



Capsulas

Can a company oppose the publication of a sanction imposed on it?

Order of the Supreme Court of 16 October 2024

Background

The Law on Guarantees and Rational Use of Medicines and Health Products establishes that sanctions for serious and very serious infringements must be published in the Official State or regional gazette. However, there is no obligation to publish minor sanctions. In recent years, some individuals have requested access to minor sanctions imposed on pharmaceutical companies, raising doubts as to whether or not this information should be disclosed in accordance with transparency laws.

Law 19/2013 of 9 December on transparency, access to public information and good governance ("LTAIBG") states that access to public information may be limited if its disclosure would damage economic and commercial interests. The question is whether the disclosure of information on minor sanctions could damage the image and reputation of a pharmaceutical company. A cassation appeal, unrelated to the pharmaceutical industry, has been admitted by the Supreme Court to examine this question.

Request for the information of origin

In 2019, the Catalan Administration was asked to provide access to information on sanctions imposed on elderly care homes in Catalonia. As the Administration refused access, the applicant lodged a complaint with the Commission for the Guarantee of the Right of Access to Public Information of the Catalan Government ("GAIP", by its Spanish acronym). The GAIP upheld the appeal and granted access to the information requested.

Court records

One of the elderly care homes, affected by the GAIP decision filed an appeal to the High Court of Justice of Catalonia (TSJC). The TSJC partially upheld the appeal and ordered to grant access to the information without including the name of the sanctioned elderly care homes, considering it as specially protected personal data. The TSJC argued that the Transparency Law of Catalonia (as well as the LTAIBG) prevented the non-consented disclosure of the name of the elderly homes that had been sanctioned without publication.

The Catalan Administration appealed the TSJC ruling on the grounds that data protection only applies to natural persons, not to legal persons, such as the elderly care homes. The Supreme Court upheld this appeal and ordered the TSJC to re-examine the matter.

In its second analysis, the TSJC had analysed whether disclosing the name of the sanctioned elderly care homes could impact their economic and commercial interests, especially for sanctions that are not to be published under the law. The TSJC concluded that such disclosure could impact on their image and reputation, affecting their competitiveness in the market; and, therefore, affecting their business and economic interests.

The Supreme Court will rule on the issue

The case is pending before the Supreme Court. The Catalan Administration has filed a new appeal in cassation. The Supreme Court will rule on whether a company can oppose against the disclosure of its identity in cases where this could affect its image or reputation.