

Expert reports. Possible ramifications of the *Sorolla* case

Madrid, April 2022

When the Spanish public administration is sued it usually relies on expert reports by civil servants who may not appear before the courts to be examined by the parties.

This is the case for example when a decision by the CNMV (the Spanish National Securities Market Commission) on an *OPA* (a takeover bid) is challenged by a minority shareholder.

Even though both are parties' expert reports, courts tend to give more credibility to those submitted by the public administration than to those submitted by the other party, on the assumption that civil servants acting as experts are more objective and impartial.

However, the Spanish Supreme Court (SC) has quashed a Madrid High Court's ruling in a judgment that may contribute to level the playing field in judicial proceedings between private parties and the public administration¹.

The conflict arose in 2016, when the heirs of a well-known Spanish painter, Joaquín Sorolla, requested the Ministry of Culture to authorize the export of one of his paintings.

The Ministry of Culture denied the authorization on the grounds that the painting had an "exceptional value" according to the reports by two civil servants of the Ministry and decided that the painting should remain in Spain.

Sorolla's heirs appealed this decision before the Madrid High Court and filed two expert reports rebutting those of the Ministry of Culture. The Madrid High Court dismissed the appeal by arguing that expert reports filed by the administration should prevail as they are "more objective".

The heirs filed an appeal before the SC, that declared that there is no logic in claiming that reports by civil servants should prevail as a matter of principle. It laid down the following criteria:

1. Civil servants' reports filed with a court by a public administration should not prevail when the latter is a party to the proceedings, since in such case civil servants are not impartial.
2. The degree of dependence of the civil servant in question should be taken into account, given that some civil servants have more autonomy than others.
3. If civil servants do not appear before the court, then the report cannot be considered an expert report, but merely a document filed by one of the parties, namely the public administration.

¹ SC judgement 202/2022 dated 17 February 2022.