

FUNDAMENTAL RIGHTS 509/2020
SUPERIOR COURT OF JUSTICE OF MADRID
CONTENTIOUS-ADMINISTRATIVE CHAMBER
SIXTH SECTION

TO THE ROOM

MR. EMILIO MARTINEZ BENITEZ, Attorney of the Courts and of the Trading Company **NEW TECNOLOGIES GLOBAL SYSTEMS, SL** (in forward **NTGS**), as I have already accredited in Cars, with the legal assistance **JULIO ANTONIO ARANDA RONCERO**, Collegiate No. 29,524 ICAM, I appear before the Chamber and as best proceeds in Law, **I SAY:**

That in compliance with the provisions of the Ordering Diligence of date July 14, 2021, within TEN DAYS I come to formulate the following

CONCLUSIONS

FIRST.- It is not true that my client, NTGS, is the supplier of the mortar carriers mentioned in the Complaint, even when it is true that the ALAKRAN 120mm mortar system that is mentioned in the Demand, is the property of my sponsored, as well as that In 2018, as detailed in the Statement of Accounts for that year, the main client of the company was the Ministry of the Interior of Saudi Arabia. All the others that – as conjectures – referred to by the plaintiff, is uncertain.

The plaintiff assumes that - because NTGS is the owner of the invention called ALAKRAN 120 mm mortar - she must be the one who made it and later marketed. This assumption is rash since the inventions can be transferred to third parties for their manufacture. From there, your commercialization escapes the competition, knowledge and control of the transferor.

The attribution made to my client is therefore unjustified and lacks the most basic empirical evidence that would serve to _____
demonstrate – if only indirectly – the need for us to
intervene in this procedure. Furthermore, the plaintiff should have made a minimal and elementary investigation to find out if the weapon he denounces is the invented by NTGS, whether or not it has been manufactured by it and whether it has finally been also marketed by NTGS, but we already asserted that it is not my _____
principal who has manufactured or supplied the products referred to in
contrary.

The plaintiff, based on these basic acknowledgments made for this part (ownership in the manufacture, not in the commercialization and existence of trade agreements with Saudi Arabia) arrives at the illogical deduction that NTGS had participation in the sale that it denounces as irregular, without any evidence to prove it.

SECOND.- In relation to the right of Information that is invoked by the plaintiff, Article 10.2 of the ECHR expressly admits that said right it is not absolute, but may be subject to legal limitations: *“2. The exercise of these freedoms, which entail duties and responsibilities, may be subjected to certain formalities, conditions, restrictions or sanctions, provided by law, which constitute necessary measures, in a society democratic, for national security, territorial integrity or security public, the defense of order and the prevention of crime, the protection of health or morality, the protection of the reputation or the rights of others, to prevent the disclosure of confidential information or to guarantee the authority and impartiality of the judiciary.”*

The validity of the restriction in question requires that the requirements of legal provision, legitimate purpose and that it is a measure necessary in a democratic society, with the corresponding judgment of proportionality.

In the case that concerns us and to support the restriction to the information, the legal provision requirement is fulfilled not only with what is foreseen

in Law 19/2013, of December 9, on Transparency, access to public information and good governance, but also in Law 9/1968, of December 5, April, on official secrets.

In both cases, the requirement that a range norm legal and with a sufficient degree of certainty define the restrictions and information access formalities. Likewise, the requirement to pursue a legitimate purpose could be reasonably understood to be fulfilled in apply in its own terms the precepts of said provisions legal.

Public security, national defense and the defense of the order that Article 10.2 of the ECHR provides for legitimate purposes that allow for the inclusion of which is precisely pursued by Law 9/1968, of April 5, on official secrets (article 2: *"For the purposes of this Law, "materials classified" the matters, acts, documents, information, data and objects knowledge of which by unauthorized persons may damage or endanger the security and defense of the State"*).

Said purposes, as well as the rest listed in article 10.2 ECHR, and in particular "the protection of the reputation or the rights outsiders" would allow support for the exceptions provided for in articles 14 and 15 of the Transparency Law.

Nor is it appropriate to deliver the documentation requested under the Transparency Law since the legal configuration of the right of access Nor has it been violated in the case at hand.

Regarding the request for the *"minutes of the meeting of the Interministerial Regulatory Foreign Trade of Defense Material and Double Use -JIMDDU-, in which the decision was adopted to authorize said export"* as well as the documents *"in which the decision of the JIMDDU favorable to the granting of the authorizations of export, in the event that this point is not recorded in the record referred to in the previous paragraph"*, the requested information should not be delivered, since the regulations on official secrets constitute a special regime in relation to with transparency regulations.

The First Additional Provision of the Transparency Law establishes expressly in its second paragraph:

"They will be governed by their specific regulations, and by this Law on a supplementary basis, those matters that have foreseen a specific legal regime of access to information."

Well, Law 9/1968, of February 5, on Official Secrets constitutes a specific legal regime of access, whose article 2 prevents what:

For the purposes of this Law, "classified matters" may be declared matters, acts, documents, information, data and objects whose knowledge by unauthorized persons may damage or jeopardize the safety and defense of the state."

For its part, the eighth article provides that:

"The qualifications of secret or reserved, made in accordance with the terms of this Law and the provisions that are issued by regulation for its application, will determine, among others, the following effects:

- a) They may only have knowledge of the "classified matters" bodies and persons duly empowered to do so and with the formalities and limitations determined in each case.*
- b) The prohibition of access and the limitations of movement to people not authorized in premises, places or areas where the "materials classified".*
- c) Personnel serving in the State Administration and in the Armed Forces Armed Forces will be obliged to comply with whatever measures are provided for protect "classified materials".*

The plaintiff has not proven that the case at hand escape the previous provisions to restrict the information. More so, the documentary evidence that it has provided and the referrals that it has also referenced come solidly to demonstrate that the alleged defendant is

fits perfectly into the limitations of information that the norms transcribed regulate.

Therefore, the petition contained in the Complaint is inadmissible.

We already stated in our governing document that this Court ruled on the secrecy of the minutes of the JIMDDU in Judgment No. 369/2010 of March 31, of Section 8, issued in a matter in which a copy was requested of the export-expedition authorizations of defense material, materials for police or security use, and dual-use products and technologies. use sent to Morocco, Ghana and China, granted by the General Secretariat of Foreign Trade during the years 2005 and 2006, as well as the reports mandatory and binding regulations issued by the Interministerial Regulatory Board of the Foreign trade of defense and dual-use material (JIMDDU) in relation to with the aforementioned export authorizations. The aforementioned Judgment exposed:

"In interpretation of the regulations regarding official secrecy, the Sixth Section of the Third Chamber of the Supreme Court, in its judgment of 11/14/1992, issued in appeal 8187/1990 (RJ 1992, 3738) states: "... As we have just seen, the Official Secrets Law, in short, only allows access to material classified to persons specially empowered to do so and the Law of State Contracts, empowers the Administration to directly enter into contracts with private companies that it deems appropriate, when the object of they affect the security of the State or the protection of the interests essential to that security. It is clear, then, that when it is or can be questioned state security in the development of a contractual relationship, the Administration has broad powers to choose the company or entity that has to verify and carry out the contractual object, precisely for the sake of guarantee those high interests of the State. Our Constitution (RCL 1978, 2836) in its art. 30, affirms that Spaniards have the right and the duty to defend Spain and 105 in its section b) specifies that the laws will regulate access of citizens to administrative files and records, except in that which affects the security and defense of the State. It is the Constitution itself, as we see, the one that recognizes, and protects in a special way the secret or restricted knowledge of the contracts, documents, files or records that

they can affect the security of the State or other high national interests integrated in the defense of the State. The Official Secrets Act and the State contracts, in the aforementioned aspects, are nothing but applications of the fundamental constitutional principle guaranteeing at all costs the security of the State...", while the Court of Conflicts of Jurisdiction, In its judgment of 12/14/1995 (RJ 1995, 10064) it maintains: "...c) that the activities reserved by declaration of law and "classified matters" do not may be communicated, disseminated or published, nor used its content outside the limits established by the Law, in such a way that the non-compliance of this limitation will be sanctioned, if appropriate, in accordance with the criminal laws and, where appropriate, by disciplinary means, considering in the latter case the infraction as a very serious offense -article 13-; d) that they can only have knowledge of "classified matters" organs and people duly empowered to do so and with the formalities and limitations that in each case are determined, and which also corresponds to the Council of Ministers and Board of Chiefs of Staff, within their respective sphere of competence, granting authorizations for access to the "materials classified", as well as for their movement out of them; and, e) by last, that it is admitted, and is not the object of controversy, that the Council of Ministers, on November 28, 1986, formally declared the secret character of the structure, organization, means and operating procedures of the information services, as well as the sources and information that may disclose their performance, an agreement that, it is also recognized, retains all its validity. The Court wants to emphasize that this set of precepts of a Law in force, together with the rest of the precautionary regulations of the aforementioned "matters", establishes, clearly and directly, a jurisdictional area, resident, in what now it matters, in the Council of Ministers, which is responsible, therefore, make the appropriate assessments about the concurrence of the conditions necessary to declare classified or, in your case, to cancel this statement, a certain matter. Correlatively and indirectly, also indicates what is the procedure to follow in the event that the access to knowledge of the aforementioned subjects, a procedure that It is the responsibility of the Government of the Nation, as has been said, and which is made up of the classifying declarations, for the cancellations in its case and also for the pertinent authorizations...".

We therefore have that the plaintiff asked the Administration for a "copy of the export authorizations-expedition of defense material, materials of police or security use, and dual-use products and technologies, granted by the General Secretariat of Foreign Trade during the years 2005 and 2006, when the aforementioned material has been sent to the following countries: Morocco, Ghana and China, and also that a copy of the mandatory reports be sent and binding issued by the Interministerial Trade Regulatory Board Exterior of defense and dual-use material (JIMDDU) in relation to the aforementioned export-expedition authorizations", that the records of the JIMDDU were declared secret by Agreement of the Council of Ministers, which the Administration has responded to the actor's request, regarding his second section, that mandatory and binding reports are inseparable from the content of the minutes, to the extent that the content of these is collected in the reports, a statement that in principle is reasonable and adjusted considering taking into account the purpose of the meetings and the relevance of the report in relation to with the object of the operations to which they refer, and that the plaintiff has not specified what specific information of the export operation that could be collected in the report will be outside the content of the minutes whose secrecy is protected by law, and it must therefore be concluded that the contested administrative decision is sufficiently protected by law of official secrets and by the Agreement of the Council of Ministers, without the jurisdictional bodies can facilitate the plaintiff's access to information you want."

For its part, the Transparency Law itself provides in its article 14 that there are limits to this:

"1. The right of access may be limited when accessing the information cause damage to:

- a) National security.*
- b) The defense.*
- c) Foreign relations.*
- d) Public safety.*

- e) The prevention, investigation and punishment of criminal, administrative or disciplinary offenses.*
- f) The equality of the parties in judicial proceedings and judicial protection effective.*
- g) The administrative functions of surveillance, inspection and control.*
- h) Economic and commercial interests.*
- i) Economic and monetary policy.*
- j) Professional secrecy and intellectual and industrial property.*
- k) The guarantee of confidentiality or secrecy required in decision-making processes of decision.*
- l) The protection of the environment.*

2. The application of the limits will be justified and proportionate to its purpose and purpose of protection and will take into account the circumstances of the specific case, especially to the concurrence of a superior public or private interest that justify access.

3. The resolutions that, in accordance with the provisions of section 2, are issued in application of this article will be subject to prior publicity dissociation of the personal data that they contained and without prejudice to the provisions of section 3 of article 20, once they have been notified to the interested."

Therefore, in the opinion of this party, the resolution of the General Director of Commercial Policy when he denies the access requested by the plaintiff today, in relation to the limits provided for in letters a), b), c), h), j) and k) of section 1 of article 14 of the aforementioned Law 19/2013.

THIRD.- Regarding legal costs, we have proven that NTGS should not have been called to the procedure, which together with the inadmissibility – substantively – in the petition promoted by the plaintiff, it must have as Consequently, it is ordered to be paid, in accordance with art. 139 LJCA.

For the exposed,

I PRAY TO THE CHAMBER, that having presented this document,
worth admitting, **CONCLUSIONS** are taken as formulated and finally
issue a Judgment in which the petition contained in the Lawsuit filed by GREENPEACE ESPAÑA is inadmissible
and subsidiarily dismissed, which
It must also be ordered to pay the procedural costs.

All this for being Justice that I ask in Madrid on July 26, 2021.

Ltd.- Julio A. Aranda Roncero

Proc.- Emily Martinez Benitez

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