of the neighbourhood document when deciding whether to authorise or deny a detention order.

60 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

61 Cf. in this regard, the ruling of the Contentious-Administrative Division of the Catalan High Court 667/2018, of 14 September 2018 (appeal 430/2017).

62 This is the case of, amongst others, Catalan High Court Rulings 729 and 731/2018, of 5 October (appeals 510/2017 and 132/2017, respectively).

63 Cf., amongst others, Catalan High Court Rulings 1639/2017, of 30 January (appeal 257/2014), 10536/2017, of 14 November (appeal 428/2015) and 2972/2018, of 29 March (appeal 136/2016).

7 Conclusions

The creation and implementation of the municipal neighbourhood document by Barcelona City Council represents one of the first "sanctuary measures" adopted by an important Spanish city. The context in which it was developed and its explicit goal of "interfering" with expulsion and/or detention procedures for immigrants with irregular status means that this document can be regarded as a pioneering inclusion measure, which aims to protect such people against Spanish state policies against irregular immigration. From a political point of view, it is clear that the mere act of acknowledging those with irregular status as being rooted in the city and increasing their visibility is noteworthy, above all because it highlights the failure of the Spanish state policy of deporting these people, as well as the importance of meeting their needs. However, in its current configuration, the sanctuary provided by city of Barcelona's neighbourhood document is more symbolic than realistic. The legal analysis of the document has shown how, while its name may cause confusion, the neighbourhood document is a municipal report certifying information on the personal circumstances of the holder and on a series of indicators of integration in the city. However, it cannot realistically claim to have effects on judicial procedures aimed at reviewing expulsion orders or authorisations of detention. From a legal point of view, aside from the debatable competence based on which the City Council created the neighbourhood document, it should be noted that this is a non-binding municipal report that cannot suspend the power of the courts either to determine which facts are relevant for the procedure or to evaluate the evidence in connection with those facts. But above all, the neighbourhood document cannot dismiss nor subsitute the jurisprudential criteria used by the Catalan High Court when reviewing expulsion orders and requests to authorise preremoval detention.

While from a legal standpoint the neighbourhood document does not appear to have a significant impact on expulsion and/or detention procedures – which, furthermore, have undergone important changes in recent years –the results are undoubtedly more positive from a political and symbolic point of view. The context within which it was created, the method of implementation, the criteria by which certain integration indicators were defined, the way in which they have been interpreted and the desire to not formally reject any application are all aspects that reveal that the intention has at all times been to give more importance to symbolic and political rather than legal aspects. Highlighting the contradiction of having residents whose status is irregular despite their integration in the city, providing these persons with protection (theoretically at least) and thus denouncing Spanish and European policies by a city like Barcelona are goals that *have* been achieved.

Similarly, the type of application procedure and the use of interviews with applicants are likely to have had a positive impact on the recognition and empowerment of persons with irregular status. Although it may also have caused some frustration, the fact that the city administration has opened its doors to those in fear of deportation and supported them during a process that has been carried on carefully and in an applicantfriendly way may have had benefits that go far beyond the document itself.

Nevertheless, if the desire is, in the future, to progress from a mostly symbolic to a more genuine sanctuary, it would be useful to bear in mind the current realities of expulsion and pre-removal detention in the city of

Barcelona, review some of the definitions of integration indicators used in the document and some of the criteria used in application procedures, as well as take greater account of the jurisprudential criteria governing the decisions that it seeks to affect. This may well seem too much for a document that has only existed for a short time. However, in the field of law, true protection tends to be more important than symbolic sanctuary.

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