

EL DERECHO A LA DEFENSA EN EL EXPEDIENTE DISCIPLINARIO DE FUNCIONARIOS DOCENTES

THE RIGHT TO DEFENCE IN DISCIPLINARY PROCEEDINGS AGAINST TEACHING STAFF

Imanol Tazón Domínguez.

Retired Education Inspector from the Basque Autonomous Community.

Resumen

El derecho a la defensa en los expedientes disciplinarios de funcionarios docentes en España es una garantía fundamental para asegurar un proceso justo y conforme a la legalidad. Su relevancia radica en la protección de derechos profesionales y personales frente a sanciones administrativas. Mediante un análisis normativo y jurisprudencial, se examina el marco legal (Constitución Española, TREBEP, Ley 39/2015) y los principios procesales (inmediación, contradicción). Se analizan casos prácticos y fallos judiciales para evaluar la aplicación de estas garantías. El estudio identifica que el derecho a la defensa se fundamenta en: la notificación clara de cargos, acceso íntegro al expediente, y el derecho a presentar pruebas y alegaciones. Sin embargo, el uso exclusivo del "informe de inspección educativa" como prueba única vulnera los principios de contradicción e inmediación, generando riesgos de indefensión. La jurisprudencia ha anulado

sanciones fundamentadas exclusivamente en informes que no han sido sometidos a contradicción. La efectividad del derecho a la defensa depende de la transparencia en la recolección de pruebas y la participación activa del docente. La falta de motivación en resoluciones o la denegación de pruebas son fallos recurrentes que debilitan la legitimidad del proceso. Es crucial garantizar un procedimiento equilibrado, donde el docente pueda contradecir pruebas y acceder a recursos administrativos/judiciales. La jurisprudencia refuerza la necesidad de ajustarse estrictamente a las garantías procesales, evitando sanciones arbitrarias y preservando la seguridad jurídica en el ámbito educativo.

Palabras clave: *Derecho a la defensa, expediente disciplinario, principio de contradicción, informe de inspección educativa, seguridad jurídica.*

Abstract

The right to defence in disciplinary proceedings against teaching staff in Spain is a fundamental guarantee to ensure a fair and lawful process. Its importance lies in protecting professional and personal rights against administrative sanctions. Through a legal and case-law analysis, this study examines the regulatory framework (Spanish Constitution, TREBEP, Law 39/2015) and procedural principles (immediacy, adversarial). Practical cases and court rulings are reviewed to assess the application of these guarantees. The study identifies that the right to defence is based on: clear notification of charges, full access to the case file, and the right to present evidence and arguments.

However, the exclusive use of the "educational inspection report" as sole evidence violates the adversarial principle and principle of immediacy,

creating risks of defencelessness. Jurisprudence has annulled sanctions based on unchallenged reports. The effectiveness of the right to defence depends on transparency in evidence collection and the teacher's active participation. Lack of reasoning in decisions or denial of evidence are recurring flaws that weaken the legitimacy of the process. Ensuring a balanced procedure is crucial, allowing teachers to challenge evidence and access administrative or judicial remedies. Jurisprudence underscores the necessity of strict adherence to procedural guarantees, preventing arbitrary sanctions and preserving legal certainty in the educational sector.

Keywords: *Right to defence, disciplinary proceeding, adversarial principle, educational inspection report, legal certainty.*

I. INTRODUCTION

The right to a defence is an essential guarantee in any disciplinary procedure and is particularly relevant in the field of teaching staff. In Spain, disciplinary proceedings against teachers not only affect their professional careers but can also have a significant impact on their reputation and job stability. It is therefore essential that such proceedings comply with the principles of legality, transparency, proportionality and, above all, with the fundamental rights of the accused.

In the administrative sanctioning sphere, the Constitutional Court, in its Ruling 18/1981, of 8 June, has equated the fundamental principles of criminal proceedings with administrative sanctioning proceedings, as the latter share the same punitive nature and the capacity to impose heavy penalties.

In the disciplinary system for teaching staff, the right to a defence is guaranteed in several fundamental rules. article 96 of the Consolidated Text of the Basic Statute of the Public Employee (TREBEP) guarantees this right, ensuring that the civil servant has the possibility of knowing the alleged facts, accessing the file, making allegations and providing evidence. For its part, Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, reinforces these guarantees by establishing in its article 53.1.a the right of interested parties to access the file at any time, a right that is essential to articulate an effective defence.

However, in the specific field of disciplinary proceedings, Royal Decree 33/1986 of 10 January 1986 introduces important limitations affecting the

exercise of the right of defence. In its regulation of the disciplinary procedure, contained in articles 34 to 44 (Chapter IV), it is established that access to the file by the accused official is only allowed after their interrogation, which prevents them from knowing in advance the evidence against them and adequately preparing his statement. This configuration turns the initial phase of the procedure into a real procedural trap, as the defendant must answer without knowing the incriminating evidence against them. Even after the statement of charges has been drawn up, when the defendant presents their allegations and requests the taking of evidence, they still does not effectively know all the incriminating evidence in the case file, which severely limits their ability to contradict and violates the principle of equality of arms.

Moreover, in many disciplinary proceedings against teaching staff, the disciplinary procedure is initiated on the basis of an education inspectorate report, which is usually considered as pre-constituted evidence, without having been subjected to contradiction in its drafting phase. This means that the report enjoys a presumption of veracity that the official has not been able to refute beforehand, which greatly weakens the principle of the presumption of innocence and restricts their right to an effective defence.

In this context, the guarantee of a real and effective defence within a disciplinary procedure is not only a legal requirement, but an indispensable one to avoid arbitrary sanctions and to ensure respect for the fundamental rights of the civil servant. Any sanction imposed without respecting these essential principles lacks the legitimacy that should govern the actions of the administration in a state governed by the rule of law.

This article analyses the right to a defence in disciplinary proceedings against teaching staff, from the applicable legal framework to the practical

application of the principle of immediacy and adversarial principle. It examines the role of the educational inspection report as evidence against the accused, details the procedural guarantees -including the right of access to the file- and studies the means of challenge, such as recourse to the contentious-administrative jurisdiction, in the event of infringement of these rights.

Throughout this article, particular emphasis is placed on the importance of ensuring that the disciplinary procedure does not become a one-sided mechanism in which the teacher is deprived of their ability to contradict the evidence and defend themselves adequately. Ultimately, protecting the right to defence is fundamental to guaranteeing legality and fairness in the disciplinary field. This avoids abuses and ensures that any sanction is imposed only after a full, balanced and contradictory assessment of the facts.

2. NORMATIVE FRAMEWORK OF THE RIGHT TO DEFENCE

The disciplinary procedure in which a disciplinary sanction may be imposed on a teaching official is underpinned by a normative framework that guarantees respect for fundamental rights. The main sources of law that support the right to a defence in this context are described below:

2.1. Spanish Constitution of 1978

The Spanish Constitution is the supreme law and contains in various articles the principles governing the right to defence:

- **Article 24:** establishes the right to effective judicial protection, guaranteeing access to justice and protection against defencelessness.

This precept, although focused on the judicial sphere, has been interpreted extensively to cover administrative sanctioning procedures.

- **Article 103:** obliges the administration to act in full compliance with the law, ensuring the principle of legality and transparency in administrative actions.

- **Article 25:** prohibits the imposition of sanctions for acts that are not expressly typified, which implies that no official can be sanctioned for conduct that is not previously established in the regulations.

2.2. Basic Statute for Public Employees (TREBEP)

Royal Legislative Decree 5/2015, of 30 October, which approves the Consolidated Text of the Law on the Basic Statute of the Public Employee, is the rule that regulates the disciplinary regime applicable to all civil servants, including teachers. Its provisions include the following:

- **Article 93:** recognises the disciplinary power of the administration, establishing the framework for the imposition of sanctions.

- **Article 94:** regulates the guarantees of the sanctioning procedure, including the right to be heard, the possibility to present allegations and the requirement for a duly reasoned decision.

2.3. Disciplinary Regulations for Civil Servants

Royal Decree 33/1986 of 10 January 1986 approves the Disciplinary Regulations for civil servants in the General State Administration and is applied on a supplementary basis in many autonomous communities. This regulation develops the phases of the disciplinary procedure, with special emphasis on:

- The taking of evidence during the investigation.
- The need to ensure that the official's participation is guaranteed at all stages of the process.
- The requirement to state reasons in the sanctioning decision.

2.4. Regional legislation

Each Autonomous Community in Spain has specific regulations governing the disciplinary regime for teaching staff, adapted to the particularities of the autonomous education system. These rules, without prejudice to state legislation, must guarantee respect for the fundamental rights of the accused.

2.5. Law 40/2015, on the Legal Regime of the Public Sector.

Law 40/2015, of 1 October, establishes the principles governing the actions of the Public Administration, including those applicable to sanctioning procedures. Among its fundamental principles are:

- **Legality and typicality:** the imposition of sanctions can only be based on infringements defined in the legislation.
- **Proportionality:** sanctions should be appropriate to the seriousness of the offence.
- **Presumption of innocence:** the burden of proof is placed on the administration, and in case of doubt, the interpretation favourable to the official must prevail.

2.6. Law 39/2015 on Administrative Disciplinary Proceedings

Law 39/2015, of 1 October, on the Common Administrative Procedure for Public Administrations (LPACAP) is key to the regulation of

administrative sanctioning procedures. Its application in the disciplinary field, complementary to the specific civil service regulations, guarantees a fair and transparent process. Its most relevant aspects include:

- **Phases of the procedure:** the LPACAP regulates from the initiation -whether *ex officio* or as a result of a complaint- to the resolution phase, guaranteeing the right of the affected party to know the facts, to present evidence and allegations, and to appeal the resolution.

- **Procedural safeguards:** the right to be informed, to present allegations, to have legal assistance and, ultimately, to appeal the decision through administrative and judicial remedies is reinforced.

This regulatory integration ensures that the disciplinary procedure is carried out with the minimum guarantees required, avoiding arbitrariness and protecting the teacher's right to defence.

3. CONTENT OF THE RIGHTS OF DEFENCE IN PROCEEDINGS

The effective exercise of the right of defence implies that the disciplinary file includes a series of procedural guarantees that allow the teaching staff member to contradict the evidence and present their arguments. Each of these elements is detailed below:

3.1. Right to be informed of the charge

The first pillar of the right to defence is to receive clear and precise notification of the charge. This means that, at the beginning of the disciplinary proceedings, the official must be notified:

- A detailed description of the alleged facts.
- The legal qualification of the conduct, with reference to the

legislation alleged to have been infringed.

- The possible sanction to be considered.

This information is essential for the teacher to prepare an adequate response. The lack of full and clear notification may result in a violation of the right to defence, affecting the legitimacy of the process.

However, it should be pointed out that initiating disciplinary proceedings with a brief description of the alleged facts constitutes a "meagre starting point" for preparing a solid defence; not knowing from the opening of the proceedings the "indicia" of the evidence supporting the accusation places the defendant in a "material defencelessness" from the outset.

Ignorance of these elements generates material defencelessness, as it prevents the accused from articulating an adequate defence from the outset. According to Gómez Colomer (2006), the lack of precision in the communication of the charges limits the effective exercise of the defence and violates the principle of legal certainty and adversarial principle.

3.2. Right to present arguments and evidence

The right of defence largely takes the form of the possibility to present arguments and evidence. This right is exercised at various stages of the procedure:

- **Statement of charges:** after the initial notification, a document formalising the charges is served. At this stage, the official should be given the opportunity to respond, pointing out any deficiencies in the indictment or providing evidence in their favour.

- **Investigation phase:** during the investigation, the defendant may propose and request additional evidence, such as the production of documents, testimonies or expert reports.

- **Hearing:** before the final decision is taken, a final period is allowed for the teacher to make representations, ensuring that all their observations are taken into account.

According to Parra Vera (2013), the possibility to challenge evidence and provide exculpatory elements is a substantive right and not a mere formality, as its restriction turns the procedure into a unilateral act of the administration.

3.3. The right to legal aid

Although legal assistance is not always compulsory at administrative level, legal advice or a union representative is essential in complex procedures or where the sanction may seriously affect the teacher's career. Legal assistance helps to interpret the applicable regulations, to formulate accurate allegations and to ensure that all procedural safeguards are respected.

For García de Enterría and Fernández (2008), the presence of a legal advisor is an additional guarantee against possible administrative arbitrariness, by balancing the position of the civil servant *vis-à-vis* the administration.

3.4. The right to evidence and the principles of equality of arms, immediacy and adversarial proceedings

The right to evidence is indispensable to ensure that the assessment of the facts is complete and balanced. Three fundamental principles are

involved in this area:

- **Principle of equality of arms:** the "Diccionario del español jurídico" de la RAE defines the principle of equality of arms as: "A procedural principle that guarantees the parties to a proceeding the same rights and opportunities to exercise their defence in conditions of balance and contradiction, without any of them having an undue advantage over the other."

In the area of disciplinary proceedings against civil servants, the principle of equality of arms translates into the guarantee that the official being prosecuted has the same possibilities of defence as the investigating administration in terms of access to and the taking of evidence.

This principle is closely linked to the right to defence and the adversarial principle, both of which are essential in any sanctioning procedure to avoid situations of defencelessness and to guarantee a fair process. Simón Moratto (2020) states that, in the context of disciplinary proceedings against civil servants, its application is particularly relevant in guaranteeing that the defendant has the same opportunities for defence as the administration, thus avoiding situations of defencelessness.

- **Principle of immediacy:** this principle requires the assessment of evidence to be carried out directly by the investigating officer. In other words, the investigating officer must personally assess the evidence gathered, rather than relying solely on reports or documents produced by third parties.

- **Adversarial principle (*Audi alteram partem*):** this guarantees that

the official being prosecuted can challenge, contradict and, where appropriate, supplement the evidence presented by the administration. This right implies that the teacher has access to all the evidence and can ask questions, request clarifications and provide elements that contradict the administration's version.

In the investigation phase of disciplinary proceedings, Royal Decree 33/1986 limits access to evidence until after the accused has been questioned (article 39). This restriction has been criticised by the doctrine, as it obliges the official to defend himself without knowing the full content of the file.

According to Gómez Colomer (2006), this practice distorts procedural equality and can lead to sanctioning decisions with a lack of real contradiction, which calls into question the validity of the procedure.

3.4.1 Practical application in the start-up phase

At the stage of initiation of the disciplinary proceedings, fundamental elements for the development of the procedure are gathered. At this stage, the instructor receives the initiation resolution and the educational inspection report. In order to comply with the principle of immediacy, it is essential that it is carried out:

- **Direct collection of testimonies:** the investigator must take witness statements directly, preventing the evidence from being diluted by intermediaries, i.e. it is necessary to ratify all the interviews carried out and which make up the report of the educational inspection as well as the possible complaints presented by third parties and annexed to it.

The direct taking of testimonies allows for a more reliable assessment of the credibility and coherence of the statements.

- **Personal assessment of the evidence:** by taking witness statements first-hand, the investigator can directly assess aspects such as tone, accuracy and confidence in the answers, which is essential for an objective assessment of the facts.

At the same time, the adversarial principle would be guaranteed by allowing the official to be present during the taking of statements and to have the possibility to ask questions, which is not a common practice, but rather a *rara avis*. In this way:

- **Presence of the defendant:** the direct participation of the teacher during the taking of witness statements allows them to listen live to the statements and, if necessary, to point out contradictions or ask for immediate clarifications.

- **Asking questions:** by being able to ask questions, the teacher not only verifies the veracity of the testimonies, but also helps to elucidate aspects that may be decisive in the assessment of the offence. This intervention strengthens their ability to contradict the evidence presented and results in a more transparent and fairer process.

3.5. Presumption of innocence and burden of proof

The principle of the presumption of innocence is an essential pillar in any disciplinary procedure. In the disciplinary field, this implies that:

- The burden of proof rests with the administration, which must reliably establish that an infringement has been committed.
- The teaching official is not obliged to prove their innocence, but

in case of doubt, the situation must be interpreted in favour of the accused.

- This principle obliges that, in the face of any evidence or inconclusive proof, a decision should be taken to acquit the teacher, avoiding the imposition of sanctions based on mere conjecture or incomplete evidence.

According to Roxin (2000), the presumption of innocence is an essential pillar in any sanctioning procedure, avoiding arbitrary sanctions based on mere conjecture or subjective assessments by the investigators.

3.6. Grounds for the decision to impose penalties

Motivation is another essential guarantee in the sanctioning procedure. Every sanctioning decision must be duly substantiated, specifying:

- The facts that are considered proven and how they have been assessed.
- The legislation considered to have been infringed and the relationship between the facts and the infringement.
- The determination of the sanction, assessing the proportionality of the sanction in relation to the seriousness of the facts.
- A statement of the factual and legal arguments leading to the final decision.

The absence or inadequacy of a statement of reasons may constitute sufficient grounds for challenging the decision, as the official's right to know the basis for the decision and to contradict it is violated.

According to Parada Vázquez (1999), an insufficiently reasoned decision is equivalent to an arbitrary sanction, which could lead to its nullity in contentious-administrative proceedings.

3.7 Right of access to the file

The right of access to the file is an essential guarantee that allows the teaching official to know, in advance and in its entirety, all the elements, evidence and actions incorporated in the procedure **before the formalisation of the statement of objections**. This right has multiple implications:

- **Procedural transparency:** allows the defendant to identify and examine all the elements that will be used against them, facilitating the detection of possible errors, irregularities or biases in the collection of evidence.

- **Guarantee of the adversarial principle:** by having full access to the contents of the file, the teacher can prepare an adequate defence, contradict the evidence presented and request the practice of complementary evidence. The impossibility of accessing the file is a direct violation of the right to a defence, since it prevents the teacher from exercising an effective contradiction, leading, as we have already indicated, to a possible "material defencelessness".

- **Preparation of the defence:** prior knowledge of the evidence allows the official to ask questions, question witnesses in advance and prepare specific allegations to counter the administration's arguments.

- **Procedural consequences:** the unjustified refusal or limitation of access to the file may result in the nullity of the procedure or in the annulment of the sanction imposed, as has been recognised by case law on several occasions.

We are well aware of the **right of access to the file** which is based on the provisions of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations (LPACAP) set out in article 53.1.a) in which the interested parties have the right to access and obtain copies of the file **at any time during the procedure**, however, in practice, there have been cases in which the Administration has restricted this access, either by delaying the delivery of documentation or by limiting access to certain key reports.

The doctrine has pointed out that restricting access to the case file until after the accused has been questioned can generate situations of defencelessness. According to Marina Jalvo (2020), this practice prevents the official from knowing the evidence against them before their statement, negatively affecting their right to an effective defence. Furthermore, the jurisprudence of the Constitutional Court has recognised the application of principles of criminal law to the disciplinary field, in this sense, Marina Jalvo (2020) argues that criminal guarantees are projected in the disciplinary field, with many of the principles that guide and orient this discipline of law being applicable, a right to full defence and consequently the right to know the evidence against them in the case file.

However, it is common practice, and in accordance with the law if the provisions of article 4 of Royal Decree 33/1986 are strictly applied, where such access is effective for the first time, after the statement of charges, once the allegations have been presented, and where the evidence of the accused has to be taken with a complete lack of knowledge of the evidence against them in the case file. This practice hinders the presentation of allegations, as well as the proposal of evidence and, ultimately, violates the official's right of defence, which has been the subject of judicial

pronouncements that insist on the need to guarantee this access in an effective manner.

According to García de Enterría and Fernández (2008), this restriction violates procedural fairness, as it forces the official to formulate their defence in the dark, without knowing the evidence against them in advance.

4. THE EDUCATIONAL INSPECTOR'S REPORT AS EVIDENCE FOR THE PROSECUTION

One of the most frequently used pieces of evidence in disciplinary proceedings against teachers is the educational inspector's report. This document, drawn up by education inspectors, can have a decisive weight in the grounds for the sanction, but it also raises serious questions in relation to the right to defence.

4.1. Nature and probative value of the inspector's report

The inspector's report is a technical document that contains inspector's assessment of the teacher's performance. Its characteristics include the following:

- **Description of facts:** the report includes a detailed description of the facts observed and, in many cases, ascertained by third parties, which may cover aspects related to teaching performance, relationship with pupils and colleagues or compliance with educational regulations.
- **Technical opinion:** in addition to describing the facts, the report provides a technical assessment of the teacher's conduct, based on

professional and normative criteria.

- **Evidentiary value:** although this report enjoys a **presumption of objectivity**, its documentary nature does not make it unappealable. The official has the right to challenge its conclusions and to provide evidence that contradicts or qualifies the assessment made by the inspector. According to García de Enterría and Fernández (2008), administrative reports, although they have a presumption of veracity, are not conclusive evidence in themselves and can be challenged by means of evidence to the contrary. In this line of argument, according to Parra Vera (2013), the presumption of veracity of an administrative report does not exempt the Administration from the obligation to prove the facts reliably when they are challenged.

4.2. Legal problems arising from the use of the inspector's report

The use of the educational inspector's report as prosecution evidence can create a number of problems in disciplinary proceedings:

4.2.1. Lack of immediacy and adversarial proceedings

Given that the report is drawn up unilaterally by an inspector, which becomes a "pre-constituted truth" giving rise to the opening of the file and in the initial phase of the case without the direct intervention of the teacher, there is a risk of violating the principle of immediacy and adversarial principle.

- **Principle of Immediacy:** the absence of direct contact between the inspector and the defendant at the pre-trial stage may lead to distorted or incomplete interpretations of the facts.

- **Adversarial principle:** as a result of the above, if the report is presented as definitive evidence without the teacher having the

opportunity to contradict it or to request clarification, there is a clear violation of the right to defence.

As Gómez Colomer (2006) points out, the right to be heard implies that all evidence must be subjected to debate before being considered in the resolution of a sanctioning procedure.

4.2.2. Absence of direct witness evidence

Sometimes, the report is based on testimonies or indirect data that have not been subjected to direct questioning. This prevents the teacher from effectively confronting the evidence and subjecting it to the contradictory assessment required by the process, both in the preliminary proceedings and in the evidence phase, as they are unaware of the content of the disciplinary file. Let us remember what is specified in art. 41 of the Royal Decree 33/1986, which states that said file can be accessed once the statement of charges has been answered. According to Roxin (2000), the right of defence is seriously affected when testimonies are used which are not subject to contradiction or when the accused is unaware of the content of the prosecution's evidence until a late stage in the proceedings.

4.2.3. Lack of motivation or impartiality

The report must be duly motivated and based on objective facts. However, it is sometimes observed that the inspector's assessment is based on subjective value judgements or on criteria that may be biased. This affects the legitimacy of the evidence and, consequently, the right to an adequate defence. For Parada Vázquez (1999), the motivation of administrative acts is an essential guarantee of due process, and its absence can be a cause for the nullity of the sanction imposed.

4.3. Strategies for challenging an inspector's report

In the event that the educational inspector's report is used as the only evidence against the teacher, there are various strategies available to the teacher to contradict it:

- **Request for clarification or amplification:** the respondent may request that the report be clarified or supplemented, requiring that the basis for the value judgements be clarified and that additional evidence be provided to support the conclusions.

- **Proposal of contradictory evidence:** additional evidence (such as expert opinions, testimonies or alternative technical reports) may be requested to contradict or qualify the version presented in the report.

- **Allegations at the hearing stage:** during the hearing stage, the teacher may make specific allegations questioning the veracity and completeness of the report.

- **Judicial challenge:** if the use of the report is decisive for the imposition of the sanction, it may be appealed before the contentious-administrative jurisdiction, arguing the violation of the principle of immediacy and adversarial principle. As García de Enterría and Fernández (2008) state, the administration cannot base a sanction exclusively on a report if it has not been subjected to contradictory debate, and likewise Parra Vera (2013) points out that a disciplinary procedure that limits the defence of the accused with the exclusive use of documentary evidence without effective contradiction is contrary to the principles of due process.

5. INFRINGEMENT OF THE RIGHTS TO DEFENCE AND RECOURSE TO CONTENTIOUS-ADMINISTRATIVE JURISDICTION

Effective protection of the right to a defence is an essential requirement in disciplinary proceedings. When violations occur, the teaching staff member has various means of appeal, both through administrative and judicial channels.

5.1. Frequent causes of violations of the rights of the defence

Situations that may give rise to a violation of the right to defence include:

- **Lack of proper notification:** non-communication or defective communication of charges and file documentation creates defencelessness.

- **Unjustified refusal of evidence:** refusal to admit or take relevant evidence requested by the teacher violates the right to contradict the charge.

- **Insufficiently reasoned decision:** the lack of a clear and complete statement of the proven facts and of the legal grounds prevents the defendant from knowing the reasons for the sanction.

- **Exclusive use of unilateral reports:** the exclusive reliance on the educational inspector's report, without the possibility of contradiction, seriously affects the right to defence.

- **Limitation of the right of access:** preventing or restricting full access to the file, especially at stages prior to the formalisation of the statement of objections, weakens the possibility of an effective defence.

5.2. Review of the sanction in administrative proceedings

Before going to court, the official has administrative remedies to challenge the sanction. These remedies include the following:

- **Appeal for reconsideration:** this is lodged with the same body that issued the decision, allowing it to review and, if necessary, correct the defects detected.

- **Appeal to a higher authority:** this is lodged with the hierarchical superior of the sanctioning body. This appeal is compulsory in some cases and optional in others, depending on the applicable regulations.

These appeals must be lodged within the established legal time limits and must be based on the infringements found, in particular those affecting the rights of the defence.

5.3. Contentious-administrative proceedings

When the administrative remedies fail to correct the violations or when the procedure is considered to have suffered from insurmountable defects, the teacher may resort to the contentious-administrative jurisdiction.

5.3.1. Deadlines and procedure

- **Time limit for lodging the appeal:** generally, the contentious administrative appeal must be lodged within two months of the notification of the sanctioning decision.

- **Procedure:**

1. **Filing of the complaint:** the file must be included, detailing the facts, the procedural violations and with the request of the annulment or review of the sanction.

2. **Response of the Administration:** the sanctioning entity presents its defence and the arguments that justified the decision.

3. **Evidence:** documentary, testimonial and expert evidence may be admitted to support the allegations.

4. **Judgment:** finally, the judicial body issues a judgment in which, depending on the assessment of the evidence and the existence or not of violations, it confirms, modifies or annuls the sanctioning decision.

5.3.2. Possible outcomes

The court, after assessing the proceedings, may:

- **Declare the sanction null and void:** if it is found that fundamental rights, such as the right to defence, have been violated.
- **Order the reinstatement of the proceedings:** to remedy the procedural defects and to take the necessary evidence.
- **Uphold the sanction:** in the event that, despite the allegations, it is demonstrated that the procedure has been carried out correctly and that the sanction is proportionate.

The jurisprudence of the Spanish courts has been decisive in the protection of the right to defence in the disciplinary field and has contributed to delimit the scope of procedural guarantees and to reinforce the obligation of the administration to act with total transparency and respect for the rights of the defendant.

Authors such as García de Enterría (2002) argue that the right to a defence is a fundamental pillar of the rule of law, but that its effectiveness in administrative proceedings is limited due to the principle of administrative self-protection. Along these lines, Muñoz Machado (2019) stresses that the overload of the contentious-administrative courts and the procedural complexity limit the real exercise of this right. It is argued that the administration continues to act with a presumption of validity that hinders the citizen's effective defence.

6. CONCLUSIONS

The right to a defence in disciplinary proceedings against teachers in Spain is a fundamental guarantee that is based on a wide range of regulations and procedural principles that must be complied with. From the notification of the charges to the imposition of the sanction, it is essential that the procedure respects the following aspects:

- **Transparency and access to information:** the official must know the full facts of the case, have access to the entire file and to the evidence used against them.

- **Active participation and contradiction:** the possibility of making allegations, providing evidence and being present during the taking of statements - especially in the opening phase - is crucial to ensure that the evidence is directly and immediately assessed, allowing any one-person elements to be contradicted.

- **Procedural guarantees at each stage:** from the issuing of the initial decision to the final reasoning of the sanctioning decision, the procedure must provide the teacher with every opportunity to defend themselves and to contradict the accusation.

- **Strict application of the principle of immediacy and adversarial principle:** these principles ensure that the assessment of the evidence is carried out directly by the investigator and that the defendant has the possibility to interact with the evidence, asking questions and requesting clarifications.

- **Effective judicial protection:** the existence of appeals administrative and, ultimately, the contentious-administrative route, guarantees that teachers can challenge any infringement of their right to defence, contributing to the legality and transparency of the

procedure.

In short, respect for the right to defence not only protects the teaching staff member, but also strengthens legal certainty and the legitimacy of administrative action. Disciplinary proceedings that do not guarantee these essential guarantees may result in arbitrary or unjust decisions, seriously affecting the career and integrity of the person concerned. It is therefore essential that both the administration and the judicial bodies ensure that these principles are observed, guaranteeing that the sanction is imposed only after an adversarial, balanced and fully reasoned process.

7. BY WAY OF EPILOGUE.

From the peace of mind that comes from the vantage point of belonging to the class euphemistically called "Passive Classes", it occurs to me to put forward a series of Proposals to the Administration and the Instructors to Guarantee the Right to Defence of the Accused in Disciplinary Proceedings, and for this reason we insist that the right to defence in disciplinary proceedings of civil servants is a fundamental guarantee that must be protected at all stages of the process. In order to strengthen this guarantee and avoid situations of defencelessness, it is necessary that both the Public Administration and the investigators of the proceedings adopt a series of measures that ensure a transparent and fair sanctioning procedure that respects the rights of the accused.

1. Proposals for Public Administration

1.1. Ensure Full and Immediate Access to the File

- Modify the procedure so that access to the disciplinary file is effective from the initial phase, allowing the accused to be aware of all the evidence against them before they present their first allegations.
- Implement digital platforms that facilitate access to documentation in real time, avoiding unjustified delays.
- Before opening disciplinary proceedings, the administration should rule out that the alleged disciplinary offence is not caused by other circumstances such as mental health.
- The administration should be careful to notify in detail the alleged facts and the evidence against them in the decision to open the case.

1.2. Regulating the Use of the Educational Inspector's Report

- Prevent the educational inspector's report from being treated as irrefutable evidence, requiring that it be subject to contradiction by means of ratification by the inspector in the procedure, as well as being subject in the preliminary proceedings phase to the adversarial principle of all witnesses who are cited in the report.
- Require that any assessment contained in the report be based on objective evidence and not on mere indications or value judgements.

1.3. Implementation of a Code of Good Practice

- Draw up and publish a protocol of action with uniform criteria for the investigation of disciplinary proceedings, ensuring that the guarantees of the accused are respected.
- Set out specific recommendations on the right to defence, access to evidence and proportionality of sanctions.

1.4. Training of Instructors

- Design and implement mandatory training programmes in administrative law and administrative sanctioning law and procedural guarantees for all officials involved in the processing of disciplinary files.

1.5. Ensuring Contradiction and Arms Equality

- Modify the procedure to allow the defendant to be present at all testimonial evidence and to ask questions of witnesses and experts.
- Create a specific protocol to prevent the arbitrary refusal of evidence requested by the defendant, requiring a reasoned justification for each refusal.
- Establish a presumption of good faith on the part of the accused official, avoiding an excessive burden of proof on their defence.

2. Proposals for Disciplinary File Instructors

2.1. Effective Application of the Principle of Immediacy

- Take evidence in person and directly from witnesses and the defendant, avoiding exclusive reliance on written documents or administrative reports.
- Collect detailed minutes of the declarations to ensure that they can be reviewed in case of appeal.
- Allow the defendant or their representative to intervene in the testimony phase, guaranteeing the right to contradict.

2.2. Rigorous Motivation of Instructive Acts

- Issue reasoned decisions and statements of objections that clearly explain:
 - The alleged facts.
 - The tests used.
 - The relationship between the evidence and the proposed sanction.
- Avoid the use of generic arguments, ensuring that each decision is based on a detailed analysis of the specific case.

2.3. Ensuring the Right to Present Evidence

- Ensure that the defendant is able to propose and give evidence, allowing them to question witnesses and present expert reports.
- Do not reject evidence without a solid legal motivation, preventing discretion at the pre-trial stage.

- Allow evidence on equal terms, ensuring that evidence on the defence has the same probative value as evidence on the prosecution's case.

2.4. Avoiding the Exclusive Use of the Inspector's Report as a Basis for Sanctions

- Consider that the inspector's report cannot constitute the only evidence for sanctioning, requiring its ratification and its contrast with other objective evidence.
- Avoid automatic application of sanctions without a critical analysis of the content of the report.

2.5. Promoting Proportionality in Sanctions

- Apply the principle of proportionality when determining the sanction, avoiding decisions that are disproportionate to the seriousness of the offence committed.
- Consider mitigating circumstances and analyse the context of the offence before proposing disciplinary sanctions.

The proposals set out above are aimed at strengthening the guarantees of the right to defence in disciplinary proceedings of civil servants. Both the public administration and the investigators must adopt measures to ensure transparency, impartiality and fairness in the processing of cases.

Immediate access to the file, effective contradiction of evidence, impartiality of the investigator, rigorous motivation of decisions and the

application of the principle of proportionality are essential elements to guarantee a fair disciplinary procedure, ensuring that any sanction imposed is the result of a rigorously legal, transparent and due process procedure.

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