GENERAL STATE ADVOCATE
DIRECTION OF THE LEGAL SERVICE OF THE STATE

STATE ADVOCACY IN THE SUPREME COURT

SJE 456/2021

Instance procedure: TSJ of Madrid. Appeal 417/2020

Addressee: Third Chamber of the Supreme Court.

Appellant: GREENPEACE SPAIN.

Respondent: State Administration

Application and defense: State Attorney before the Supreme Court.

Judgment appealed: Judgment of the sixth Section, of the Contentious Chamber Administrative of the Superior Court of Justice of Madrid, of September 30, 2021 dismissal of the appeal filed against the agreement of the General Director of Policy Commercial of the Ministry of Industry, Commerce and Tourism that denied the information requested, referring to the licenses granted for the export of artillery ammunition.

Type of brief that is presented: Brief of appearance as appealed and of opposition to the admission of appeal.

Subject: Right to Information. Transparency.

SJE 456/2021

Instance procedure: Appeal 417/2020

Supreme Court of Madrid. Section 6

TO THE THIRD CHAMBER OF THE SUPREME COURT

THE STATE LAWYER, in legal representation and legal assistance that you run ponders, appears before the Chamber and as best proceeds in Law, SAYS:

I. That in accordance with article 89.6 of the Jurisdictional Law (LJCA) I come in **APPEAR** in the appeal prepared by the entity GREENPEACE SPAIN against the ruling issued by the Sixth Section of the Contentious Chamber Administrative of the Superior Court of Justice of Madrid, of September 18-30, 2021 dismissal of the appeal filed against the agreement of the General Director of Policy Commercial of the Ministry of Industry, Commerce and Tourism that denied the information requested by the appellant, referring to the licenses granted for the export of artillery ammunition.

II. That it also comes to formulate **OPPOSITION TO THE ADMISSION** of the resource for consi consider, against what is alleged to the contrary, that the appellant does not prove that there have been the infractions that it denounces nor does it justify the appeal of the matter.

(i) It is, first of all, clear that although the appellant maintains that the judgment against the that appeals violates the precepts outlined in its preparation brief, in reality, what is is making assumption of the matter from the moment in which the infringement of such pre concepts is held on the basis that the sentencing Chamber has not estimated his claim, without on the other hand and aside from such circumstance, there is the minimum and necessary explanation of the reason why it is considered that, in view of the terms of the sentence, there have been of the reported violations. The preparation therefore lacks an obligatory judgment of re elevation that the condition of such deserves.

(ii) On the other hand, the appellant entity does not justify either, despite being a procedural burden that weighs about it, that there is an objective appealing interest in the matter for the formation of juris prudence that makes a pronouncement of the Chamber convenient with respect to the questions that raises.

1. There is no appeal interest ex article 88.2.b) LJ because the appellant does not justify that the doctrine (which it does not identify) of the judgment that appeals can be seriously harmful to general interests despite the fact that the Chamber has established (so it said in its Order of 12-2-18, rca 5994/2017 and in numerous other later cars such as those of 10/30/2017, RC 3666/2017, or ATS 2/26/2018, RQ 609/2017, etc) that *"the statement, without further ado, that a certain doctrine has as an automatic consequence that it is seriously harmful to the general interest, is absolutely insufficient to justify the need for jurisprudence (Order of October 30, 2017 [RCA 3666/2017, TS:2017:10011A]"* and that *"This obliges that in the written preparation: (i) they are made explicit, in a succinct way but expressive, the reasons why the doctrine contained in the disputed sentence can be seriously harmful to general interests, (ii) linking the damage to such interests with the reality to which the sentence applies its doctrine, (iii) without it being enough in this respect to the mere apodictic affirmation that the criterion of the sentence harms them (Autos of 29 of March 2017 [RCA 302/2016, ES:TS:2017:2313A] and October 30, 2017 [RCA 3666/2017, ES:TS:2017:10011ª; among others])".*

2. There is also no appealing interest ex article 88.3.a) LJ because the simple fact of that there is no jurisprudence that has resolved a matter identical to this one does not mean, without more, that a pronouncement of the Supreme Court is mandatory (Order, by all, of 17 November 2021, RCas. 4329/21)

That is the doctrine that the Chamber established in its Order of 9/2/2017, RC 131/2016 (reiterated des then in many later cars such as the AATS of 2/11/2017, RC, 2872/2017, 27/11/2017, RQ 523/2017, y 11/4/2018, RQ 45/2018):

> *"The mere invocation of the precept is not enough to integrate its content and thus give access to the contentious-administrative appeal before this Chamber, requiring a minimum argument for the purposes of the presumption to come into play and, in*

> *Consequently, the corresponding resolution adopts the legal form of an order [...] The appellant does not clarify in what particular said jurisprudence is non-existent, without it being possible to claim it in the context of an appeal with a nomophylactic vocation and the generation of uniform jurisprudence that in this assumption it is possible to include the inexistence of a specific resolution that resolves a singular assumption identical in its factual aspects to which one resorts at all times before the Supreme Court"*

In the same sense, it should be remembered that the nomophylactic function of the cassation appeal oblivious to concrete and particular controversies such as the one that arises here, especially when - as it happens here - the convenience of a pronouncement is not reasoned or explained of the Supreme Court on the specific request made. So said the ATS 8/1/2019, RC 4346/2018 according to which:

> "[...] *Additionally, article 89.2.f) of the LJCA requires that the preparatory brief justify not only the assumptions that allow the concurrence of appeals to be assessed, but also the advisability of a ruling by the Supreme Court in the question raised. Convenience that, it should be understood – according to the nomophylactic function attributed to the cassation appeal–, refers to the general interest and not to the particular interest of the appellant, since it is not a second or subsequent instance of judicial review on the specific case".*

(iii) In any case and finally, it should be noted that there is no certain interest in the matter, iden certifiable or alleged, for the formation of jurisprudence nor reasonable doubts about the interpretation of the norms that are allegedly violated, since the appeal is presented as a last attempt to try to solve the specific claim of the appellant, being able to remember the respect that, as the Chamber has declared, the simple knotting of the interest is not acceptable. rés casacional to the legal infractions that are circumscribed to the concrete vicissitudes of the litigation case without transcending issues with a greater content of generality or with possible projection to other lawsuits that correspond to the meaning and functionality that must have the training of jurisprudence that – as the Chamber recalled in its Order of 22 March 2017 (Recourse 3/2017) – necessarily obeys more general parameters and the interpretation of legal norms for their common application. There is no real interest identifiable or alleged for the formation of jurisprudence nor reasonable doubts about on the interpretation of the rules, because as we have just stated, the appeal is presented as a last attempt to try to solve the specific claim of the appellant

Thus, it is considered that the appeal should be inadmissible.

By virtue of the foregoing, I **PRAY TO THE CHAMBER,** that having presented this document I am considered to have appeared and appeared in this appeal as a party appealed and by formulated opposition against the admission of the resource to resolve by means of self his inadmissibility.

It is justice that is requested in Madrid on February 24, 2022

JOSE LUIS MUÑOZ CALVO, State Attorney at the State Attorney in the Court Supreme I CERTIFY that this writing consists of 8,525 characters with spaces.