

# LA IMPARCIALIDAD DE LOS TRIBUNALES SELECTIVOS. ACCESO AL CUERPO DE INSPECTORES DE EDUCACIÓN

## THE IMPARTIALITY OF THE SELECTIVE COURTS. ACCESS TO THE CORPS OF EDUCATION INSPECTORS

**Juan Miguel Albertos García**

Department of Education and University Planning of the Government of  
Canarias.

### **Resumen**

La función inspectora en la educación en España tiene su amparo en el artículo 27 de la CE de 1978; la cual desarrolla actuaciones para llevar a cabo funciones de asesoramiento, entre otras. Asesoramiento que debería propiciar un informe con carácter previo y preceptivo de la Inspección Educativa, en el expediente de elaboración de la orden o resolución de la convocatoria, sobre los criterios de evaluación y calificación, los cuales deben estar incluidos en su totalidad en las bases de un procedimiento selectivo de acceso a la función pública docente, de conformidad al artículo 23.2 de la CE, y de los principios de constitucionalidad, ordenamiento jurídico, igualdad, publicidad, transparencia, mérito, capacidad, concurrencia competitiva, probidad y demás principios del Estado de derecho.

Todo ello, favorece la imparcialidad, objetividad y neutralidad de las bases, evitando la posible reserva de plazas a título personal, aumentando, además, las garantías de imparcialidad del Tribunal selectivo, reduciendo las causas o motivos de abstención y/o recusación; minimizando la percepción del Tribunal selectivo como juez y parte. Ya que, en última instancia, la potestad discrecional no avala, ni autoriza, la arbitrariedad, ni la desviación de poder. Se llevado a cabo un estudio comparativo entre tres comunidades autónomas.

**Palabras clave:** *Procedimiento selectivo, actuaciones de la inspección educativa, criterios de evaluación, criterios de calificación, informes, asesoramiento.*

## Abstract

The inspection function in education in Spain is protected by article 27 of the CE of 1978, which develops actions to carry out advisory functions, among others. Advice that should lead to a prior and mandatory report of the Inspectorate of Education, in the file of the elaboration of the order or resolution of the call, on the evaluation and qualification criteria, which must be included in its entirety in the bases of a selective procedure of access to the public teaching function, in accordance with article 23.2 of the CE, and the principles of constitutionality, legal order, equality, publicity, transparency, merit, capacity, competitive concurrence, probity and other principles of the rule of law.

All this favors the impartiality, objectivity, and neutrality of the bases, avoiding the possible reservation of places on a personal basis; furthermore, increasing the guarantees of impartiality of the selective Tribunal, reducing the causes or reasons for abstention and/or recusal; minimizing the perception of the selective Tribunal as judge and party. Since, ultimately, the discretionary power does not endorse, nor authorize, arbitrariness, nor the deviation of power. A comparative study was carried out between three autonomous communities.

**Keywords:** Selective procedure, actions of the educational inspection, evaluation criteria, qualification criteria, reports, advice.

## 1. INTRODUCTION

Generally, the selective processes can be either competition exams or entrance examinations. And this in accordance with article 61.6 of the Consolidated Text of the Basic Statute of the Public Employee, approved by Royal Legislative Decree 5/2015, of October 30, (hereinafter TREBEP), when it makes explicit that the selective systems for career civil servants shall be those of competition and entrance examination which shall include, in any case, one or more tests to determine the ability of applicants and establish the order of priority. Only by virtue of law may be applied, exceptionally, the competitive examination system which shall consist solely of the assessment of merits. ("BOE" no. 261, of 31/10/2015, in force since 01/11/2015 in its current wording or consolidated text).

The competition exam consists of passing eliminatory tests or exams, which may be one or several, and of different types depending on the body or category to which access is sought.

In the entrance examination, there is an entrance examination and a competition phase, in which merits of the participants in the process, such as their professional experience, seniority in the Administration, academic degrees, training, etc., are valued. The points from the competition phase cannot be used to pass the competition exams. In internal promotion processes, the entrance exam is usually used, which in education is given between Group B and A, nowadays subgroup  $A_2$  and the  $A_1$ .

In a competition exam, there may be more than two phases, for example: a practical instrumental test in the case of Music and Conservatory Teachers. There may also be an internship phase. The selective course will take place in an educational center and is of an eliminatory nature.

If the call for applications establishes an internship period, the proposed candidates will be appointed as interns. The remuneration of probationary civil servants is regulated by Royal Decree 456/1986, of February 10, 1986 ("BOE" no. 56, of 06/03/1986, in force since 06/03/1986, in its current wording or consolidated text).

Otherwise, if there is no internship phase, the offer of provisional assignments shall be made to the candidates who have passed the selection process, in accordance with the provisions of the corresponding Public Employment Offer and in the terms and conditions of the call for the selection process in question. Awarding provisional assignment, in which he/she will carry out a year of supervised and supervised internships, in which he/she will also have to take training courses specified by the Educational Administration.

## **2. The selection procedure: Synthesis**

a) Generally, information such as the publication of calls for applications, approval of lists of those admitted and excluded, dates of examinations, declaration of those who have passed the exercises, locations of the selection tribunals, etc. can be accessed through the web page corresponding to the body calling for applications and indicated in the terms and conditions of the call for applications. In addition, for incidents and claims, the headquarters of the selection board is indicated in all the calls.

b) Once the deadline for the submission of applications has elapsed, there is a maximum period of approximately one month to issue a resolution which is published on the web page of the convening body, and which will indicate:

- The complete list of admitted applicants.
- The list of excluded applicants.
- The web page and the places where they are exposed to the public.

- The deadline for correcting, if applicable, the defects that may have caused the exclusion or omission.

- Place, date, and time of the beginning of the first exercise of the competition exam.

- Composition of the Selection Court with incumbents and candidates.

c) In case of having to remedy, there should be a period of 10 working days in accordance with Article 68.1 of Law 39/2015, of 01 October, of the Common Administrative Procedure of Public Administrations, hereinafter LPACAP ("BOE" no. 236, of 02/10/2015, in force since: 02/10/2016). Consequently, it would be appropriate to submit a letter together with the documentation that accredits what has been stated to correct the defect. Once this period has expired, the lists will be exhibited again as definitive, in the same places where the initial or provisional lists were.

d) In the resolution that publishes the list of admitted and excluded candidates, the date of the first exercise shall be indicated. The date of the rest of the exercises shall be communicated with the resolution of the successful candidates of the previous exercise, for the purposes of the successive tract of procedural acts of the procedure.

e) The lists of candidates who pass each exercise shall be published in:

- At the place or places where the exercise was held, normally at the headquarters of the court or courts.

- On the web page corresponding to the body convening the exam (Department of Education).

f) Once the competition exam or entrance examination phase has been passed, a period is established as from the publication of the resolution with the definitive list of candidates who have passed the competition exam or entrance

examination, for the presentation of merits, unless another procedural moment for their presentation is established in the terms and conditions themselves.

g) It is necessary to differentiate between access to the public teaching service and access to a specific job. In this regard, it is interesting to note the **STC<sup>1</sup> no. 192/1991 which in its FJ 4th, establishes:**

However, neither should we ignore the different consideration that, for these purposes, **on the one hand, access to the civil service and, on the other —within the civil service— the development or promotion of the administrative career** itself deserve, and, consequently, the different rigor and intensity with which the constitutional rights and values such as equal access (art. 23.2 CE) and in accordance with the principles of merit and ability (art. 103.3 CE), to public functions, operate in each of them. Indeed, since the right of art. 23.2 CE is a right of legal configuration, the Administration can legitimately, within the competitions for the filling of vacancies or job positions among persons who have already accessed the civil service (and therefore, accredited the requirements of merit and ability), take into account other criteria that are not related to these, precisely in order to achieve greater efficiency in the organization of the services or the protection of other constitutional assets..

Criterion subsequently shared by **STC<sup>2</sup> 200/1991 and STC<sup>3</sup> 131/2017**, in the latter case, because the TC accepts part of the Prosecutor's thesis.

The offer of postings will be made by the summoning body and will be addressed to the approved candidates, establishing a term to be able to apply for the posts offered. Said offer of postings may be published in the Official Gazette

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<sup>1</sup> STC, no. 192/1991, of October 14, 1991. ("BOE" no. 274 of November 15, 1991).

<sup>2</sup> STC, no. 200/1991, of October 28 ("BOE" no. 284 of November 27, 1991).

<sup>3</sup> STC no. 131/2017, of November 13 ("BOE" no. 308 of December 20, 2017).

of the Autonomous Community and, in any case, on the website of the convening body.

h) The awarding of positions or provisional assignments shall be made taking into account the request for assignments made by the applicants in order of entitlement, that is to say, according to the total score obtained by them after passing the selection process, except for the possibility of altering this order in application of the provisions of art. 9 of Royal Decree 2271/2004, of December 3, which regulates access to public employment and the provision of jobs for persons with disabilities. Once the selective procedure has been passed, including the internship phase, the candidate becomes a career civil servant in expectation of assignment. It is compulsory to take part in each transfer competition that takes place, whether national or regional, until the first definitive assignment is obtained.

i) After the corresponding awarding of the jobs offered in the transfer competitions, career civil servants will be appointed. Therefore, the first definitive assignment may be obtained both in a transfer competition at the national level and at the regional level, which are held in alternate years.

j) The appointment of career civil servants shall be published, in any case, in the Official State Gazette, in addition to its publication in the Official Gazette of the calling Autonomous Community.

k) With the publication of the appointment, the post awarded shall be taken possession of, within the established term and before the bodies indicated therein, and, in the case of career civil servants, the act of compliance with the Constitution and the rest of the legal system shall be taken by means of a promise or oath. (art. 9.1 of the CE, principles of constitutionality and legal system).

### **3. The autonomous community of Andalucía**



### **3.1 Access to the Corps of Education Inspectors**

By means of the Order of December 18, 2019, there was a public call for competition exams for access to the Corps of Education Inspectors for vacant positions in management of the autonomous community of Andalucía ("BOJA" no. 248, Friday, 27/12/2019).

Examined the bases of this call does not contain the qualification criteria, nor the evaluation criteria. And in this sense, base 5.6, which reads as follows:

5.6. Functions of the selection board.

The functions of the selection board, once constituted, shall be the following:

- a) The determination of the performance criteria.
- b) The qualification of the tests of the competition exam phase, whose development shall be in accordance with the provisions of this order.
- c) The development of the procedure (...).

From the above, it can be inferred that under the denomination: "a) Determination of the performance criteria", the elaboration of the evaluation and qualification criteria are implicitly included, which are not explicitly stated in the terms and conditions of the aforementioned call for proposals.

## **4. The autonomous community of Madrid**

### **4.1 Access to the Corps of Education Inspectors**

By Decree no. 133/2014, of November 27, 2014, of the Governing Council, the procedure for access to the Corps of Education Inspectors in the scope of the Community of Madrid was established ("BOCM", Friday, 28/11/2014).

By Resolution of December 17, 2020, of the Directorate General of Human Resources, an entrance examination for access to the Corps of Education Inspectors within the scope of management of the Community of Madrid was announced ("BOCM", no. 311, Tuesday, 22/12/2020).

Having examined the bases, the 5.4, by excerpt, reads as follows:

5.4. Functions of the Tribunal. The Tribunal, once constituted, shall perform the following functions:

- a) To ensure the correct development of the selective procedure in accordance with the provisions of the bases of this call.
- b) The determination of specific performance and evaluation criteria, as well as the preparation of the first part of the test (written analysis of a practical case).
- c) Qualification of the different parts of the competition exam (...).

The sixth base, called "Selection System", in the last paragraph of base 6.1.6, states: "The performance of the Tribunal and the evaluation criteria for each part of the test shall be in accordance with the provisions of Annex X". This annex is called: "EVALUATION CRITERIA".

From the above, it is inferred that the evaluation and qualification criteria are included, at least the general ones, since the Selection Court was empowered to dictate specific criteria in development or specification of those established in the bases.

## **5. The autonomous community of Canarias**

### **5.1 Access to the Corps of Education Inspectors**

By means of the Order of March 30, 2022, the selective procedure to access the Corps of Education Inspectors in the scope of the autonomous community of the Canary Islands, corresponding to the Public Employment Offer of the year 2021, was summoned. ("BOC", no. 72, Tuesday, 12/04/2022).

Examined the bases of this call, there are no qualification criteria, nor evaluation criteria. And in this sense, there is base 5.5, which reads as follows:

5.5. Functions of the selection board.

- a) The elaboration of the qualification criteria for each of the parts of the test, for which they shall consider the provisions of the bases of this call, and which shall be posted on the notice boards of their headquarters and on the aforementioned website at least three days prior to the holding of the tests.
- b) The preparation of the practical case study to be developed by the participants in the selective procedure.

From the above, it can be inferred that the evaluation criteria are prepared and approved by the Selection Court, with the sole obligation to publish them at least three days before the holding of the tests.

## **6. The actions of the Educational Inspection**

The inspection function in education in Spain is a consequence of the constitutional mandate contained in article 27 of the Spanish Constitution (CE) of 1978. This article establishes the universal nature of the right to education, which also states that "the public authorities shall inspect and approve the education

system to ensure compliance with the laws". Among the attributions of the Educational Inspection are:

3. mediate and advise the educational community in situations of conflict.
4. To elaborate reports, formulate proposals in the exercise of its functions.
5. To be part of boards, commissions, and tribunals.

Within the functions of supervision and control, it is already understood the function of advising<sup>4</sup>.

According to Pérez Aguilar, José Francisco<sup>5</sup>, "The educational inspection develops actions to carry out functions of control and supervision, evaluation and counseling and guidance and information. The fundamental task of these actions is, firstly, to try to ensure compliance with the law, secondly, to ensure the guarantee of the rights and the observance of the duties of all those involved in the teaching and learning processes and, finally, the improvement of the education system and the quality of education. Precisely, the development of these actions, through its functions, involves the exercise of educational inspection".

Issuing "reports", formulating "requirements" or drawing up "minutes" can be three ways of finalizing the development of the actions; but the inspection report is usually the conventional way of finalizing the development of the actions, unless during the intervention, non-compliances in the application of the regulations are detected and, then, requirements would be formulated, and these could end in minutes.

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<sup>4</sup> Moratalla Isasi, S. (2017). La Inspección Educativa: Funciones y Atribuciones. En Vázquez-Cano, E. (coord.). La Inspección y Supervisión de los centros educativos (pp. 155-173). Madrid: UNED.

<sup>5</sup> Central Inspector of the General Inspectorate of Education of Andalusia Regional Ministry of Education and Sport.

The content of the report is usually oriented towards advice to guarantee the degree of sufficiency or, if applicable, compliance with current regulations or the recognition of good practices in relation to the processes and results developed by the centers and services; or a more technical advice with the objective that the educational centers and services themselves generate modifications or changes in their ways and means.

In a selection procedure for access to the teaching public service, non-university education, National Habilitation Bodies (articles: 9, 10, 14, 23.2, 24, 27, 103.1, 103.3, 149.1.18th, and 149.1.30th of the Spanish Constitution); based on the principles of constitutionality, legal framework, equality, publicity, transparency, merit, capacity, competitive competition, and probity<sup>6</sup> and other principles of the rule of law, it is necessary to have access to:

- The order or resolution of the convocation. (Counselor - General Director).
- The bases of the selective procedure.
- The access system: competition exam or entrance exam.
- The composition of the Selection Court.
- The evaluation criteria and the qualification criteria.
- The acts of procedure of the selective procedure.

Of the six issues mentioned above, all of them occur at a certain point in the selection procedure, except for the evaluation and qualification criteria, which do not always appear in the terms and conditions of the call for applications. It is common for them to be deferred in time, well beyond 2 months from the publication of the order or resolution of the call, empowering the Selection Court

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<sup>6</sup> According to the Pan-Hispanic Dictionary of Legal Spanish, the Principle of Probity consists of observing an impeccable official conduct and an honest and loyal performance of the function or position, with preeminence of the general interest over the private interest. <https://dpej.rae.es/lema/principio-de-probidad>.

for the development of both criteria (evaluation and qualification). This circumstance raises doubts of constitutionality and legality:

### **6.1 The previous administrative file**

Every regulation, in this case, every order or administrative resolution has at least two administrative files: a) the previous administrative file for the creation of the regulation, b) at least one administrative file for the execution of the order or resolution.

In the previous dossier for the elaboration of the rule, several previous and mandatory reports must be included, such as: report proposal for the initiation of the dossier, budget availability report, intervention report, legal report, which give body and budgetary and legal security to the rule in process.

If the evaluation and qualification criteria are not included in the previous processing of the order or resolution of the call, obviously they do not pass the filters of the previous and mandatory reports. And it is not that the Jurists know more about Education than the Professors of EE.MM., but they do know and should know, if the evaluation and qualification criteria comply with the requirements established by the Jurisprudence so that they are not arbitrary, discriminatory, indeterminate, incoherent, incongruent, that predetermine the result of the selective procedure, contrary to the principle of equality, that favor or produce *ad personam* appointments directly or indirectly.

And already from the outset, with only this procedural defect in the drafting of the order or resolution, a quite reasonable doubt of partiality and lack of objectivity in the functioning of the administration is sown, which could violate articles 9, 10, 14, 23.2, 24, 27 and 103 of the CE, which in accordance with article 47 of Law 39/2015, could be grounds for radical nullity or nullity by operation of law.

### **6.2 Judge and party**

Related to the above, if the evaluation criteria and grading criteria do not appear in the terms and conditions of the call for applications, and the terms and conditions themselves defer to the Selection Court itself to draw them up, the latter becomes "**judge and party**". In addition to being the one who judges, evaluates, and grades the different tests of the competition exam phase, it is also the one who prepares the evaluation and grading criteria to be applied. This circumstance has a mirror in the popular proverb: "You make your bed, you lie in it".

Both the qualification criteria, as well as the evaluation criteria, are two important points to be determined in the order of the call, which should at least be set by the administration, and should be included in the terms and conditions of the call to ensure objectivity, impartiality, and transparency. The absence of both criteria grants total and absolute discretion to the Selection Court, which far exceeds technical discretion. It becomes both judge and party.

Can the Selection Court design the selective procedure, or on the contrary, must it limit itself to complying and enforcing the selective procedure designed by the convening administration? Is this technical discretion or is it arbitrariness? It is the convening administration that has the normative competence, who can issue orders and resolutions. The Selection Court lacks normative competence, it cannot redesign the selective procedure under the protection of supposed interpretative faculties, after the order or resolution of the summons has been published and once it is final in law, after more than 2 months have elapsed since its publication in the corresponding Official Gazette.

In this sense, it is applicable the provisions of the **STS<sup>7</sup> of 12/12/2012, F.J. 7th**:

Accepting, therefore, that it was the Selection Committee that was empowered to adopt as many criteria for action and qualification as it

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<sup>7</sup> Centro de Documentación judicial (CENDOJ). STS 12/12/12. Id Cendoj: 28079130072012100727.

deemed necessary in order to ensure a homogeneous performance of the different tribunals that were appointed to evaluate the specialty of infant education, what is undeniable is that the criteria and guidelines that, if any, were set in the exercise of that power could not be contrary to the bases, since, as this Court has repeatedly held, the rules of a selection process constitute the law that must be subject to the rules of the selection process, were established in the exercise of this power could not be contrary to the bases since, as this Court has repeatedly held, the bases of the call for a selective process constitute the law to which the procedure and resolution of the same must be subject so that, once they are final and consented to, they are equally binding on the participants and the Administration. It should also be recalled, at this point, that this Chamber, by all the judgments of March 18, 2011 (cassation appeal no. 4278/2009) has been considering that this type of preparatory actions —aimed at setting the qualification criteria of the selective tests— are not part of the core of the technical judgment on which the technical discretion of the tribunals in charge of personnel selection operates, and may be subject to jurisdictional control.

### **6.3 Partiality or lack of objectivity and neutrality in the bases**

Euphemistically, it is often said that the bases of a selective procedure are “**the Law of Procedure**”, when it is obvious that they are approved by administrative order or resolution, depending on whether the Organic Regulation of the Department of Education attributes the competence to the Counselor or to the General Director of Personnel.

Once the bases have been approved by the order or resolution of the call for applications, they bind both the Administration, the Selection Court, and the applicants. Consequently, the Selection Court cannot appeal the bases; it must



apply and interpret them to make them viable. Nor can it modify or alter the bases, with the hackneyed argument that technical discretion operates. In this sense, the **STS<sup>8</sup> of 24/09/2014, FJ 4th**, which is excerpted as follows:

First, it should be pointed out that the interpretation of the rules governing the announcement of any selective process of access to the civil service is a task that cannot be included in the so-called technical discretion, since, as it is aimed at determining the scope of a regulated element, it is an operation of legal qualification that is outside the space of specific technical knowledge to which the basic nucleus of the aforementioned technical discretion must be circumscribed.

It must also be affirmed that the jurisdictional challenge, by the person who has been negatively affected, of the interpretative criterion that the Administration has followed in relation to a certain element of the announcement, is a manifestation of the exercise of his right to effective judicial protection and, therefore, the result of such jurisdictional challenge (open to all the participants in the selective process) cannot be considered an infringement of the constitutional postulate of equality.

#### **6.4 Interdiction of the reservation of places on a personal basis (*ad personam*)**

Regarding the prohibition or interdiction of the reservation of a seat on a personal basis, **STC<sup>9</sup> 67/1989, of April 18**, from which part of FJ 1st is extracted, is clarifying:

It should be noted that the principle of equality in access to public functions and positions enshrined in art. 23.2 of the Constitution, which must

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<sup>8</sup> Centro de Documentación judicial (CENDOJ). STS 24/09/14. Id Cendoj: 28079130072014100356.

<sup>9</sup> STC 67/1989, of April 18. ("BOE" no. 119, of May 19, 1989).

be necessarily connected to the principles of merit and ability in access to public functions in art. 103.3 of the Constitution (STC 193/1987, December 9, 1987), refers to the requirements established by law, which grants the legislator a wide margin in the regulation of the selection tests for civil servants and in the determination of the merits and abilities to be taken into consideration. This freedom is limited by the need not to create inequalities that are arbitrary in that they are alien, unrelated or incompatible with the principles of merit and ability.

And part of and FJ 2nd:

This Court has stated that from art. 23.2 of the Constitution derives that the rules of procedure for access to public office positions and, among them, the calls for competitions and examinations "are established in general and abstract terms and not by means of individualized and specific references" (STC 50/1986, April 23). This means giving constitutional relevance to a criterion that had been required by our contentious-administrative jurisprudence since the well-known Supreme Court Decision of October 7, 1971, which applied the theory of the deviation of power to a competition established with the "preconceived purpose" of appointing a certain person. Hence, it is required that the requirements or merits be established "in general" (STC 42/1981), it being constitutionally unacceptable that *ad personam* acceptances or preteritions occur in the access to public functions" (STC 148/1986, of November 25). "What art. 23.2 of the Spanish Constitution prohibits is that the rules of procedure for access to public office be established not by means of general and abstract terms but by means of individual and specific references" (STC 18/1987, of February 16, 1987).

## 6.5 Guarantees of the Selection Court's impartiality: abstention and recusal

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Within the fundamental right to a procedure with all the guarantees, included in article 24 of the CE, among these guarantees are included the institutions of "**abstention and recusal**", guarantees of procedural public order. What are these procedural guarantees? The guarantees of "**objectivity**" and "**impartiality**", which can be compromised by reason of kinship, in 1st and 2nd degree, among other reasons.

For these purposes, the provisions of articles 23 and 24 of Law 40/2015, of 01/10/2015, on the Legal Regime of the Public Sector, (LRJSP) in accordance with articles 47 and 74 of Law 39/2015, 01/10/2015, on the Common Administrative Procedure of the Public Administrations. (Both, "BOE" 02/10/2015, in force since October 02/10/2016, which replace Law 30/1992, LRJAP and PAC) must be borne in mind.

The importance of the recusal must be highlighted, in accordance with the provisions of article 74 of Law 39/2015, already mentioned, namely: "**Article 74. Incidental issues. The incidental issues that arise in the proceedings, including those referring to the nullity of proceedings, shall not suspend the processing of the same, except for recusal.**" This means that recusal is the B side of non-abstention when someone should abstain, it is configured as a legal institution with suspensive effects. In these aspects the **STS<sup>10</sup> of 23/02/2016** is significant, from which a large part of the FJ 10th is extracted:

(...) the following must be pointed out:

Firstly, that the due observance of the constitutional principle of access to the civil service imposes to monitor with special rigor the unique circumstances in each selection procedure and to exclude all those that may place some applicants in a situation of advantage over others, since

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<sup>10</sup> Centro de Documentación judicial (CENDOJ). STS 23/02/16. Id Cendoj: 28079130072016100088

such situation entails an unjustified discrimination contrary to the principle of equality recognized in articles 14 and 23.2 CE.

Secondly, that the communication by the president of the Selection Court to several candidates of some practical cases that were finally proposed in the second exercise of the competition exam phase obviously placed them in a situation of greater ease and advantage to pass the selection process.

And, thirdly, that the arguments offered by the appealed sentence to deny the invalidating effect of the previous fact are not convincing because of what is explained below.

Such arguments are not convincing because the assessment of the concurrence or not of the cause of abstention referred to friendship must be made on a case-by-case basis and, in the case of a selection process, it will depend on the incidence or influence that the treatment derived from that friendship may have had in said selection process.

This influence is clear when, as in the present case, the person who is part of the Selection Court, as president or member, has intervened in the training or preparation process of certain candidates by providing practical cases and instructing on how to approach and resolve them and, subsequently, proposes those same cases in the exercise of the selection process in question.

These facts are indifferent to the reasoning of the appealed judgment: the time that has elapsed since the practical cases were communicated (a delay that was due, as is shown in the first ground, to the challenge that was raised against the call); that on the date on which the cases were communicated, the person who sent them was not yet aware of his designation as a member of the Qualifying Tribunal; and that the score given individually by the person or persons close to them who form part of the Qualifying Tribunal is not decisive for the final qualification of certain

candidates. Because what is really relevant is the intervention that this last person has had in the selective process deciding which has to be the content of the exercise of practical cases, and to do this last with the knowledge of which are the cases on which certain candidates had been specially instructed or informed.

### **6.6 Discretionary power does not endorse or authorize arbitrariness.**

In general, arbitrariness is expressly prohibited in article 9.3 of the CE, as one of the principles of the rule of law. Having a certain margin of freedom or movement does not mean that everything is fair game, that anything goes. In this regard, the **STS<sup>11</sup> of 04/02/2016** is significant, from which part of its FJ 6th is extracted:

However, this judgment of the Constitutional Court, to which the Plenary of the Court of Auditors and the State Attorney refer, does not leave the competent Administration free to decide on the resolution of calls such as the one in question. On the contrary, it states that free designation implies in its assessment "an evident connotation of discretion or, if one prefers, (...) a certain margin of freedom". Thus, if we are in the sphere of discretion, there is no room for arbitrariness in its exercise and sufficient motivation is essential according to article 54 of Law 30/1992, of November 26, 1992, of the Legal Regime of the Public Administrations and of the Common Administrative Procedure.

Sufficient motivation must be controlled by the courts of this jurisdictional order and, in the case in question, by this Chamber and Section, in the same way that it must examine whether the exercise of the discretion that the Law has granted to the Court of Audit has taken place without arbitrariness and in accordance with the purposes for which it was given

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<sup>11</sup> Centro de Documentación judicial (CENDOJ). STS 04/02/16. Id Cendoj: 28079130072016100041

the power exercised. For these latter purposes, a constant jurisprudence includes within the judicial control of administrative discretionality the examination of the determining facts of the challenged action.

### 6.7 Motivation, the antidote to arbitrariness

The motivation is regulated today, in article 35 of Law 39/2015, already mentioned. According to the dictionary of the Real Academia de la Lengua Española, **arbitrariness** is "the quality or condition of arbitrary, arbitrary fact or saying, arbitrary behavior or proceeding". And **arbitrary** is "to be subject to free will or caprice rather than to law or reason". It could be defined as: act or proceeding contrary to Justice, reason, or laws, dictated only by the will or whim of the one who dictates it.

Therefore, arbitrariness is the non-exposition of the cause of the decision or the exposition of an illogical, irrational, or based on reasons that cannot be legally considered, in such a way that the resolution appears to be dictated only based on the will or whim of the one who makes it, as a pure voluntarism. **(STC<sup>12</sup> 63/1.988 of April 11, F.J. 2nd. In the same sense, STC<sup>13</sup> 08/1.981 of March 30).**

A decision can be arbitrary, not only because it is not motivated and therefore does not show the reason for it, but also because, even if apparently motivated, such motivation is apparently irrelevant, has nothing to do with what is being questioned, **(STC<sup>14</sup> 13/1.985 of January 31)** is not legally attentive, **(STC 8/1.981**

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<sup>12</sup> STC 63/1.988, of April 11. ("BOE" no. 107, of May 4, 1988).

<sup>13</sup> STC 8/1.981, of March 30. ("BOE" no. 89, of April 14, 1981).

<sup>14</sup> STC 13/1985, January 31, 1985 ("BOE" no. 55 of March 5, 1985).

**of March 30, already cited), or does not deserve the name of such (ATC<sup>15</sup> 1.295/1.987 of November 23, FJ 2nd).**

### **6.8. Prohibition of the deviation of power**

There is a certain parallelism between "fraud" which is included in the Civil Code, in article 6.4: "The acts carried out under the protection of the text of a rule that pursue a result prohibited by the legal system, or contrary to it, shall be considered executed in fraud of law and shall not prevent the due application of the rule that had been tried to evade". And the deviation of power, is included in article 70.2, second paragraph of the Law of Contentious-Administrative Jurisdiction (LJCA), which states: "Deviation of power is understood as the exercise of administrative powers for purposes other than those established by the legal system". It is worth noting the importance of the **STS<sup>16</sup> of 08/10/2019**, which extracts the FF.JJ. 13<sup>th</sup> and 14<sup>th</sup>:

THIRTEENTH - In view of the foregoing, the Court does find that in the election and appointment of Mrs. Sabina there was a misuse of power for the following reasons:

1st. That it was intended to choose her, it is not necessary to resort to evidence by presumptions under article 386.2 of Law 1/2000, of January 7, of Civil Procedure: The Ombudsman herself confesses this when rejecting the appeal for reconsideration and, already in the case file, the answer to the claim. In both cases, no other argument is used to justify it other than to maintain that it was a direct appointment made in another proceeding

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<sup>15</sup> [https://hj.tribunalconstitucional.es/es/Resolucion/Show/12429#complete\\_resolucion](https://hj.tribunalconstitucional.es/es/Resolucion/Show/12429#complete_resolucion)

<sup>16</sup> Centro de Documentación judicial (CENDOJ). STS 08/10/19. Id Cendoj: 28079130042019100293.

outside the one that was underway, an allegation that has been rejected due to its manifest lack of grounds.

2nd. What is decisive in order to appreciate a deviation of power is that a power that is markedly discretionary in the case of the Ombudsman, given the peculiarity of its legal regime, could have been exercised without any competitive call, but if it is done, it must be done respecting the rules that the institution of the Ombudsman itself established, without altering the terms and much less excusing itself by saying that there were two intermingled proceedings..

3rd. As we have seen, to exercise this power of election and appointment of technical advisors, the Ombudsman limited herself: she designed a competitive procedure and, subject to its bases, offered a position, approved a shortlist, and ordered the three initial applicants in order of score.

4th. In this way, a juridical-administrative relationship was established, binding for the convener and the applicants, concretized in a procedure set out in unalterable terms, as a result of which the person can be chosen who is considered more trustworthy, based on a judgment of merit and capacity deducible from the evaluated merits and the interviews, as well as from the resolution of a practical case.

5th. The alleged reasons on the need to increase the call to a second position, will be justified, but the issue is that it is taken just at the time when the list of three candidates does not include Ms. Sabina and for this the situation of the Area of Economy and Finance, whose reality is not denied and that already existed when the call was made and in any case when the list of three candidates was drawn up, is used as an excuse.

FOURTEENTH.- Due to the above, a deviation of power was incurred by exercising the power of election of a technical advisor in terms contrary to



the proposed purpose, which was, of course, to make an appointment of free designation, but subject to a competitive, public procedure, assessing merits contrasted with objective data (requirement of a profile, examination of the curriculum, preparation of a report), resulting in a shortlist subject to the order of score from which a candidate would be freely chosen. Instead, the terms of the call were altered to exercise the power of free designation—which, we repeat, is not in dispute—for the direct election of a predetermined candidate, excluded from the shortlist, for which the call was increased by one more position. In short, it is not possible to limit oneself with such a procedure, creating in the applicants the right that the election will be made in accordance with this procedure, to avoid it when the desired person is not included in the shortlist and thus exercise this power outside these rules.

## **7. Evaluation and qualification criteria: publicity and transparency**

In the ordinary functioning of educational centers, and of each school year, the evaluation and grading criteria must be part of the didactic programs of each Department by subject, subject or module from the beginning of the school year; they must be explained to the students in the first weeks of the course and be available to the educational community during the same. Based on this reality, several questions arise:

Should the evaluation and qualification criteria be part of the bases of the call for a selective procedure for access to the public teaching function?

Should a prior report from the educational inspectorate be included in the administrative file for the preparation of the order or resolution approving the terms and conditions of the call for the selective procedure for access to the public teaching service, with respect to the evaluation and qualification criteria?

Is it possible to draw a parallel between the didactic programs of a school year, and the bases of a call for a selective procedure for access to the public teaching function, regarding the moment at which the evaluation and qualification criteria are made known, that is to say, from the beginning?

Based on the jurisprudence of the SC, we analyze three judgments for their importance and relevance:

### **7.1 The STS<sup>17</sup> of 20/10/2014**

Judgment from which we extract from the FF.JJ. 5th and 6th the following:

The Qualifying Tribunal did not apply the bases of the call in accordance with the jurisprudence. Indeed, to ensure that in their application these bodies do not incur in arbitrariness, it has been demanding that when, in accordance with the bases, they establish qualification or scoring criteria for the exercises, they must do so before the exercises are held and that they must also make them known to the candidates before that moment. Likewise, case law has rejected those actions such as the one carried out in this case form part of the technical discretion of these bodies. That is to say, the determination of the different scoring of the questions on the practical case without communicating this distribution to the candidates prior to the performance of the exercise (judgments of 26 May 2014 (cassation 1133/2012), 25 June 2013 (cassation 1490/2012), the two of 15 March 2013 (cassation 1131/2012 and 4928/2010),<sup>2</sup> November 2012 (cassation 973/2012), 18 January 2012 (cassation 1073/2009),<sup>15</sup> December 2011 (cassation 6695/2010) and 27 June 2008 (cassation 1405/2004) among others).

SIXTH - (...) access to the civil service must take place, in accordance with articles 23.2 and 103.1 and 3 of the Constitution, under conditions of

<sup>17</sup> Centro de Documentación judicial (CENDOJ). STS 20/10/14. Id Cendoj: 28079130072014100352.

equality, respect for the principles of merit and ability and publicity or, as stated in article 55.2 b) of the Basic Statute of the Public Employee, of transparency, as emphasized in the appealed judgment. Transparency and publicity are necessary conditions for the effectiveness of these conditions and principles. Our judgment of January 18, 2012 (cassation 1073/2009), in addition to recalling that transparency is a principle of action of the Public Administration proclaimed in article 3.5 of Law 30/1992, of November 26, 1992, of the Legal Regime of the Public Administrations and Common Administrative Procedure, says:

"It must be said in principle that this principle of publicity in its most generic formulation is linked to other constitutional mandates such as the fundamental right to effective judicial protection of article 24 of the CE and the principle of objectivity for all actions of the public administration provided for in article 103.1 of the Constitution itself. And for this very reason it entails, among other things, both the need for all administrative actions to be transparent in the facts, criteria and reasons that determine their decisions, since this is the only way to ensure the control required by the right to effective judicial protection; and also that these criteria are established prior to their completion in the case of competitive procedures, because this is how the risk of individual favoritism (contrary to the principle of objectivity) that would occur if the criteria for evaluating the applicants were defined once the competitive tests had been held is avoided with the due guarantees".

Thus, the Barcelona ruling is consistent with these criteria.

## 7.2 The STS<sup>18</sup> of 21/01/2016

This decision of the TS upholds the cassation appeal filed against a STSJ of the Administrative Chamber of the Valencian Community, rejecting the reasoning of the lower court as follows:

THIRD. As the appellant maintains, it is not a question of denying the possibility that a Selection Court of a selective process can establish correction criteria giving prevalence to some questions over others in the evaluation of the same, duly justified, but that this preference must be made known to the competitors before the test is carried out, in such a way that they can decide the priority in their answers, adapting the answers to the relevance of the questions raised, thus preventing the occurrence of defenselessness, and in this sense the appellant recalls the jurisprudence of this Chamber, citing the judgment of June 25, 2013 , of June 25 (appeal 1490/2012 , citing other previous ones such as those of June 27, 2008 (appeal number 1405/2004); 15 December 2011 (appeal number 4298/2009); 18 December 2011 (appeal number 4298/2009); 18 December 2011 (appeal number 1490/2012). number 4298/2009); January 18, 2012 (R.C. number 1073/2009, which holds that the principle of publicity requires that the criteria of action of the Qualifying Tribunal be prior to the performance of the test and notified to the applicants, since only in this way is the principle of legal certainty also guaranteed. In the same sense, he cites the judgment of December 21, 2011, or that of October 20, 2014 (R.C. 3093/2013) with citation of previous judgments). Consequently, in accordance with this jurisprudence, the Qualifying Court, by assessing the answers to the practical case questions differently, without previously notifying these criteria to the candidates, produced a procedural

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<sup>18</sup> Centro de Documentación judicial (CENDOJ). STS 21/01/16. Id Cendoj: 28079130072016100042.

irregularity that caused the defenselessness of the appellant who could not adapt the answer of the exam to the different assessments of the questions. Therefore, these criteria must be considered as not having been applied to the appellant and, consequently, it must be understood that the case law of the Chamber has been violated by the appealed judgment, and also the principle of transparency and publicity that must govern the selection processes, as set forth in article 66.2.b) of the Basic Statute of the Public Employee, as stated in the judgment of this Chamber of October 20, 2014. (Judgment cited in the previous epigraph).

### **7.3 The STS<sup>19</sup> of 20/07/2022**

The debate before the Contentious-Administrative Chamber of the TS is about the scope of the obligation of the Selection Court to inform the participants of a selection process, after the evaluation of their exercises, of the qualification criteria applied to score them.

Judgment from which the 5th and 7th FF.JJ. are extracted:

FIFTH - The appellate appeal is upheld in view of the case law of this Chamber on the matter.

In the recent judgments of January 27, 2022 (appeal in cassation 8179/2019) and March 28, 2022 (appeal in cassation 6160/2020) our jurisprudential doctrine is recalled in its fourth grounds with mention of some of the judgments invoked by the appellant. Thus:

"The scope of the requirement of transparency and publicity in the field of competition processes such as the one in question has been analyzed and specified by this Third Chamber of the Supreme Court in various rulings.

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<sup>19</sup> Centro de Documentación judicial (CENDOJ). STS 20/07/22. Id Cendoj: 28079130042022100411

Thus, in the judgment of April 23, 2019, issued in appeal no. 3039/2016, it was stated "It must be recalled what regarding the significance and purpose of the principle of transparency was stated in the judgment of this Chamber and Section of January 18, 2012 (appeal no. 1073/2009), reiterated in the subsequent judgment of October 20, 2014 (appeal no. 3093/2013):

"It must be said that this principle of publicity, in its most generic formulation, is linked to other constitutional mandates such as the fundamental right to effective judicial protection of article 24 of the CE and the principle of objectivity that article 103.1 of the Constitution establishes for all actions of the public administration.

And for this very reason it entails, among other things, both the need for all administrative actions to be transparent in the facts, criteria and reasons that determine their decisions, since only in this way is the control demanded by the right to effective judicial protection possible; and also that these criteria are established prior to their completion when competitive procedures are involved, because in this way the risk of individual favoritism (contrary to the principle of objectivity) that would occur if the criteria for evaluating the applicants were defined once these competitive tests have been carried out is avoided with the due guarantees".

We may also cite the judgment handed down on January 21, 2016 (appeal no. 4032/2014) when it said that "citing the judgment of June 25, 2013 (relapsed in appeal 1490/2012, with citation of previous ones such as those of June 27, 2008 (appeal number 1405/2004); December 15, 2011 (appeal number 4298/2009); January 18, 2012 (R. C. number 1073/2009), which holds that the principle of publicity requires that the criteria of action of the Qualifying Tribunal be prior to the performance of the test and notified to

the applicants, since only in this way is the principle of legal certainty also guaranteed".

And it must be said, finally, that in this same line was pronounced the judgment of June 27, 2008 of the Seventh Section of this same Chamber (appeal 1405/2004), recalled in that of October 8, 2020 (appeal 2135/2018), with an extensive citation of judgments in the same sense, when it stated that the principle of publicity requires that the performance criteria be precedent to the conduct of the tests.

SEVENTH - The answer to the question of appeal interest.

In view of what is argued in the fifth ground, the answer to the question posed is that the qualification criteria of the exercises of selection processes in the Public Administration must be prior to the qualification and must be published for the knowledge of all the applicants before the exercises are carried out.

#### **7.4 What should we understand by the publication of the qualification criteria so that all candidates are aware of them before the exercises are carried out?**

The beginning of a selective procedure has different moments in time, depending on whether we are talking about: a) the applicants, b) the Educational Administration, c) the Selective Tribunal and d) the Administration of Justice (Contentious-administrative Jurisdiction):

**a)** For the applicants and depending on whether we are talking about access to the Corps of Teachers, the Corps of EE. MM., or the Corps of Educational Inspection, we can talk about 1 to 3 years on average as a minimum for the preparation of the selective process, the syllabus, disregarding other requirements, such as merits, years of experience, years as an interim or career civil servant, etc.

**b)** For the Administration, it begins in the months of October and November with the negotiation of the positions to be called, which are then reflected in the Budget Law of the following year, and the public offer of employment must be published before March 31 of the current year, in execution of the Budget Law, also including the order or resolution of the call for applications.

**c)** For the selective Tribunal, it begins its activity from the moment it is appointed in execution of the bases of the call for the selective procedure, approved by order or resolution.

**d)** For the Courts and Tribunals of Justice, their activity begins when an applicant has filed or presented a contentious-administrative appeal against the act that puts an end to the selection procedure, or against any procedural act, if the latter directly or indirectly decide the merits of the case, determine the impossibility of continuing the procedure, produce defenselessness or irreparable damage to legitimate rights and interests, the interested parties may file an appeal for review and an appeal for reversal, which may be based on any of the grounds of nullity or annulment provided in articles 47 and 48 of Law 39/2015 (LPACAP), as a recommended prior step before resorting to the courts or going directly to the courts.

Therefore, the publication of the evaluation and qualification criteria 2 or 3 days before the first test of the competitive examination phase complies with the minimum required by the Jurisprudence to be able to check in administrative and then in judicial venue, to review whether the Administration has acted in accordance with those criteria and whether the criteria comply with the principles of constitutionality, legal order, equality, publicity, transparency, merit, capacity, competitive concurrence and other principles of the rule of law (articles: 9, 10, 14, 14, 23.2, 24, 27, 103. 1, 103.3, 149.1.18.a) and 149.1.30 a) of the CE).



Thus, who must pass the selective procedure? a) The Administration of Justice, b) the summoning educational Administration, c) the selective Tribunal, or d) the applicants.

It seems obvious that the applicants should be the ones who know the evaluation or qualification criteria one to three years in advance, which could be considered excessive and could go against the self-organization power of Public Administrations. However, the evaluation and qualification criteria should be included in their entirety in the terms and conditions of the call for applications. In other words, that all the rules of the championship should be known from the beginning of it, that they do not change or vary throughout it, to predetermine the finalists and the medal list, that is to say, the overcoming of the selective procedure and therefore obtaining a place.

When you have been a student at the UNED, you learn that you must know from the beginning of each school year what the evaluation and qualification criteria are, to adapt the study system to each of the subjects. Not any study system is suitable for any evaluation and grading criteria.

- a) Development of an oral topic.
- b) Development of a written topic.
- c) Tests with a determined number of short questions, limiting the answer space.
- d) Multiple-choice questions and their penalty conditions.
- e) Various combinations of the previous systems, with the corresponding specific weight.

The student, the candidate, in addition to knowing the syllabus on which he/she is going to be examined, must know, by means of how many tests and phases, and above all and especially, what the evaluation and qualification criteria will be, with sufficient time, to be able to adapt the effort of years, the study and preparation time with the procedural guarantees of success, with objectivity,

publicity, transparency, equality, and probity. As a simile, the athlete must know the type of test to develop, to adapt the training to it, it is not the same 100 meters sprint, 5 km in closed circuit, 20 or 40 km. It is not the same for 100 meters sprint, 5 km in a closed circuit, 20 or 40 km in a city or cross country. And for this reality it is not enough to know between 1 and 3 days before the event.

## 8. CONCLUSIONS AND PROPOSAL FOR IMPROVEMENT

### A) Conclusions

A) The inspection function in education in Spain is a consequence of the constitutional mandate contained in Article 27 of the Spanish Constitution (CE) of 1978. The educational inspection develops actions to carry out functions of control and supervision, evaluation, counseling, guidance, and information.

B) The evaluation and qualification criteria must form part of the bases of the call for a selective procedure for access to the public teaching function. They must be included in their entirety, without being deferred in time, several months after the publication of the call and its bases.

C) The total inclusion of the evaluation and qualification criteria in the bases of the call, allows the appeal for reconsideration, within a period of one month, counting from the day following its publication. Otherwise, they gain firmness, becoming a firm and consented act, which prevents then in the meridian of the selective procedure its challenge, except for reasons of nullity of full nullity, which as such lack the statute of limitations, in accordance with articles 47.1.a) and 106 of Law 39/2015, LPACAP.

D) The total incorporation of the evaluation and qualification criteria in the bases of the call for access to the public teaching function, favors the impartiality, objectivity, and neutrality of the same, avoiding the possible reservation of places

on a personal basis, increasing the guarantees of impartiality of the Selection Court, reducing the causes or grounds for abstention and recusal.

E) And all this avoids or reduces that the Selection Court is perceived or may be perceived as judge and party. Ultimately, the discretionary technical power does not endorse or authorize arbitrariness or the misuse of power.

### **B) Proposal for improvement**

For a better elaboration and conformation of the order or resolution of the call for access to the public teaching function, in any of its bodies, it should be included as one of the previous and mandatory reports, a report of the Educational Inspection regarding the evaluation and qualification criteria, to guarantee among other issues that all specialties and/or applicants within the same call are regulated by the same criteria, increasing the motivation of the order or resolution of the call and therefore the legal quality of the same.

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## ANNEX - ABBREVIATIONS

Art.	Article
BOE	Official State Gazette ( <i>Boletín Oficial del Estado</i> )
BOC	Official Gazette of Canarias ( <i>Boletín Oficial de Canarias</i> )
BOCM	Official Gazette of the Autonomous Community of Madrid ( <i>Boletín Oficial de la Comunidad Autónoma de Madrid</i> )
BOJA	Official Gazette of the Regional Government of Andalucía ( <i>Boletín Oficial de la Junta de Andalucía</i> )
CE	Spanish Constitution of 1978 ( <i>Constitución española de 1978</i> )
DP	Ombudsman
EE.MM.	Secondary Education ( <i>Enseñanzas Medias</i> )
F.J.	Conclusion of Law
FF.JJ.	Conclusions of Law
L.O.	Organic Law ( <i>Ley Orgánica</i> )
LOE	Organic Law 2/2006 on Education ( <i>Ley Orgánica 2/2006 de Educación</i> )
LOMLOE	Organic Law 3/2020, of 29 December, which amends Organic Law 2/2006, of 3 May, on Education ( <i>Ley Orgánica 3/2020, de 29 de diciembre, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación</i> ).
LOPJ	Organic Law of the Judiciary ( <i>Ley Orgánica del poder Judicial</i> )
LOTIC	Organic Law of the Constitutional Court ( <i>Ley Orgánica del Tribunal Constitucional</i> ).
LJCA	Law 29/1998, of July 13, 1998, regulating the Contentious-Administrative Jurisdiction ( <i>Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-administrativa</i> ).
LPACAP	Law 39/2015, of 01 October, on the Common Administrative Procedure of the Public Administrations ( <i>Ley 39/2015, de 01 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas</i> ).
LRJSP	Law 40/2015, of 01/10/2015, on the Legal Regime of the Public Sector ( <i>Ley 40/2015, de 01/10/2015, de Régimen Jurídico del Sector Público</i> )
R.C.	Cassation appeal ( <i>Recurso de Casación</i> )
RD	Royal Decree ( <i>Real Decreto</i> )
RPT	Relation of Job Positions ( <i>Relación de Puestos de Trabajo</i> )



STC	Constitutional Court Ruling ( <i>Sentencia del Tribunal Constitucional</i> )
SSTC	Constitutional Court Rulings ( <i>Sentencias del Tribunal Constitucional</i> )
STS	Supreme Court Ruling ( <i>Sentencia del Tribunal Supremo</i> )
SSTS	Supreme Court Rulings ( <i>Sentencias del Tribunal Supremo</i> )
STSJ	High Court of Justice Ruling ( <i>Sentencia del Tribunal Superior de Justicia</i> )
TC	Constitutional Court ( <i>Tribunal Constitucional</i> )
TREBEP	Consolidated Text of the Basic Statute of the Public Employee, approved by Royal Legislative Decree 5/2015, of October 30 ( <i>Texto Refundido de la Ley del Estatuto Básico del Empleado Público, aprobado por el Real Decreto Legislativo 5/2015, de 30 de octubre</i> )
TS	Supreme Court ( <i>Tribunal Supremo</i> )
UNED	National University of Distance Education ( <i>Universidad Nacional de Educación a Distancia</i> )