European Review of Digital Administration & Law - Erdal
2026, Volume 7, Issue 1, pp. 265-277
ISSN 2724-5969 – ISBN 979-12-218-2846-7 – DOI 10.53136/9791221828467 22

*The Bosco Case Before the Spanish Courts: A Missed Opportunity**

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Tribunal Supremo, Sala de lo Contencioso-Administrativo, 11 September 2025, No. 1119/2025

Intellectual property rights and general or abstract cybersecurity risks do not, in themselves, justify denying access to the source code of a computer application used by a public administration. Any restriction on access must be specifically justified and proportionate, following a concrete balancing of the competing interests, while appropriate safeguards may be imposed to prevent unauthorised disclosure or use of the code.

ABSTRACT This article analyzes the legal trajectory of the Bosco case, a landmark dispute in Spain regarding algorithmic transparency. The conflict began when the Civio Foundation sought access to the source code of 'Bosco,' a computer application used by the Spanish administration to automate the verification of requirements for the social electricity tariff.
The author argues that the case has been surrounded by a 'dystopian' public mood that confuses simple automated software with complex Artificial Intelligence (AI). Huergo Lora emphasizes that Bosco is merely an instrumental tool that applies strictly regulated legal criteria; it does not exercise discretion or 'decide' rights, but rather automates calculations similar to a tax calculator. Therefore, he contends that transparency should focus on the legality of the administrative result rather than the code itself.
While the Supreme Court ultimately ruled in favor of Civio, granting access to the source code, the author criticizes the reasoning. He notes that the ruling is highly specific to the parties involved and relies on a 'balancing of interests' that reduces legal predictability. Finally, he warns that imposing excessive transparency requirements on non-AI, rule-based systems could hinder administrative efficiency without providing actual legal benefits to citizens.

KEYWORDS: Algorithmic transparency - Source code - Access to public information - Cybersecurity - Intellectual property

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1. *Introduction*

The so-called 'Bosco case' has been the most significant one brought before the Spanish courts concerning the use of 'algorithms' in an administrative context (although this statement requires considerable nuance). It has been comparable to the Syri case in the Netherlands or the rulings of the Italian Consiglio di Stato on competitive examinations for the allocation of teaching posts. In my view, the specific characteristics of the case, the weight of an apocalyptic public mood and the power of slogans ('algorithmic transparency') have prevented a more robust analysis from emerging that could serve as a benchmark for the future.[1] This is

* Article submitted to double-blind peer review.

This study develops and expands the author's contribution to the workshop 'Transparencia algorítmica 2.0: a propósito del caso BOSCO' (Universidad Complutense de Madrid, Faculty of Law, 12 December 2025), organised within the research project 'Fortalecimiento del Estado de Derecho a través de la Inteligencia Artificial' (PID2024-157561NB-I00), funded by the Spanish Ministry of Science (2024 Call for 'Proyectos de Generación de Conocimiento', 'Proyectos de Investigación No Orientada', State Plan for R&D Projects 2024).
The study was elaborated with the support of the research project 'El uso de la IA en el acceso y la prestación de servicios esenciales' (PID2024-160298OB-100), funded by the Spanish Ministry of Science (2024 Call for 'Proyectos de Generación de Conocimiento', 'Proyectos de Investigación No Orientada', State Plan for R&D Projects 2024).

without prejudice to the fact that, as I explain below, I am not opposed to the conclusion reached by the Supreme Court's judgment, although I am critical of part of the reasoning. Curiously, a judgment handed down very recently, which does address serious issues of algorithmic transparency but is less well known, takes the opposite view.

2. *The Origin: Two Rulings Going Against Public Opinion*

2.1. *The Social Tariff and the Bosco App*

The social electricity tariff ('bono social') is a subsidised rate for electricity, to which those who meet certain economic and family criteria listed in Article 3 of Royal Decree 897/2017 of 6 October[2] (implemented, in turn, by Order ETU/943/2017[3] of the same date) are entitled. It is therefore a 'regulated' right, in the typical terminology of administrative law: those who meet the requirements are entitled to have the subsidy recognised (it cannot be refused), and it cannot be granted to anyone who do not meet the requirements. It is as strictly regulated as the access to retirement pensions or the calculation of income tax or council tax.

The social tariff is applied for through the supplier (i.e. the company that supplies the energy and bills for it), and the supplier will verify compliance with the requirements using a computer application available on the Ministry of Energy, Tourism and the Digital Agenda's Electronic Portal. If there are discrepancies, the affected party may lodge a complaint with the relevant consumer services.

Both the Royal Decree and the Order implementing it stipulate that the Government will launch a computer application to process applications and verify compliance with the requirements. Without this application, the bureaucratic process would be lengthy and the approval of the subsidy would face significant delays. This is the computer application known as Bosco. This type of IT support is being used in many other strictly regulated processes to speed up decision-making and prevent people from having to wait for long periods of time.

2.2. *The Case Before the Courts*

The administrative litigation proceedings in which the judgments I am discussing were handed down – that is, the Bosco case – relate precisely to this computer application. The lawsuit did not arise because any interested party had appealed against the refusal of the grant, but because the Civio Foundation requested, in 2018, under the Transparency Act,[4] access to the source code of this computer application. The source code is, in layman's terms, the computer program itself, that is, the set of instructions loaded onto the computer to run the application. One of the key aspects of this case is that a request made in 2018 will not receive a final ruling until 2025. There is no doubt that the terms of the social – and legal – debate on artificial intelligence have changed significantly over the years. The fact that this case continues to attract academic attention, although inevitable given the delay in resolving the matter, is meaningful. Curiously, no cases of errors in the application or of people being denied access to the social tariff due to such errors have come to light. It does not appear that there are more errors in this case than in many other areas of administrative activity.

The Administration refused the request for access. The Civio Foundation lodged a complaint with the Council for Transparency and Good Governance ('Consejo de Transparencia y Buen Gobierno'), which partially upheld the complaint, in the sense of obliging the Ministry to provide information on the functioning of the application, as well

[1] Of the many articles published on this case in Spanish legal literature, I shall mention J. Tahirí Moreno, *La transparencia algorítmica en la administración pública: reflexiones a la STS 1119/2025, de 11 de septiembre* (*caso Bosco*, in *Revista Aragonesa de Administración Pública*, 63-64, 2025, 189-205; J. Ponce Solé, *Por qué se equivocan las sentencias sobre el algoritmo del bono social eléctrico*, *Utopía y algoritmos*, and *La sentencia 'Bosco': un punto -importante- y seguido*; C. Velasco Rico, *La transparència algorítmica al sector públic: més enllà del cas BOSCO*, in *Revista catalana de dret públic*, 71, 2025, 25-47; S. de la Sierra Morón, *El caso BOSCO ante la Sala Tercera del Tribunal Supremo: una sentencia 'brújula' sobre el control de la Administración inteligente*, in *Revista de Jurisprudencia El Derecho*, no. 85, 11 March 2026.

[2] Real Decreto 897/2017, de 6 de octubre, por el que se regula la figura del consumidor vulnerable, el bono social y otras medidas de protección para los consumidores domésticos de energía eléctrica.

[3] Orden ETU/943/2017, de 6 de octubre, por la que se desarrolla el Real Decreto 897/2017, de 6 de octubre, por el que se regula la figura del consumidor vulnerable, el bono social y otras medidas de protección para los consumidores domésticos de energía eléctrica.

[4] Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno.

as the tests carried out to verify that it complies with its specifications (what we might very loosely call an 'audit' and an explanation), but denied access to the source code. To this end, it invoked two of the grounds for refusal provided for in the Transparency Act: the protection of copyright (in this case, regarding the software of the 'Bosco' application) and security reasons. It is this latter issue that is addressed in greater detail in the judgments. During the proceedings, the defendant administration submitted a report, drawn up by the head of an administrative body (the Deputy Director-General for Information and Communications Technology at the Ministry of Industry, Trade and Tourism), which stated that access to the source code would facilitate the commission of sabotage and cyberattacks.

I would like to emphasise – as it is relevant to the resolution of this case – the manner in which this matter has come before the administrative courts. It is not through an appeal against the refusal to grant the social electricity tariff, but through an appeal against the decision denying access to public information (the source code). The issue at stake is whether the conditions set out in the Transparency Act for access to information are met, or whether any exceptions apply. If a consumer were to challenge the refusal of the social tariff, the court would have to examine whether its requirements (those of the social tariff) are met. As this is a regulated decision, in which the court can verify, on its own and without needing to reproduce the reasoning of the contested administrative decision, whether the consumer is entitled to the social tariff or not, in that process it would be irrelevant which computer application was used to make the decision (if any was used).

Conversely, if an administrative decision were challenged where the use of a computer tool had indeed been relevant to its formulation, the court would have to examine, if the appellant so requests, the proper or improper functioning of that tool, which may include access to all the information (including, where applicable, the source code). Therefore, in administrative litigation proceedings to review the legality of the Administration's actions, access to the source code is instrumental and depends on whether or not it is necessary to decide the claim made. In a transparency case (such as this one), access to the code is the claim itself (it is the end sought, not a means) and the viability of that claim depends on whether the requirements of the Transparency Act (positive and negative) are met.

2.3. *The Two Initial Judgments Recognise That the Bosco Application Is Instrumental and That It Is Not Necessary to Understand How It Works to Determine Whether a Citizen Is Entitled to the Social Tariff*

The Civio Foundation's administrative appeal was dismissed at first instance by a judgment of the Central Administrative Court No. 8, dated 30 December 2021 (ordinary proceedings 18/2019). An appeal lodged by the Civio Foundation was dismissed by a judgment of the Contentious-Administrative Chamber of the National High Court (Section 7) of 30 April 2024 (appeal 51/2022). Following the first judgment, the Transparency Council changed its position and granted the Civio Foundation's request for access. In any event, the procedural dispute is between the Foundation and the General State Administration, which does not agree with this request for access.

The Court's judgment (first instance), after reviewing the provisions of the Royal Decree and the Order, states:

> 'Applying the provisions set out above to the present case, we must consider that the Ministry for Ecological Transition, in recognising the right to the social tariff, acts in accordance with said regulations, issuing the corresponding administrative act. To this end, it uses a computer application, known as the 'BOSCO information system', which forms part of a stage in the administrative procedure, the purpose of which is to verify compliance with the requirements previously established by the aforementioned regulations.
>
> That being the case, the administrative act cannot be regarded as being issued by a computer application, but rather by an administrative body, and should the addressee of said act be dissatisfied with it, they may challenge it through administrative channels and through the courts.
>
> Consequently, the legality of the administrative act is not justified by the computer application that is instrumentally used at a stage of the relevant administrative procedure, but by the regulations governing the matter'.

The judgment of the National High Court adds, in the same vein:

> 'We are also compelled here to disagree with the appellant's argument regarding the infringement of Article 9.3 of the Spanish Constitution. The debate centres on the right of access to the source code of the application used to manage the social tariff, whilst the question of whether the verification procedure to assess the status of a vulnerable consumer is lawful (Royal Decree 897/2017 regulating the concept of the vulnerable consumer, the social tariff and other protective measures for domestic electricity consumers, and Order ETU 943/2017 on the mechanism for verifying the requirements for being a vulnerable consumer) is outside the scope of the debate.
>
> As the State Attorney points out, the computer application is merely a tool integrated into an administrative procedure that will continue to produce an administrative act fully subject to the legal system, so that the control of the legality of administrative acts remains guaranteed: the legality (or otherwise) of the administrative act is not determined by the use of the computer application but by the act's compliance with the legal system.'

In other words: it is not correct (these judgments state, and I agree) to say that this 'algorithm' determines who is entitled to the social tariff. It is like saying that a civil servant 'decides' whether a person is entitled to a retirement pension (when, in reality, entitlement depends on whether the legally established requirements regarding age and contributions are met) or to unemployment benefits, or how much a homeowner must pay in property tax in a given financial year. There are other matters which the Administration does decide, namely those where it has a margin of discretion or where the legislation uses vague terms that can be interpreted in different ways (and where the Administration is sometimes granted a margin of discretion). The Administration does decide, through town planning, whether an area can be developed or whether it is possible to build a large retail park there. These two scenarios should not be confused.

2.4. *The* Ratio Decidendi *of the Judgments: Copyright and Cybersecurity*

The reference to the instrumental nature of Bosco is an *obiter dictum* in these two judgments, since what is at issue is the right of access to the source code under the Transparency Act, that is to say, compliance with its positive and negative requirements. The judgments use this argument as a reinforcement, to make it clear that it is not necessary to access the source code in order to defend those entitled to the social tariff.

The *ratio decidendi* is that access would be prevented by two of the limits set out in Article 14 of the Transparency Act: '[p]rofessional secrecy and intellectual and industrial property' and the risks to security, referred to in several of these limits: 'public security', 'administrative functions of surveillance, inspection and control', and 'the guarantee of confidentiality or secrecy required in decision-making processes'.

With regard to copyright, it has been argued that, as Bosco applies legal rules, and these are not creations protected by the Intellectual Property Act (according to its Article 13), copyright could not be invoked to limit the public disclosure of Bosco's source code. However, a legal rule is one thing, and a book that contains it or a computer program that applies it is quite another one. It is well known that legal databases are protected by copyright. A distinction can and must be made between the text of the rule and the work published in book form that contains it (a work that is indeed protected by copyright). This is all the more true in this case, where the transformation required to convert the regulation (i.e. the articles governing the social tariff) into a computer program is far greater than in the case of a book. It is like saying that databases of legislation must be free and available to everyone because, as they contain legal provisions, 'they are law'.

As regards cybersecurity, the judgments of the Court and the National High Court give credence to the report submitted by the Administration, which effectively states that access to the source code is like publishing the blueprints of a bank's vault and it makes attacks easier.

3. *The Supreme Court's Ruling*

3.1. *The Change in Approach: Recognition of the Right of Access*

In Judgment 1119/2025 of 11 September, the Contentious-Administrative Chamber of the Supreme Court (Section 3) concluded the so-called Bosco case, upholding the appeal

lodged by the Civio Foundation and quashing the judgments of the Central Contentious-Administrative Court and the National High Court. The Supreme Court recognises the right of this foundation (not any other entity) to access the source code of the Bosco algorithm.

I would have been surprised, to be honest, if the Supreme Court had dismissed the appeal, given that the message has taken hold in recent years that 'the algorithm' (any algorithm) poses a serious danger to citizens, who until now seemed to be living in a brave new world of human civil servants who resolve cases swiftly, without error, applying the law but with empathy and, in any case, without dangerous biases. In fact, what surprised me was that the Court (first instance) and the National High Court ruled as they did and, above all, that they lucidly identified the nature and functions of this specific algorithm.

This ruling has been hailed as a major step forward and, indeed, seems destined to make big headlines in the mainstream media. It is a very current trend, that of seemingly historic rulings, which at times seem capable of halting even climate change. However, the decision is very much tailored to a specific case and takes into account very specific circumstances, as we shall see. In fact, the response to the appeal expressly mentions the Civio Foundation and the Bosco algorithm, so its application to other cases will be limited.

And the doctrine itself is highly ambiguous, as it merely reflects that transparency is also very important when computer systems are used in automated decision-making by public authorities, concluding that this 'must entail requirements for transparency in the computerised processes followed in such proceedings, with the aim of providing citizens with the information necessary for their understanding and knowledge of how they operate, which may, *on occasions*, require access to their source code, in order to enable verification of the algorithmic system's compliance with the regulatory provisions it must apply'. We therefore await clarification as to the specific circumstances in which the right of access will indeed apply. This is very similar to what happens with well-established legal principles, such as the 'single *ius puniendi*', which entails the application of criminal principles and guarantees to administrative penalty law, but 'with nuances', so that everything is left to the judgment in each specific case, in which it will be decided whether the criminal principle applies or is 'nuanced', which means that an exception applies.

What this judgment effectively states is that an entity such as the Civio Foundation (not just any entity) is permitted to access the source code of an algorithm created by a public body (such as 'Bosco'), particularly if it makes administrative decisions that specifically affect vulnerable individuals. I say this because the judgment expressly takes into account, as grounds for reaching its conclusion, that the party requesting the information is the Civio Foundation (and not any other entity) and that the algorithm was created by a public body (and not by a company which may have, for example, a clear economic interest in exploiting it and in ensuring its content is not disclosed). Hence, it is difficult to extrapolate this judgment to any other case involving the use of algorithms by public administrations. I use the term 'algorithm', as in the judgment, in a vague and informal sense; for further details, I refer you to my publications on the subject.[5]

Let us recall that what is at issue in the Bosco case is not whether the Administration may use algorithms (or under what conditions), nor to what extent the use of algorithms to reach an administrative decision affects the way in which that decision can be reviewed by the courts, nor whether citizens have the right to full access to their content (source code) when challenging that decision in court. What is at issue is whether the right of access to public information (as set out in Law 19/2013 of 9 December on transparency, access to public information and good governance) grants any individual the right to know the source code of an algorithm used by the Administration. The answer depends, logically, on whether any of the exceptions provided for in that Act apply; in this case (in the three judgments), the possible application of two of those exceptions is being discussed: 1) that access could infringe copyright or

[5] A. Huergo Lora, *The EU Regulation on Artificial Intelligence: A Commentary*, in A. Huergo Lora (ed.) and G.M. Díaz González (coord.), *The EU Regulation on Artificial Intelligence: a commentary*, Milan, Wolters Kluwers-Cedam, 2025, 1-10; A. Huergo Lora, *Una aproximación a los algoritmos desde el Derecho administrativo*, in A. Huergo Lora (ed.) and G.M. Díaz González (coord.), *La regulación de los algoritmos*, Cizur Menor, Aranzadi, 2020, 23-87.

intellectual property rights over the algorithm, and 2) the potential cybersecurity risks arising from the algorithm becoming public knowledge (that is, the danger that publishing the plans of a house might make it easier for those wishing to burgle it).

I have already stated that I wish to highlight the true function of this algorithm to prevent it from being confused with other uses of computing or AI, and to ensure that the same rules are not applied to very different situations. My interest in the two arguments that led the first two judgments to deny access is limited, but I shall set out below what the Supreme Court has to say.

The Supreme Court recognises that the algorithm (in this case, Bosco) is a creation protected as intellectual property, despite the fact that it applies legal rules. The fact that legal rules (published in official gazettes) are not intellectual creations (and may therefore be freely reproduced) does not mean that works created from them (books, compilations, databases, computer programs) are also in the public domain and may be freely used. In granting the right of access despite this, the Court takes into account, in a balancing exercise, that this specific algorithm is owned by a public administration, which is not expected to exploit it commercially; however, in many other cases this will not be the case, and therefore the doctrine established by this judgment – that free access takes precedence over the protection of intellectual property – cannot be generalised.

As regards cybersecurity, having presented, as evidence, a report listing a series of risks arising from public access, the Court weighs those risks against the interest in access, also taking into account that the applicant is a non-profit organisation with a commendable track record such as the Civio Foundation, and therefore reaches a conclusion in favour of the right of access. Once again, we find a conclusion tied to the specific case, not a rule of general application.

As is increasingly the case, the judgment is based on a balancing of interests. It is a very lengthy decision (80 pages in its official version, something undoubtedly uncommon for a Supreme Court judgment in general and, above all, until a few years ago, especially as there are no dissenting opinions) in which considerable space is devoted to listing (accumulating) applicable or related legal principles, some of them very generic, such as that of good administration. Principles that are used as a basis for interpreting the exceptions to the right of access in a restrictive manner. Balancing is an essential technique in many cases, but one that also favours discretion (in this instance, judicial) and reduces predictability, which is a legal value. From here to what Max Weber called 'qadi justice' (a concept frequently recalled by Professor García de Enterría) is but a short step.

3.2. *The Functions of Bosco*

As I have indicated (and as the first two judgments highlight), a computer system which, from among all possible decisions, recommends one based on criteria extracted from the data (as AI systems that do assist in decision-making do) is not the same as a computer system that performs calculations by applying rules previously entered by a human (as do 'Renta web', Bosco or the application used by any faculty to assign students to groups based on priority of choice, alphabetical order or whatever criteria have been established). For example, an AI system that assigns a creditworthiness score of 1 to 10 to a person applying for a loan (based on unknown criteria, since it is an algorithmic system developed on the basis of an analysis of historical creditworthiness data), and which may be taken into account by a bank when granting or refusing a loan, is a system that does make (or contributes to making) a decision relevant to citizens (judgment of the CJEU of 7 December 2023, Case C-634/21, Schufa). A system of this kind is not limited to applying pre-established criteria. The decision to grant, or not to grant, a loan is not a legally prescribed decision: banks are not obliged to grant all loans, and the criteria are not laid down in any regulation. If I am refused a loan, and the decision is based on the report from that AI system, I will only be able to challenge it if I understand how the system works, so access to it is essential. And, if such access cannot be granted because it is prevented by confidentiality obligations, or because, even if access is granted, it is not possible to fully explain how the system works, we face a problem in using these systems for certain types of decision-making.

Systems such as Bosco are a different matter; they do not introduce their own criteria into the decision but simply automate the operations necessary to apply regulated criteria established in a rule. These systems

make mistakes when the decision they propose is not the one resulting from the application of those legal criteria, that is, when an error was made in translating the rule into a computer program. To say that the system 'decides who is entitled to the social tariff' is just as inaccurate as saying that every individual must pay the income tax amount stated by Renta Web (the application that helps to fill the tax forms). This is not the case: both computer apps apply the regulation, although they may make errors and, just as with human operators, there are appeal procedures to correct them. (An important point is to determine whether, in these cases of automated application, the standard appeal procedures should apply or whether additional, faster ones need to be introduced to correct such errors).

But (and this is the most important point), whilst in the first case (creditworthiness prediction, i.e. AI systems) it is essential to understand the 'inner workings' of the system to demonstrate that it has made a mistake or issued an unjustified prediction, in the second case this is unnecessary, because a decision is incorrect when it does not comply with the rules, and the Administration must adopt the decision that complies with the standard, whatever the algorithm may say (it being irrelevant to know in which line of code the source of the error lies, or which factor was overlooked during the system's development).

The ruling, which – in my opinion – has been unduly influenced by a dystopian climate of opinion, is deliberately ambiguous on this point. It states that Bosco is used for 'automated decision-making' and 'serves as a basis for the recognition or denial of social rights, yielding a positive or negative result, without disclosing the reasons for that result'. It also states that these applications have 'clear implications for citizens' rights, insofar as they determine or condition the recognition or denial of rights and public benefits, that is to say, they operate as a source of automated decisions', and that the algorithm 'involves automated action by the Administration in the exercise of its powers, through which a decision is taken with a clear impact on citizens' rights, as is directly apparent from its regulation', or that 'the programme takes a decision that determines access to the social electricity tariff'.

These statements are not, in my opinion, correct except with many caveats, for the reasons I have just outlined. I return to the example of Renta web: we cannot say that it 'makes decisions with tax implications' or that it 'determines the tax burden of each citizen', and that is what Bosco would appear to do if we take the quoted phrases at face value.

But in the same judgement we find, as is to be expected, phrases that explain Bosco's true function:

> 'the source code of said application must comply with the regulatory provisions governing the requirements that consumers must meet for recognition of the social tariff on the grounds of holding the legal status of a vulnerable consumer, translating these rules into computer language with the aim of enabling their full compliance in verifying the fulfilment of such requirements by consumers applying for the social tariff';

> 'The State Legal Service is correct in denying that the BOSCO application constitutes an administrative act or a general provision of a regulatory nature, as it is an instrumental application enabling electricity suppliers to verify whether the consumer meets the legal and regulatory requirements to be considered a vulnerable consumer'.

3.3. *On the Statement of Reasons Behind Decisions Applying the Bosco System*

A brief mention of the issue of reasoning is necessary, because the judgement repeats several times that Bosco does not provide reasons for refusing the social tariff, as if this were yet another problem making access to the source code necessary. Once again, a specific sectoral issue clouds what is intended to be a general construct, a 'historic milestone'. The case of the social tariff is quite unique because the liberalisation of the electricity sector means that certain mandatory (and, in that sense, materially administrative) decisions are taken by private entities. This is what happens, for example, with the granting of permits for access and connection to the transport and distribution electricity network (a fundamental requirement for the viability of a wind farm, solar farm or battery facility), which are granted or refused by private companies such as Red Eléctrica de España. Or with access to the social tariff, which is granted or refused by the suppliers (private companies). The Administration acts as a guarantor, resolving (in one case through the

CNMC, in another through consumer authorities) any potential appeals. In the case of the social tariff, a solution has been devised that prioritises speed: the Administration informs the supplier whether the consumer meets the requirements for the social tariff, because it is the Administration that has rapid access to consumers' household and income data. And it does so with a simple 'yes' or 'no', so as not to disclose the consumer's personal data (as explained in the judgment I am discussing). Hence, the supplier's decision is not reasoned, because the supplier is not provided with information regarding the consumer's income and/or family circumstances. The consumer knows that, if they meet the requirements for the social tariff, it must be granted to them, without further ado.

It is obvious that administrative acts must be provided with a statement of reasons in the cases provided for by law and that this duty to provide reasons remains even when computer-assisted tools have been used in their production. This is something no one disputes, just as no one disputes that such acts must be issued by the competent body (and not by any other), that they must be notified or that they may be appealed in exactly the same way as when such tools are not used.

4. *Some Conclusions*

4.1. *Forgetting That the Algorithm Is (Merely) a Tool*

Curiously, the fact that, in a particular case, computerised assistance is used (rather than officials acting in a purely analogue manner) seems to lead to erroneous conclusions. One ends up attaching greater importance to the tool used to reach the decision than to the decision itself and the criteria used by the Administration to reach it.

If applications for the social tariff were processed without a computer programme (which would, of course, take much longer), no one would expect to be able to read the official's mind to see how they might make mistakes in applying the regulations. If the benefit is refused to someone who is entitled to it, an appeal is lodged and, if the error is verified, the appeal is upheld and the entitlement recognised, without the need to investigate whether the error occurred through oversight, due to a heavy workload, or because the regulations had been misunderstood. The fact that computerised support is used should not change matters. If, for example, a person whose property has been expropriated is paid less late-payment interest than they are entitled to, they may appeal and the appeal will be upheld, without the need to determine in which column of the spreadsheet used by the official there was an error that led to that incorrect settlement. When it is made public that a computer application is to be used to draw up a particular administrative decision, even if the criteria for that decision are the same as those used when it was drawn up manually, the discussion often shifts to the 'algorithm'.

In computer applications such as the social tariff scheme, the error can be detected by comparing what the application states (rejection of the tariff, for example) with what follows from the regulatory framework (which may be its approval). This is what always happens, I repeat, in all regulated administrative procedures. It would be desirable, in an exercise of total transparency (and to prevent errors and avoid having to appeal), to know the full inner workings of the Administration, but I believe three things are clear: (1) that degree of transparency is not necessary to correct possible errors or illegalities in regulated actions, (2) when humans act without computer support, that degree of transparency is not required, far from it (despite the fact that the 'source code' of humans – that is, what motivates their behaviour – is infinitely more complex and inaccessible than that of a computer), and (3) we cannot say that this type of computer application 'decides' on citizens' rights, since they apply a regulatory framework that admits only one correct solution, and are subject to appeal when they fail to comply with it.

It is very important to be clear on this point in order to distinguish it from those cases in which artificial intelligence systems ('algorithms') are used that do influence the content of the administrative decision. That is to say, systems which, in cases where the Administration does have a margin of discretion because there is no regulatory framework leading to a single legally admissible decision, steer the process in a certain direction. There are multiple variants: the system may make the decision directly (automated administrative action) or influence, to a greater or lesser extent, the head of the administrative body (such as a

non-binding report, or even beyond); these may be decisions concluding a procedure, which create rights or impose obligations (decisions), or procedural acts, such as the decision to initiate a procedure in which the citizen will be asked to provide explanations, or the decision to carry out an inspection. These may be adverse actions (inspections, sanctions) or favourable ones (offering or providing special support, for example in the fields of education or social services, to those who may be most in need, selected by an artificial intelligence system).

However, in all cases, we will encounter a decision that is not justified by the application of the law (as is the case with the social electricity tariff), but rather because an artificial intelligence system has so determined. In fact, artificial intelligence is a tool for decision-making, which presupposes that the user has a margin of discretion. It is clear that requirements for transparency, justification, etc., have a very different meaning in this case and in the previous one, and that confusing the two situations only serves to cause alarm regarding the use of 'rule-based' computer applications (which are essential to avoid intolerable delays in administrative action, unless one wishes to increase the number of public servants) and to allow the use of computer systems that do contribute to decision-making to go unnoticed.

4.2. *Algorithms Such as Bosco Are Not AI Within the Meaning of AI Act*

AI act clearly recognises this distinction. In Article 3, it defines an 'AI system' as 'a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments'. The concept of 'autonomy' is fundamental; that is, the system is not limited to performing operations based on rules previously provided to it and on input data (like a calculator, such as the 'Bosco' app), but rather 'contributes something of its own', including the 'capacity to adapt after deployment'.

Recital 12 of the preamble makes this clear:

> 'the definition should be based on key characteristics of AI systems that distinguish it from simpler traditional software systems or programming approaches and should not cover systems that are based on the rules defined solely by natural persons to automatically execute operations. A key characteristic of AI systems is their capability to infer. This capability to infer refers to the process of obtaining the outputs, such as predictions, content, recommendations, or decisions, which can influence physical and virtual environments, and to a capability of AI systems to derive models or algorithms, or both, from inputs or data. The techniques that enable inference while building an AI system include machine learning approaches that learn from data how to achieve certain objectives, and logic- and knowledge-based approaches that infer from encoded knowledge or symbolic representation of the task to be solved. The capacity of an AI system to infer transcends basic data processing by enabling learning, reasoning or modelling'.

The Regulation, on the other hand, only provides for access to the source code of artificial intelligence systems by the Commission or market surveillance authorities (not the general public) and under very strict conditions, essentially when 'all testing or auditing procedures and all checks based on the data and documentation provided by the supplier have been exhausted or have proved insufficient' (Article 74) – this is the type of information that, in this case, the Council for Transparency demanded be provided – and always subject to strict confidentiality obligations (Article 78).

The Commission Guidelines on the definition of an artificial intelligence system established by Regulation (EU) 2024/1689 (AI Act), Brussels, 29 July 2025 C(2025) 5053 final, in recitals 40 et seq., are in line with this approach.

I find it highly significant (and appropriate) that the Supreme Court's judgment does not once refer to 'artificial intelligence', nor does it mention its regulation (European Regulation 1689/2024), implicitly acknowledging that we are talking about something else, specifically a computer system which, like a calculator or the Renta Web programme, automates operations to verify compliance with regulatory requirements. And I say this is a good thing because at the moment everything

gets lumped together, from disinformation caused by social media, to the biases of AI systems that can influence certain decision-making… or the application of systems such as Bosco or Renta Web, which in reality do not contribute any criteria of their own to the administrative decision because they are purely instrumental and merely apply (with 100% accuracy or with some errors, that is another matter) criteria previously established in a regulation.

4.3. *The Need to Distinguish Between Different Types of Algorithm*

As I said at the start, I believe that anyone with experience of how the Administration works will agree that accountability – the opportunities citizens have to exercise strict control over the legality of administrative actions – is still very imperfect, and not only when computerised tools are used. There are many decisions (for example, in matters such as appointments of heads of various bodies, independent authorities or public enterprises) where the requirement to give reasons is low and where, in fact, the Administration or Governments act as if these were purely positions of trust. In other areas, anyone appealing a decision only has access to the file of their own case, but not to the entire proceedings of that administrative body, so that biases or unequal treatment are, in practice, neither detectable nor controllable. When it comes to transparency and effective judicial protection, as I say, there is much room for improvement, and I believe there are plenty of challenges to tackle. In my opinion, programs like Bosco pose less difficult problems.

I do not think it is right that, as is often done, any discussion of 'algorithms' lumps them all together and talks about *big data*, planes that might crash, artificial intelligence... It is as if, when discussing any matter of administrative penalty law, we were to invoke the death penalty, the prohibition of torture, and so on. This generalisation, this dystopian discourse, does not seem to me to be appropriate to reality (because there are clear differences that I have tried to highlight) and it has costs to which I shall refer later.

If we scratch even slightly beneath the surface of the examples cited and grouped together in this kind of discourse, we see enormous differences that are overlooked. For example, an 'algorithm' that a bank uses or may use to grant or refuse loans (a 'discretionary' action if ever there was one, and one carried out, moreover, by a private company) has very little to do with a computer system designed to apply a rule, sorting applications according to whether or not they meet regulated requirements (for example, calculating social security benefits or determining the number of teaching hours a lecturer must deliver based on their recognised research seniority, for instance). In the first case, the system helps to determine the content of the decision (indicating, of its own accord, who appears to be the better debtor or customer), whereas in the second, it does not. Furthermore, in many of those cases that have given rise to serious concern, even reflected in TV series, the algorithmic error is merely the start of a chain of serious human, administrative and even judicial errors which, far from correcting the error, exacerbate it.

AI Act does distinguish, both in its definition (by requiring the element of 'autonomy', which 'Bosco-type' algorithms lack) and in the preamble (paragraph 12), between artificial intelligence systems and other purely rule-based systems that merely apply criteria that have been previously supplied or programmed into them. Therefore, Bosco-type systems do not constitute AI systems and are not subject to the Regulation.

In my view, this generalisation and the joint treatment of two different realities is neither gratuitous nor inconsequential. By applying to any algorithm requirements that would only be appropriate for those that do make decisions (that is, those that choose from among different options permitted by the regulatory framework), and by imposing on all of them requirements ranging from access to the source code in all cases to the requirement for a prior 'public participation' procedure, we may be heading towards the regrettable situation currently seen, for example, in current town planning law, where the accumulation, over the years, through various legislative reforms, of successive mandatory reports, compulsory procedures, etc. – all of which are highly commendable and justifiable, at least in theory, if taken separately – has succeeded in rendering town planning completely ineffective and turning its approval into an obstacle course and a minefield due to the risk of subsequent annulments. I suspect that is what lies ahead if every use of an algorithm can be paralysed or

annulled on the basis of successive demands (first access to the source code, then prior participation), even if that algorithm serves only to apply purely regulatory rules.

I still find the comparison between decisions made by human beings and those made with the aid of a computer system entirely relevant. It is evident that human decisions are subject to the influence of multiple factors or biases (ideological, based on friendship, social class, personal sympathy, etc.) unrelated to the content of the rules being applied. These factors persist despite the application of grounds for abstention and recusal and similar techniques, which merely eliminate the most serious abuses. The obligation to give reasons for decisions and to take into account all legally relevant factors – and only those factors – does not eliminate these biases, since, as is perfectly well known from even minimal experience, it is normally possible to justify different decisions (a ruling in favour of the claimant, but also one in favour of the defendant, for example), so that one thing is the reason (often hidden) that led the decision-maker to opt for one of the available options, and another is the legal reasoning used to justify the decision previously taken. Naturally, there are ways of correcting or mitigating these biases, but one must not be naive enough to think that they arise solely through the use of algorithms.

Law (and administrative law) is not based precisely on trust in the 'human factor', but rather on the opposite: the need to subject human discretion to rules. 'Automated' inequality is a problem, but the main source of inequality is precisely human discretion, that is, treating equals differently based on political sympathies, whether one has a powerful patron, whether one is a vulnerable person or socially connected, and so on. Progress is made when, for example, social security benefits shift from being discretionary grants (subject to all those considerations) to subjective rights. That is, when they cease to depend on human discretion. The debate between human operators and artificial intelligence is a false debate: the key lies in the debate between rules and subjective discretion. And, in the application of rules, both the assistance of computer systems and the possibility of having their results reviewed by human operators are necessary. On the other hand, it is true that computer errors (which nobody defends) have a multiplier effect because they are repeated with the application of the programme, but, for the same reason, they are also easier to identify and correct.

Public administrations are understaffed. It makes no sense to reject the use of basic IT tools, scaremongering with dystopian scenarios, when the alternative is to have thousands of public sector employees carrying out simple tasks that would already be automated in any private company – and making mistakes (human ones, of course) – and condemning citizens to endure delays in receiving basic services.

I am convinced that the current mechanisms for monitoring legality are highly imperfect. Normally, the individual concerned is only aware of what the administration has done in relation to them, but not of its actions in other similar cases, the latter often being essential to demonstrate the illegality and arbitrariness of an individual action. (For example, there may be reasons to refuse a grant, but if it is shown that grants have been awarded to other projects with equal or lesser merit, the refusal becomes unlawful). And also because, even if individual illegalities are corrected, there is a mass of illegal acts that do not reach the courts, which often leads to the Administration concluding that it is not worth complying with the law or that there are no consequences for failing to do so.

But we must not confuse one thing with another and claim that access to the source code is necessary to correct illegal actions because, when we speak of automated systems such as Bosco, their malfunction is demonstrated without any need for access, when a person who meets the requirements for the recognition of a right is told that they do not meet them, without needing to knowin which line of code the source of the error lies. Hier, access to the source code is a bonus; in other systems, a necessity. In short, it is important to avoid confusion because there are other systems in which such access is indeed essential to verify that an error has occurred (notwithstanding the fact that, even in AI systems, a 'reverse audit' is also possible, that is, demonstrating a malfunction based on the clearly inadequate, erroneous or biased nature of the system's responses, even if it cannot be demonstrated why or how the error occurs).

It is worth noting that the AI Act, which covers systems far more significant than Bosco because they do influence decision-

making through their own autonomous criteria, does not require the disclosure of source code, not even for high-risk AI systems. It imposes a series of obligations regarding transparency and explainability, but only requires operators to disclose the source code in specific cases, where there are no alternative means of fulfilling those obligations; and, in such instances, the code must be disclosed to the competent authorities, not to third parties. The Supreme Court has established a much broader duty of openness for a clearly less significant computer system, although, admittedly, only for a specific entity (the Civio Foundation). Will we see, in the medium term, a request for a preliminary ruling so that the CJEU can determine whether these rights of access to source code (which we assume will extend to more significant AI systems) are compatible with the AI Regulation, which, as we know, is a harmonising regulation expressly intended to prevent Member States from imposing additional obligations?

4.4. *Contrast with Other Rulings on the Use of 'Strong' AI.*

As I have said on several occasions, algorithms such as Bosco do not influence the content of administrative decisions, which is determined by the applicable rules. Bosco may be correct (if its result coincides with what follows from the rule) or incorrect, but it neither grants nor denies rights. In contrast, in other cases, the administration or another party has a margin of discretion and, if they rely on an AI system to know what decision to take, that system will indeed have influenced the decision-making process. For example, if we ask an AI to identify which companies are most likely to be committing an infringement, and we do not specify the criteria for identifying the companies, but instead ask for a prediction based on data from previous proceedings.

One such case where AI does influence the legal treatment of individuals is personalised pricing, that is, when a company applies different conditions to consumers based on what it expects their behaviour to be. For example, charging a higher price for a flight ticket to someone who, having searched for it repeatedly, demonstrates greater interest, than to someone searching for the first time who has also looked at other destinations and may be choosing based on price.

In fact, in Spain, the recent Law 10/2025 of 26 December, regulating customer service,[6] has amended the consolidated text of the General Law for the Protection of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1/2007 of 16 November,[7] adding this paragraph to Article 20.1.*c)*: 'The trader shall provide clear and comprehensible information on the price where it has been personalised on the basis of an automated decision-making process. Such personalisation shall not result in increases in the final sale price where there is an increase in demand in contexts of urgency, risk or need on the part of the consumer'.

However, the same Third Chamber that handed down the judgment in the Bosco case, in another judgment of 30 January 2026 (judgment 81/2026, appeal 8367/2023), upheld the annulment of a regional regulatory provision requiring companies providing ride-hailing services to report their prices to the authorities. The judgment annuls the regulatory provision because it considers that it prevents the application of dynamic or personalised prices:

> 'Precisely in the exercise of this economic activity, holders of ride-hailing licences have complete freedom to set the prices that users must pay for these services. And, in exercising this freedom, they have opted for dynamic and variable pricing, rather than fixed and static prices, as is the case in many other sectors of the economy.
>
> The decision to apply dynamic and variable pricing in the exercise of the economic activity means that the specific amount of those prices is determined by taking into account various factors present at the time the user initiates the pre-booking process, such that, through the application of algorithms, the final price of the service is determined, which the user knows prior to deciding to book that service.
>
> Taking into account the specific characteristics of the operation of the private hire vehicle market and, amongst these, the freedom of business decision-making to charge dynamic prices for the provision of their services, we conclude that the obligation imposed on holders of VTC hire licences in the

[6] Ley 10/2025, de 26 de diciembre, por la que se regulan los servicios de atención a la clientela.

[7] Real Decreto Legislativo 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias.

> Region of Murcia is a measure restricting freedom in the exercise of business activity, insofar as it requires business conduct that restricts their freedom of decision-making in the sphere of private enterprise. This is the case because, indirectly, it is requiring users of VTC services to pay fixed and static prices, insofar as a price list can only be drawn up if these are considered fixed prices that do not require the amount to be specified at the time of booking, as opposed to dynamic prices, where the determination of the amount depends on multiple factors applicable at any given moment, using algorithms that make it impossible to comply with the imposed obligation to provide a price list to the authorities'.

Therefore, we see how, in a case where AI is going to significantly determine the conditions applicable to users (who will pay different amounts for the same product), the company's trade secrets are protected. The consumer is not informed that personalised prices are applied, nor of the criteria used for personalisation, nor of the extent to which those prices may rise or fall. Nor is there even an interpretation of the law that would oblige companies to provide, not fixed rates, but at least the criteria. Curiously, in a sector (ride-hailing transport) subject to administrative regulations (which implies greater consumer protection compared to unregulated sectors), the level of protection guaranteed in this ruling falls short of what is required by Law 10/2025.

Hence my scepticism regarding the grand statements made in relation to the Bosco case and its outcome in court.