



Superior Court of Justice of Madrid
Contentious-Administrative Chamber
Sixth Section

C/ General Castaños, 1 . Ground Floor - 28004

33009772

NIG: 28.079.00.3-2020/0017788

Fundamental Rights 509/2020

From: GREENPEACE SPAIN

ATTORNEY Mr./Mrs. MARIA MARTA SANZ AMARO

Against: MINISTRY OF INDUSTRY, COMMERCE AND TOURISM

Mr. STATE ATTORNEY

NEW TECHNOLOGIES GLOBAL SYSTEMS, S.L.

ATTORNEY D./Mrs. EMILIO MARTINEZ BENITEZ

A U T O

SON. SR. CHAIRPERSON: D./

Dr. M a TERESA DELGADO VELASCO

ILMOS. MR. MAGISTRATES:

Mr./Mrs. CRISTINA CURTAIN CHAINS

Mr./Mrs. RAMON FERNANDEZ FLOREZ

In Madrid, on November seventeen, two thousand and twenty-one.

FACTUAL BACKGROUND

FIRST.- In this contentious-administrative appeal, it has been issued Judgment dated 09/15/2021 with the following ruling:

"THAT WE MUST DISMISS AND DISMISS the contentious-administrative appeal of the special procedure of Fundamental Rights 509/2020 filed by the procedural representation of **GREENPEACE SPAIN**, against the resolution of September 15, 2020, of the General Director of Commercial Policy of the Ministry of Industry, Trade and Tourism, which denies the right to public information requested, referring to the licenses granted and others for, the export to Saudi Arabia of Alakran 120 mm mortar carrier No. 001-045499 and we ratify said resolution, considering it of

in accordance with the law, with an express order for costs to the appellant, with a limit of 1,500 € for legal fees".

SECOND.- Against the previous ruling, a writ of preparation of an appeal has been filed by the Attorney of the Courts Ms. MARIA MARTA SANZ AMARO on behalf of GREENPEACE SPAIN.





FOUNDATIONS OF LAW

FIRST.- In accordance with the provisions of article 86, first and third sections, of the LJCA in the wording given by Organic Law 7/2015, of July 21, the judgments issued in sole instance or on appeal by the Chambers Administrative Litigation of the High Courts of Justice are subject to appeal before the Contentious-Administrative Chamber of the Supreme Court, if the appeal seeks to be based on infringement of rules of state law or of the European Union that is relevant and determining of the contested decision, provided that they had been invoked opportunely in the process or considered by the sentencing Chamber.

However, the sentences issued in the procedure for the protection of the fundamental right of assembly and in contentious-electoral processes are not subject to appeal (article 86.2 LJCA).

Well then, the judgment against which the brief for the preparation of the appeal of cassation that concerns us is among those susceptible to this appeal.

SECOND.- The appeal will be prepared before the Court of Instance within thirty days, counted from the day following the notification of the resolution being appealed, being entitled to do so those who have been a party to the process or should have. been (article 89.1 LJCA).

The writ of preparation of the cassation appeal must meet the requirements imposed by the second section of article 89 LJCA, in which case the appeal will be considered prepared, ordering the summons of the parties for their appearance within a period of thirty days before the Court. of the Contentious-administrative of the Supreme Court, as well as the referral to it of the original orders and the administrative file, in compliance with the provisions of article 89.5 LJCA.

If the preparation brief does not meet the requirements imposed, the appeal will be considered unprepared, denying the summons of the parties and the referral of the proceedings to the Supreme Court, in compliance with the provisions of article 89.4 LJCA.

The aforementioned requirements, the justification for which must be made in the document preparing the appeal in separate sections that will be headed with an expressive epigraph of what they deal with, are the following:

a) Prove compliance with the regulated requirements in terms of the term, the legitimacy and the appealability of the resolution being challenged.

Compliance with this requirement requires the appellant to show that the appeal is prepared within the term conferred by article 89.1 LJCA, providing the appropriate parameters for the record, that it is entitled, either because it was a party to the process or well because it should have been, and that the resolution being challenged is among those subject to appeal, as established in article 86 of the LJCA.





b) Precisely identify the norms or jurisprudence that are considered infringed, justifying that they were alleged in the process, or taken into consideration by the Trial Chamber, or that it should have observed them even without being alleged.

Compliance with this requirement requires that the specific regulatory or jurisprudential infractions that are intended to be developed be indicated in the writ of filing of the appeal, by mentioning the specific precepts that are considered violated and the precise identification of the judgments of the Supreme Court that include the jurisprudence that is said to have been violated.

In addition, it is required to justify that such normative or jurisprudential infractions were alleged in the process, or taken into consideration by the Trial Chamber, or that it should have observed them even without being alleged, which entails the argumentative explanation of their relationship with the object of the dispute.

c) Prove, if the imputed infraction is one of rules or jurisprudence related to the acts or procedural guarantees that produced defenselessness, that the correction of the fault or transgression in the instance was requested, if there was an appropriate procedural moment for it.

This requirement is only enforceable when procedural infractions generating defenselessness are reported and consists of the identification of the specific act to which the irregularity generating defenselessness is attributed and the justification that the correction of the fault or transgression in the instance was requested, to through a useful and suitable channel to remedy the infringement *in proceeding*.

d) Justify that the imputed infraction or infractions have been relevant and determinants of the decision adopted in the resolution to be appealed.

Compliance with this requirement requires a reasoned and detailed explanation, that is, in relation to the specific characteristics of the litigation, that the infractions that are reported, whether normative or jurisprudential, have had a significant impact on the meaning of the "failure" of the resolution that is intended to be appealed, that is, that decisively affect its *ratio decidendi* or, what is the same, the pronouncements of the contested resolution that have established and determined the meaning of the resolution.

e) Justify, in the event that it had been issued by the Contentious-Administrative Chamber of a High Court of Justice, that the norm allegedly infringed forms part of State Law or that of the European Union.

This is a requirement that derives from the exclusion of regional law from the scope of the cassation appeal that is aired before the Supreme Court, ex art. 86.3 JCA.

f) Especially, substantiate with singular reference to the case, that one or more of the assumptions concur that, in accordance with sections 2 and 3 of the previous article, allow to appreciate the objective appealing interest and the convenience of a pronouncement of the Chamber of the Contentious-administrative of the Supreme Court.





Compliance with this last requirement entails making the corresponding argumentation to justify the presence in the appeal of objective appeal for the formation of jurisprudence, in accordance with the provisions of article 88 LJCA.

In general, the control that the Court of Instance must carry out in the process of preparing the appeal on compliance with the requirements set forth is of a merely formal nature, therefore, once it has been verified that the written has been presented within a working period, the observance of the requirements of application and legal defense, the legitimacy of the person who prepares the appeal and the appealability of the appealed resolution, he must limit himself to verifying that the writing of preparation of the appeal formally presents the content required by the precept examined, since the judgment on the basis and prosperity of the reasoning used by the appellant to prove the extremes contained in article 89.2 LJCA and about the presence of objective appeal interest for the formation of jurisprudence corresponds to the Supreme Court in a subsequent procedure.

This criterion has been confirmed by the Supreme Court when it ruled in the resolution of appeals regarding the powers of the judicial body *a quo* to determine if the preparation brief meets the requirements of article 89.2 of the LJCA (AATS of 02.02.2017, Appeal of Complaint 110/2016, dated 02/08/2017, Complaint appeal 108/2016, dated 02/15/2017, Complaint appeals 100/2016, 134/2016, 157/2016, 159/2016 and 16/2017, dated 02/28/2017, Complaint resources 37/2017 and 40/2017); of 03.08.2017 (recourse of complaint 126/2016); of 03.22.2017 (Complaint appeals 18/2017 and 69/2017); of 03.29.2017 (complaint appeal 95/2017), of 04.24.2017 (complaint appeal 11/2017), of 05.16.2017 (complaint appeal 275/2017), of 05.18.2017 (complaint appeal 121/2017) of 06.12.2017 (recourse of complaint 185/2017) in the following terms:

a) The verification of the appealability of the sentence in the terms expressed and that of compliance with the rest of the requirements established in art. 89.2 of the LJCA corresponds to the judicial body *a quo*, in accordance with the provisions of art. 89.4 of the LJCA. It is incumbent on him, in particular and from a formal perspective, to analyze compliance with the requirements of time, legitimacy and appealability of the resolution, as well as the verification that in the preparation brief there is an argumentative effort aimed at justifying the relevance of the reported infraction and its determining nature of the ruling and also, in particular, if a specific argument is contained, with singular reference to the case, of the concurrence of one or more of the assumptions that, in accordance with sections 2 and 3 of art. . 88 of the LJCA, allow us to appreciate the objective appeal interest.

b) It is not up to the court of instance, on the other hand, to judge whether or not the substantive infringement alleged by the appellant concurs or not, nor to rule on the effective concurrence of that objective interest in appeal, revealed in the preparation document, which determines the admission of the appeal, since that is a function that corresponds exclusively to this Chamber (articles 88 and 90.2 LJCA). All this without prejudice to the fact that the judicial body may, if it considers it appropriate, issue the report provided for in art. 89.5 of the LJ.

In this same sense, it is added that to consider whether the justifying argument for the reported infractions is based on the substantive question resolved by the judgment appealed against, that is, whether or not said





infractions, constitutes a function that corresponds to the Supreme Court (ATS of 04.05.2017, Complaint resource 101/2017).

Finally, this doctrine on the powers of the judicial body *a quo* to determine whether the preparation brief meets the necessary requirements to have the appeal prepared is completed, with the statement that *"if it is clear that it is limited to raising the mere discrepancy of the appellant with the assessment of the facts made by the court of first instance, it corresponds to the legitimate scope of its competence to consider the appeal as unprepared, since it is, after all, no less clear that it has been prepared overflowing its legitimate scope, not being able to pass the admission process"*. This statement is based on the following reasoning: *"This is a power of the court of instance that, even though it is not explicitly contemplated in article 89 LJCA, follows with all legal logic from the joint and systematic interpretation of this article and the aforementioned Article 87 bis, since once it has been established that the questions of fact are excluded from the appeal, it makes no sense to consider prepared -under the pretext that it meets the formal requirements of the preparation brief- an appeal that moves only on the ground prohibited from factual assessments" [ATS of 03.08.2017 (Complaint resource 8/2017)].*

THIRD.- The writ of preparation of the appeal has been filed within the legally established period and by a person entitled to do so, in accordance with the provisions of article 89.1 LJCA.

On the other hand, the writ of preparation of the cassation appeal complies with the formal requirements imposed by article 89.2 LJCA since, in separate sections and headed with an expressive epigraph of what they deal with, it makes the reasoning required to accredit and justify the extremes that the precept enumerates.

For all these reasons, it is appropriate to have the appeal prepared and to order the summons of the parties for their appearance within a period of thirty days before the Contentious-Administrative Chamber of the Supreme Court, as well as the referral to it of the original records. and the administrative file.

The Ilmo Magistrate is rapporteur in this proceeding. Mr. D. RAMÓN FERNÁNDEZ FLOREZ, who expresses the opinion of the Chamber.

THE CHAMBER AGREES: To have an appeal prepared by the Attorney of the Courts Ms. MARIA MARTA SANZ AMARO on behalf of GREENPEACE ESPAÑA against the judgment dated 09/15/2021, issued in Fundamental Rights 509/2020, summoning the parties, by notification of this resolution, to appear within the term of THIRTY DAYS before the Contentious-Administrative Chamber of the Supreme Court, to which the original orders and the administrative file will be sent.

This order, against which there is no recourse, is firm.

The Ilmos/as agree, send and sign it. Mr. noted in the heading of this resolution.

Attest.





The dissemination of the text of this resolution to parties not interested in the process in which it has been issued may only be carried out after dissociation of the personal data that they contained and with full respect for the right to privacy, the rights of the people who require a special duty of protection or the guarantee of anonymity of the victims or harmed, when appropriate.

The personal data included in this resolution may not be transferred or communicated for purposes contrary to the law.



This document is an authentic copy of the document Auto prepared appeal for annulment sentence before the TS signed electronically by RAMÓN FERNÁNDEZ FLOREZ (PON), M^a TERESA DELGADO VELASCO (PSE), CRISTINA CADENAS CORTINA, BEATRIZ OCA DE ZAYAS