



Capsulas

Lessons from the Supreme Court on transparency

Judgments of the Supreme Court (appeals nos. 2412/2025 and 3386/2025) of 10 and 11 March 2026 (appeal no. 8005/2024)

Background

These judgments examine various requests for access to information, made under the Law on transparency and freedom of information in relation to Covid-19 vaccines.

In two of the cases, access was sought to the contracts entered by the Spanish Government with several companies for the supply of vaccines, including prices and quantities. In the third case, the request concerned the international agreement signed between Spain and Andorra for the resale of those vaccines.

In all three cases, the National High Court overturned the decisions of the Council for Transparency and Good Governance ordering the Ministry of Health to provide the information.

Relationship between European and Spanish legislation on access to public documents

One of the first issues addressed by the Supreme Court is the possible application of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

The National High Court had considered that, since vaccine prices were negotiated by the European Commission, access should be governed by European rules. On that basis, it held that their 'sensitive' nature justified the refusal.

The Supreme Court, however, qualifies this approach. It points out that Article 5 of the Regulation provides that where a Member State receives a request concerning a document in its possession originating from a European institution, it must consult that institution before deciding, unless the outcome of the decision is obvious.

In this case, the Supreme Court considers that such clarity was lacking. Therefore, the Ministry could not make the decision on its own but was required either to consult the European Commission or to refer the application to it.

On the damage to Spain's external relations if the requested information is disclosed

The Ministry of Health argued that the agreement with Andorra incorporated vaccine prices set by the European Commission, subject to strict confidentiality measures, and that their disclosure would constitute a breach of the commitments made by Spain to other Member States and to the Commission itself. In its view, this would lead to a loss of trust in Spain at international level, with the resulting reputational harm and impact on its foreign relations, thereby justifying application of the limitation relating to foreign affairs.

The Supreme Court acknowledges that the Government enjoys a certain margin of discretion in matters of foreign policy. However, it emphasises that the application of this limitation requires sufficient, reasonable and plausible justification of the harm.



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In this specific case, the Court concludes that such justification did not exist. The Administration merely invoked the involvement of a third State, without explaining in what specific way the disclosure of the agreement's content would affect Spain's foreign policy.

The Supreme Court therefore emphasises a key point: not all information contained in international agreements is automatically protected; rather, its content and the actual risk of harm must be analysed.

On confidentiality and secrecy in decision-making processes

Finally, the Supreme Court analyses the application of the confidentiality restriction in decision-making processes in the context of the agreement between Spain and Andorra.

The Supreme Court acknowledges that this limitation may justify the refusal of access where it is specifically identified which information may affect ongoing or future negotiations, which specific negotiations would be affected, and how their disclosure might harm them. It also emphasises that this is a temporary limitation, confined to the period during which such negotiations remain open.

In this specific case, the Supreme Court concludes that the Ministry of Health failed to meet this standard, as it did not specify which information was confidential or for what reasons. Consequently, it confirms the obligation to provide the requested information.

Conclusions

In a sector where documents produced by European institutions -such as the European Commission or the EMA- frequently coexist with documents produced by Member States, it is worth

recalling the possible application of Regulation (EC) No 1049/2001 when the information requested originates from a European institution, as well as the obligation to consult that institution or refer the request to it when the meaning of the response is unclear.

Moreover, in proceedings concerning requests for access to price and reimbursement decisions, it is common to argue that the disclosure of certain information may be detrimental to ongoing negotiations in other Member States regarding the same medicinal product. In light of the Supreme Court's reasoning, access may be restricted where it is specifically identified which negotiations may be affected and why the disclosure of the requested information could harm them, for example, due to its potential use in international price referencing processes.

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