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EL PAPEL DE LA INSPECCIÓN DE EDUCACIÓN EN LAS ACTUACIONES PREVIAS A LA INCOACIÓN DEL PROCEDIMIENTO DISCIPLINARIO

THE ROLE OF THE EDUCATIONAL INSPECTORATE IN PRELIMINARY ACTIONS PRIOR TO THE INITIATION OF DISCIPLINARY PROCEEDINGS

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Resumen

Las actuaciones previas previstas en el artículo 55 de la Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas (LPACAP) son las primeras averiguaciones que, como órgano inspector, la Inspección de Educación realiza ante una situación de presunto incumplimiento.

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Sus características han sido definidas por la jurisprudencia al igual que otras cuestiones como la garantía de derechos de los investigados durante este proceso.

Este artículo pretende realizar un acercamiento conceptual a las actuaciones previas (información reservada), analizando cuestiones formales, exigencias jurisprudenciales y el necesario respeto a los principios de la potestad sancionadora que deberá verse reflejado tanto en la actuación del inspector como en el informe con la propuesta de incoación correspondiente, observando las cuestiones básicas a las que se debe atender.

Palabras clave: actuaciones previas, inspección educativa, procedimiento administrativo, LPACAP, potestad disciplinaria, derechos de los interesados.

Abstract

The preliminary actions provided for in article 55 of Law 39/2015, of october 1, on the Common Administrative Procedure of Public Administrations (LPACAP), are the initial investigations carried out by educational inspectors, acting as inspection authorities, when faced with a situation of alleged non-compliance.

Their characteristics have been defined by case law, along with other matters such as the guarantee of the rights of the individuals under investigation during this stage.

This article aims to offer a conceptual approach to preliminary actions (also referred to as confidential inquiries), analyzing formal aspects, jurisprudential requirements, and the necessary respect for the principles of sanctioning power, which must be reflected both in the inspector's actions and in the report proposing the initiation of disciplinary proceedings.

Keywords: preliminary actions, educational inspection, administrative procedure, LPACAP, disciplinary authority, rights of stakeholders.

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1.- INTRODUCTION.

The preliminary actions (reserved information in the Administration's usual terminology) regulated in Article 55 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations (LPACAP), form part of the daily work of the Education Inspectorate and constitute a tool of special relevance for ensuring a proper proposal for the initiation of disciplinary administrative proceedings. These inquiries provide an initial factual basis and indicative and documentary elements obtained from the measures carried out, which make it possible to guide the decision to initiate proceedings with greater precision. Their main benefit lies in enabling the Administration, before adopting a formal decision, to have sufficient preliminary information regarding the facts, the persons involved, and the relevant circumstances, thus avoiding the unnecessary opening of proceedings or, where appropriate, ensuring that those proceedings that are initiated are based on due legal grounds, thereby avoiding the opening of unnecessary cases whose outcome would be dismissal or closure.

In addition to preliminary actions, and notwithstanding the fact that they constitute a first approach to the possible existence of the liability of the person under investigation, they must not cease to safeguard that person's rights, thereby ensuring correct action by the Administration in the exercise of its self-protective powers.

In this context, the diligent and technical action of the Education Inspectorate is essential in pursuing an initial analysis of situations with objectivity, a specialised legal-technical perspective, and a documented proposal, with the purpose of facilitating the proper initial assessment of the situation by the authority initiating the proceedings and, where appropriate, by the subsequent investigating authority. In this way, the rights of interested parties are reinforced, the adoption of arbitrary decisions is prevented, and respect is ensured for the principles of

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legality, effectiveness, and good administration, which must govern the exercise of sanctioning power.

2.- DELIMITATION OF THE CONCEPT OF PRELIMINARY ACTIONS: LEGAL NATURE AND JURISPRUDENTIAL CHARACTERISTICS.

With a long tradition in our legal system, the so-called "preliminary actions" (Art. 69.2 of Law 30/92 on the Legal Regime of Public Administrations and the Common Administrative Procedure) and, earlier, "reserved information" (Art. 134.2 of the Administrative Procedure Act of 1958), appear in Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations (LPACAP), in Article 55 as "information and preliminary actions," and are situated within the initiation phase of the procedure (Title IV; Chapter II).

They fall within the supervisory and oversight powers vested in educational administrations under Article 103 of the Spanish Constitution of 1978, which requires the Administration to act in accordance with the law and in full submission to the law.

If one looks at their legal nature, preliminary actions may be defined as pre-procedural and discretionary measures that the Administration may carry out prior to proceedings, which may be disciplinary in nature or otherwise, and whose purpose is to determine, with the greatest possible precision, whether their initiation is appropriate.

In matters concerning staff liability, "the initiation of disciplinary proceedings may be preceded by reserved information, ..., in order to analyse the circumstances of the case and the advisability of initiating the procedure" (Marina Jalvo, 2015, p. 113). These preliminary investigative measures make it possible to assess whether sufficient grounds exist to initiate proceedings, establishing an extremely provisional accusation proposal and providing the competent authority with the initial information necessary regarding the facts, persons, and circumstances (Art. 55 LPACAP). It may be said that they "constitute a contingent preliminary

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administrative action aimed at verifying whether, prima facie, there is a serious basis for opening the sanctioning procedure proper" (Montoya Martín, 2008, p. 197).

By way of analogy, and consistently with constitutional doctrine (Constitutional Court Judgment 18/1981, of 8 June, ECLI:ES:TC:1981:18), preliminary actions in administrative disciplinary law and investigative measures in criminal law share their preliminary investigative purpose, but differ in their system of safeguards, degree of formality, and procedural consequences, with safeguards being more strongly reinforced in the criminal sphere.

The various and repeated rulings, as well as the numerous conclusions reached by case law, with special interest in the judgments of the Supreme Court, make the study of these investigative measures, their characteristics, and their procedural safeguards highly relevant, as they form part of the ordinary work of the Education Inspectorate.

2.1.- DISCRETIONARY CHARACTER.

On the basis of the foregoing definition, the first characteristic that should be underscored is the discretionary character of preliminary actions. They are discretionary impulse measures, the use of which is left to the judgment of the competent authority in accordance with the purpose that justifies them: to have minimally verified initial information enabling it to decide, with greater precision, whether or not the relevant procedure should be initiated.

"With this, the purpose is to avoid the direct and immediate initiation of disciplinary proceedings, allowing the competent authority first to assess whether or not there are rational indications of the commission of conduct classified as a disciplinary offence and to proceed accordingly." (Supreme Court Judgment 1181/2023, of 25 September, ECLI:ES:TS:2023:3748).

In other words, this prior processing, of very great practical utility, cannot be regarded as a mandatory step, since the competent authority may order it, but is

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not compelled to conduct it in every case, not even where indications exist. Indeed, the very rationale of these measures explains the exception to the rule, since where rational and manifest indications exist, the opening of reserved information may generate unnecessary delay, and direct initiation of proceedings may prove more appropriate.

In this regard, case law has specified that "the sole meaning of formally declaring that period open is, essentially, to provide a legal framework for an action that the Administration may in any event undertake by virtue of its powers of control or supervision in the relevant field" (Supreme Court Judgment 2380/2015, of 6 May 2015. ECLI:ES:TS:2015:2380). Therefore, where there is an indication of irregularity, such as a complaint or report, it is not incompatible for minimal verification measures to be undertaken in order to assess whether initiation is appropriate, provided that such measures are limited to what is strictly necessary.

In the educational field, this discretionary configuration is directly linked to the ordinary work of the Education Inspectorate insofar as inspection staff participate in the initial verification of the facts and in the drafting of reports or proposals. Our intervention provides the basis for the decision to initiate proceedings, avoiding automatic responses or responses lacking sufficient indicia. Inspectorial action performs a legal-technical filtering function that guides administrative action so that disciplinary proceedings are initiated only when the facts display sufficient substance and initiation is justifiable on duly reasoned grounds.

In conclusion, by carrying out these preliminary checks, the Education Inspectorate helps the Administration adopt the most appropriate decision with regard to a possible initiation of proceedings, supported by sufficient indicia and adequate reasoning, without distorting this prior phase or improperly anticipating the investigation.

2.2.- ABSENCE OF PROBATIVE VALUE.

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As a main point to be borne in mind, "preliminary actions and measures have no probative value, since they have not been carried out by the investigating officer (principle of immediacy), nor has their performance been governed by the principle of adversarial proceedings" (Marcos & Suero, 2023, p. 26).

Moreover, it should be borne in mind that "any evidence taken in the framework of reserved information, since it in no way possesses the safeguards required in disciplinary proceedings, may not be taken into account in any subsequent proceedings derived from it, because in reality it does not constitute such evidence, unless it is taken again or ratified within the disciplinary proceedings, by then endowed with the principles of immediacy and adversarial proceedings that are considered essential in a process furnished with the necessary safeguards, as established by Article 24 of the Constitution" (Marcos & Suero, 2023, p. 8).

Since preliminary actions do not form part of the case file, they not only lack probative value, but also do not bind the investigating officer with regard to the evidence taken, who may choose either not to consider it or to admit it. If the latter option is taken, the evidentiary phase of the proceedings will be closely connected with such actions, since all measures undertaken that are intended to be taken into account must be incorporated through the decision ordering the taking of evidence. At the very least, they must be listed therein, indicating their incorporation as means of evidence, in order to confer probative value upon them while guaranteeing the principles of immediacy, defence, and adversarial proceedings, which the interested party will exercise through the hearing stage of that phase.

2.3.- PROCEDURAL HANDLING AND TIME LIMIT.

Preliminary actions do not have a regulated procedure established by law and therefore are governed by the common administrative procedure (Supreme Court Judgment 1181/2023, of 25 September, ECLI:ES:TS:2023:3748).

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As regards the form of initiation, they may be ordered ex officio by the competent authority (by superior order, by initiative arising from the supervisory function, or on the basis of technical criteria appreciated by the Inspectorate), or on the basis of facts brought to the Administration's attention by a third party (complaint, report, or request), without this alone conferring the status of interested party.

As regards their appropriateness, the Supreme Court has warned that their purpose is limited and must serve solely to gather the indicia necessary to decide whether or not to initiate proceedings, without being distorted into a disguised or parallel sanctioning procedure (Supreme Court Judgment 618/2019).

Accordingly, the prior investigation must be "necessarily brief" (Supreme Court Judgment 2380/2015), ordinarily compatible, unless the matter is complex, with the 10-day period laid down for the issuance of reports in Article 80 LPACAP.

Case law has also warned against the improper use of preliminary actions to impose disguised sanctions, since this infringes the rights of the person under investigation and may lead to the nullity of the actions. It is essential that these measures be used in a proportionate manner and with due respect for the principles of good administration and legality, since any administrative sanction requires prior adversarial proceedings that respect the principles of hearing, defence, and presumption of innocence (Art. 24 of the Spanish Constitution).

2.4.- HEARING STAGE.

The Spanish Constitution states in Article 105 that "The law shall regulate: … c) the procedure through which administrative acts are to be produced, guaranteeing, where appropriate, the hearing of the interested party."

In this regard, these measures, by reason of their preliminary character, do not require the formalities specific to disciplinary proceedings insofar as their purpose is to determine whether there are facts that may be subsumed under a

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specific punishable disciplinary type capable of leading, or not, to the initiation of proceedings. However, they must be carried out in such a way as not to produce defencelessness, ensuring that the potential person under investigation has sufficient knowledge of the essential elements and an effective possibility of contradiction in the proceedings that may, where appropriate, be initiated.

Without prejudice to the foregoing, and taking into account the possibility of affording a hearing, as a general rule obtaining the version of the person concerned may be prudent, appropriate, and legally more protective, since it may help to delimit, complete, and qualify the information obtained. This understanding of the situation through the taking of a statement from the presumed responsible party could even orient the actions towards other instruments available to the Inspectorate, such as instructions or a formal requirement, thereby avoiding disciplinary proceedings.

This consideration regarding the hearing of the interested party is stated in general terms because it must be assessed and weighed on a case-by-case basis, since in certain matters or contexts it may be appropriate and in the interest of the procedure to maintain a degree of confidentiality until possible initiation, whether to ensure the effectiveness of verification, avoid interference in the gathering of data, or protect other concurrent public interests.

As regards the possibility of redirecting certain incidents that lead to the conduct of these actions, and without viewing it as a dichotomous proposal alternative to the initiation of disciplinary proceedings, it is common that, as a result of the inquiries, situations are detected whose seriousness, isolated character, attitude of the official involved, or other factors, make it more appropriate to conclude by means of the alternatives previously mentioned. Moreover, such closure through non-sanctioning routes may, where appropriate, reinforce the solidity of subsequent disciplinary action, insofar as it reveals that the Administration has weighed the circumstances of the case before activating the

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administrative ius puniendi. It should not be forgotten that disciplinary power constitutes the Administration's most intense response to certain conduct and, for that reason, its activation must be coherent with the principles of proportionality and minimum intervention. Precisely for this reason, preliminary actions make it possible to direct administrative action towards corrective or redirecting measures when this is sufficient to restore legality and ensure the proper functioning of the service.

2.5.- LIMITATION PERIOD.

"Prescription [limitation] is the extinction of a right or an action by the lapse of time, under certain legal conditions, without its holder having exercised the corresponding power to claim or act" (García de Enterría & Fernández Rodríguez, 2013). By way of a more comprehensible formulation, limitation is the maximum time limit for initiating proceedings.

In disciplinary proceedings, the limitation period (or maximum time limit for initiation) is that provided for the allegedly committed offence, since if proceedings are not initiated, administrative liability would automatically be extinguished and therefore the Administration's right to impose sanctions would lapse.

Certain acts interrupt limitation, but this is not the case with preliminary actions, since only the decision initiating proceedings marks the start of the case. Therefore, the "preliminary actions prior to the proceedings, which do not form part thereof nor have the effect of interrupting limitation of the offence that may have been committed" (Marina Jalvo, 2015, p. 113).

In conclusion, the conduct of preliminary actions must be agile, not only out of respect for the principle of good administration, but also because some time limits are short. Attention must be paid to differences in time limits depending on the type of staff involved.

2.6.- CADUCITY.

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"Caducity is the termination of administrative proceedings due to inactivity on the part of the Administration or the interested party during the legally established period, preventing their valid continuation or the obtaining of the intended final act" (García de Enterría & Fernández Rodríguez, 2013).

Caducity is one of the modes of termination of administrative proceedings provided for in Article 84.1 LPACAP. Unlike limitation, which extinguishes the right of action, caducity affects only the proceedings themselves.

These actions can never produce caducity in disciplinary proceedings, since they do not form part of the procedure per se. As confirmed by case law (Supreme Court, Administrative Chamber, judgment of 14 July 2009, Appeal 4682/2007. ECLI:ES:TS:2009:4789), the calculation of time limits in disciplinary proceedings begins with the decision to initiate them, which marks the start of the caducity period. That same judgment confirms that preliminary actions, reserved information, or preliminary investigative actions do not constitute sanctioning proceedings proper.

From a jurisprudential standpoint, no caducity period is observed in the preliminary actions themselves (Supreme Court Judgment 4599/2015), since no regulated procedure exists, although the recommendation of brevity is insisted upon (Supreme Court Judgments 2380/2015 and 618/2019), in view of the characteristics and purpose of this phase.

3.- THE ROLE OF THE INSPECTORATE IN THE CONDUCT OF PRELIMINARY ACTIONS.

Preliminary actions are contextualised as a phase of internal and preparatory investigation, typically entrusted to inspection units or staff designated for that purpose, in order to gather data, evidence, or reports concerning conduct that may eventually be sanctioned. This is clearly stated in Article 55.2 LPACAP, which provides that "preliminary actions shall be carried out by the bodies entrusted with functions of investigation, inquiry, and inspection in the matter and, in default

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thereof, by the person or administrative body determined by the authority competent to initiate or resolve the proceedings."

In the educational sphere, Organic Law 2/2006, of 3 May, on Education, as amended by Organic Law 3/2020, of 29 December, amending Organic Law 2/2006, of 3 May, on Education (hereinafter, LOE), begins Title VII, concerning the Inspection of the Educational System, with Article 148, which establishes the bases of inspection of the educational system, assigning the constitutional responsibility (Art. 27 of the Spanish Constitution) of public authorities to the Administrations of the respective territorial sphere, which shall exercise that mandate through the Education Inspectorate, as stated and specified in Article 152 of the same legal text.

In conclusion, there can be no doubt that the handling of these preliminary actions in the educational sphere falls to the Education Inspectorate, which may also be inferred from Article 153.e) LOE when it refers to the power to "issue reports and make formal requirements where breaches in the application of the regulations are detected, and to draw up records, either on its own initiative or at the request of the corresponding administrative authority."

Within the functions of the Education Inspectorate, preliminary actions may be directly linked to those classified as control, supervision, and reporting functions. However, since it is an institution of a protective nature, a safeguard against administrative self-protection, conceived for the benefit of persons subject to administrative action and intended to prevent them from being subjected to unfounded proceedings, it must in its conduct remain very close to the inspector's function as guarantor of rights, stated as follows: "to advise, guide and inform the different sectors of the educational community in the exercise of their rights and in the fulfilment of their obligations." In this case, the inspector occupies a guarantor position vis-à-vis all participants in the investigation, with special attention to the person presumed to have committed the infringement.

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As will be seen below, in light of certain jurisprudential rulings on rights that are relevant to this subject, the inspector, in these inquiries, just as must occur in the investigation of disciplinary proceedings, must not pursue the sanctioning of the person under investigation. The role adopted is the usual one of guaranteeing rights and duties, protecting the public interest while at the same time safeguarding the individual rights of the members of the educational community.

This safeguarding position, and the very conduct of these actions as case law indicates, constitute a guarantee of the proper exercise of sanctioning power. Accordingly, these measures are intended to avoid imputations lacking legal or factual basis, as well as the precipitate initiation of sanctioning proceedings (National Court judgment of 17 October 2007, Appeal 180/2006. ECLI:ES:AN:2007:4988).

Ultimately, the role of the Education Inspectorate in preliminary actions cannot be understood as a merely instrumental intervention or as simple data collection. Its true and most valuable contribution lies in verifying the initial facts with maximum objectivity, properly delimiting their legal relevance, safeguarding the rights of the persons concerned, and providing the competent authority with a sufficiently grounded basis for deciding on initiation. Thus, for these actions to be carried out with full rigour and without distorting this preliminary phase, it is necessary to address and understand the aspects analysed in the following sections, namely the rights and guarantees of persons under investigation during the handling of the matter, the proper construction of the report on the basis of the principles of sanctioning power, and the coherence between those principles and the general content of inspectorial action.

3.1.- RIGHTS OF INTERESTED PARTIES IN PRELIMINARY ACTIONS.

The rights of persons under investigation in these preliminary actions have advanced considerably thanks to the interpretations developed by case law in granting them the status of interested parties. Despite the preparatory nature of

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this phase, case law has emphasised the status of interested party acquired by a person when investigated as a presumed responsible party. Recognition of this status automatically places those under investigation in the position of holders of all the rights recognised in Article 53 of Law 39/2015 LPACAP. This represents progress in the protection of fundamental rights within the sphere of disciplinary administrative proceedings.

Supreme Court Judgment 1181/2023, of 25 September 2023, is one of the main milestones in this regard. That judgment establishes that the official in respect of whom prior or reserved information has been opened, even where no sanction is subsequently imposed, has the right to access that file. In its seventh legal ground, the Court recognises that, in such cases, the official acquires the status of interested party in the procedure, pursuant to Article 4 of Law 39/2015, and is therefore entitled to the rights laid down in Article 53 of that law, including access to the file and the right to obtain copies of the documents it contains.

On the basis of the principles of transparency and the right of access to public information, Supreme Court Judgment 484/2024, of 19 March 2024 (ECLI:ES:TS:2024:1555), likewise grants the person under investigation the right of access to files that have been closed without giving rise to the opening of disciplinary proceedings. This judgment recognises the right to obtain a full certified copy of the inspection measures concerning him or her, even where they concluded without sanction.

For Arévalo (2023), "the Inspectorate must ensure the rights of all members of the educational community with impartiality and transparency as regards the purposes of its actions and the instruments and techniques used." Fully agreeing with the importance of these principles, it must be borne in mind, in the conduct of preliminary actions by Education Inspectors, that procedural safeguards are reinforced, as occurs in all phases of investigation, such that persons under investigation possess rights as basic and indispensable as the right to know the

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status of the proceedings or to access the documents in the file, in order to avoid defencelessness.

With regard to the right to obtain a copy, Supreme Court Judgment 1181/2023, of 25 September 2023 (ECLI:ES:TS:2023:3748), recognises the nature of preliminary actions (reserved information) as administrative procedure. In this way, the right is legally grounded in relation to the personal data contained in the matter. "We fully share the consideration accorded to the documents encompassed within the concept of reserved information, where their content may affect the honour or interests of the person concerned, or against whom those measures were opened and subsequently ended with the classification of reserved" (Arévalo, 2023).

To summarise this issue, we rely on the words of Professor of Administrative Law Jesús Fuentetaja, who concludes that "these preliminary actions do not form part of sanctioning proceedings, and therefore the scope of procedural fundamental rights depends on balancing the effectiveness of these actions —for example, there is no need to notify their conduct— against the defence rights of the investigated official —the right not to incriminate himself— (Constitutional Court Judgment 142/2009). In any case, the official's right to access the file of prior or reserved information is recognised" (Supreme Court Judgment of 25 September 2023)" (Montero, 2024, p. 249). In this regard, where a statement is taken from the person who might ultimately become subject to disciplinary proceedings, it is advisable to inform that person of the right not to incriminate himself or herself, in order to avoid possible nullity of the testimony. It is advisable to record the communication of rights formally in the record drawn up when taking the statement. This information should be placed before the list of questions.

"The rights of persons subject to administrative action constitute the limit of inspectorial activity, which on occasion is not ordinary or independent but rather constitutes the very object of the preliminary actions" (Fernández Rodríguez, 2023, p. 158). Therefore, the Education Inspectorate must approach the conduct of these

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inquiry measures from its usual position as guarantor of the rights of members of the educational community, and without hesitation in granting such safeguards to persons under investigation, since iudex non est accusator.

3.2.- PROCESSING AND PROPOSAL: PRINCIPLES OF SANCTIONING POWER.

The phases and acts constituting the conduct of disciplinary proceedings in the context of administrative procedure must be carried out within the general framework of Article 103 of the Spanish Constitution, guaranteeing legality, efficiency, and the rights of interested parties, and always with absolute respect for the principles of the Administration's sanctioning power set out in Articles 25 to 31 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, and in their specific projection onto the disciplinary sphere of public employment.

Consequently, Article 94 TREBEP states that the disciplinary authority must act, among other matters, in accordance with principles such as legality and typicity of offences and sanctions, the non-retroactivity of unfavourable sanctioning provisions, and the retroactivity of favourable ones. Proportionality, culpability, and the presumption of innocence must also be taken into account. Although preliminary actions do not yet constitute disciplinary proceedings proper, they are aimed at determining whether or not the exercise of the administrative ius puniendi should be activated. It is therefore essential that these actions maintain a minimum coherence with the principles that will govern the possible opening and subsequent conduct of the proceedings.

In this context, both constitutional case law and that of the Supreme Court have repeatedly held that administrative sanctioning law is connected to the logic of the State's punitive power. This means that the guiding principles of the criminal legal order are applicable, albeit with the particular features proper to the administrative sphere, to sanctioning proceedings (Constitutional Court Judgment 18/1981 of 8 June. ECLI:ES:TC:1981:18). Thus, it is repeatedly emphasised that, in order to impose a sanction, there must be clear evidence of authorship, typified

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unlawfulness of the facts, and their attribution, whether intentional, negligent, or reckless. The construction of sanctions on the basis of vague assertions or lack of reasoning cannot be accepted.

This similarity of foundation also carries a key warning for preliminary actions: they must not become a parallel or disguised route that circumvents safeguards, nor an anticipated investigation that departs from the proper procedure, since this could compromise the validity of the file and, above all, the right of defence of the person under investigation.

In order to understand some of the principles to which this relationship refers, it is useful briefly to set out part of the basic content of the general part of criminal law concerning the structure of the offence. Thus, "it is possible to distinguish five categories constituting what we may call the analytical concept of the offence: the existence of conduct —action or omission—; its typicity or the correspondence of the action or omission with the elements grounding the unlawfulness of a typified form of conduct laid down by law; the unlawfulness or contrariety to law of the typified conduct; culpability, or personal reproachability of that unlawful conduct; and its punishability. These elements are structured by a sequential logical relationship: only an action or omission can be typified; only a typified action or omission can become unlawful; only an unlawful action or omission can be culpable; and only a culpable action or omission can become punishable. It is, therefore, a pyramidal system traversed by a necessary logical relationship between its various elements" (Gil, Lacruz, Melendo and Núñez, 2015, p. 102). In consequence, these five elements are linked by a sequential relationship, such that one of them cannot concur unless the previous one does so first.

In this regard, it is useful to insist that the sequential logic of punitive analysis operates in stages: conduct, typicity, unlawfulness, culpability, and punishability. Without mechanically transferring that structure to the disciplinary sphere, it does provide a reasonable guideline for understanding what should be sought in

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preliminary actions: first, to ascertain facts and conduct; second, to assess whether they are prima facie subsumable under a disciplinary type; next, to verify their contrariety to the legal order and the duty infringed; and only then, in purely indicative terms, to identify elements that may support a minimum hypothesis of intent, fault, or negligence. This logical order avoids frequent errors in practice, such as jumping straight to culpability, classification without a minimally closed factual basis, or forced typification for reasons unrelated to technical analysis.

In summary, the true value of preliminary actions does not lie merely in the collection of information; rather, it consists in guiding a proposal coherent with the principles governing the exercise of sanctioning power. This coherence entails investigating only what truly matters, connecting the facts with the applicable rule, maintaining a neutral stance, reasoning on the basis of indicia, and assessing proportionality. Thus, inspectorial work acts as both a filter and a guarantee of a proper and well-founded proposal. This logic helps us understand why the content and drafting of the report containing the proposal to initiate proceedings and the table relating principles and content are not secondary elements, but rather the natural result of a preliminary process directed in a technical and proper manner.

3.3.- SOME NOTES ON THE REPORT CONTAINING THE PROPOSAL TO INITIATE PROCEEDINGS.

For Pérez Jiménez and García Ballesteros (2020, p. 2), the inspection report, "together with visits to schools, may perhaps be the most valuable instrument in the everyday work of the inspector or inspectress of education." However, the inspection report must not be limited to mere description, but should go beyond this by means of assessment, conclusions, and, where appropriate, suggestions or proposals.

The report setting out the conclusions after the conduct of preliminary actions shall contain, in addition to an evaluative section with the legal-technical appraisal guiding the decision of the competent authority, an initial expository

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section setting out the factual elements. Those antecedents or facts must necessarily be directed towards what is required by Article 55.2 LPACAP, containing at least a description, with the greatest possible precision, of the facts capable of prompting initiation of the procedure, the identification of the person or persons who may be responsible, and the relevant circumstances affecting both.

As Pérez Jiménez and García Ballesteros indicate (2020, p. 4), the content of the report commits us professionally and even personally. Thus, the report containing the proposal submitted to the corresponding authority following preliminary actions speaks of the rigour with which the work is performed and of the knowledge possessed of a matter as extremely sensitive as the possible initiation of disciplinary proceedings against a public official. Each essential element of the proposal report is grounded in the principles of legality, reasoning, typicity, competence, and due procedure, and must also be consonant with the principles of sanctioning power to which it serves as a principal antecedent.

It is not uncommon for the effort invested in these preliminary actions to be neutralised by dismissal or closure of the matter in the proposed resolution of the proceedings. Since the purpose of these actions is to support the decision whether to initiate proceedings, the proposal report must avoid shortcomings such as absence of proper legal-technical reasoning, errors in classification, or errors in initial grading.

In this regard, it is advisable for the proposal report to contain: sufficient grounding in a prior and current legal rule; a correct, clear, and verifiable description of the facts capable of being subsumed under defined disciplinary types applicable to the case; identification of unlawfulness and of the duty infringed; an assessment through reasonable indicia of intent, fault, or negligence; an assessment of necessity and proportionality; and prudent drafting that avoids attributing definitive liability.

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It should be emphasised that, both in grounding the breached provision and in classifying the offence, attention must be paid to the objective elements of the type. By way of example, a very serious offence of abandonment of service does not simply mean that the official leaves the workplace, but rather requires total abandonment of the employee's functions, both those inherent in the job post and those legitimately entrusted to him or her (Marina Jalvo, 2015, p. 140).

Lastly, despite the preliminary nature of these actions, the basic formal criteria of a case file referred to in Article 70 LPACAP govern its formation. The case file should be in electronic format, organised in an orderly manner, and should preferably contain a numbered index and, where appropriate, annexes that facilitate the relation between the facts and the documentary evidence provided. At the same time, auxiliary or supporting information that should not form part of the administrative file must be excluded.

3.4.- INTERRELATIONSHIP BETWEEN THE LEGAL PRINCIPLES GOVERNING PRELIMINARY ACTIONS AND THE CONTENT OF THE REPORT CONTAINING THE PROPOSAL TO INITIATE PROCEEDINGS.

A comparative table of the issues addressed in the preceding sections is set out below to facilitate understanding and to make easier the relationship between the content of the proposal report and the principles of action that should guide the conduct of preliminary actions.

Principle of the IUS PUNIENDI	Principle of Criminal Law	Principles of Sanctioning Power (Law 40/2015)	Disciplinary Preliminary Actions	Characteristics of the Report Containing the Proposal to Initiate Proceedings

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Legality	Lex scripta. Conduct and sanction must be provided for in a written rule. Nullum crimen, nulla poena sine lege.	Legality (Art. 25)	Actions must be grounded in prior and current legal rules.	It must be grounded in the existence of a prior and current rule classifying the facts.
Non-retroactivity	Lex praevia. Non-retroactivity of unfavourable rules and retroactivity of	Non-retroactivity (Art. 26)	Verify the legislation in force at the time the facts occurred and assess, where appropriate, the application of the more favourable rule.	It must place the facts in their normative temporal framework, avoiding classifications after the fact.

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	favourable ones.			
Typicity	Lex certa and lex stricta. The act must be defined as an offence by law.	Typicity (Art. 27)	Investigation seeks to determine whether the facts fit prima facie within a classified disciplinary offence.	It must describe clear and verifiable facts together with their provisional subsumption under defined disciplinary types applicable to the case.
Unlawfulness	Conduct must be contrary to the legal order (without grounds of justification).	Legality (Art. 25) Typicity (Art. 27)	Preliminary verification of whether the facts infringe rules or duties absent circumstances excluding unlawfulness.	The report must ground the connection between facts, breached duty, and applicable provision. Avoid conclusory assertions.
Culpability	Intent, fault, or negligenc	Liability (Art. 28)	It does not prejudge culpability; it	It must reflect and reason on the

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	e is required.		merely gathers indicia of intentional, negligent, or reckless conduct.	basis of reasonable indicia of intent, fault, or negligence.
Proportionality	The penalty must be proportionate to the offence.	Proportionality (Art. 29)	Only relevant and necessary facts are investigated. Assess seriousness.	It must reason whether initiation is necessary and proportionate to the seriousness of the facts.
Presumption of innocence	Innocent until proven otherwise.	Presumption of innocence (Art. 24 of the Constitution and constitutional doctrine)	Presumption of innocence remains intact from this moment and throughout the procedure. Law 39/2015 LPACAP, Art. 53.2.b).	It must not attribute definitive liability in the proposal report. Prudential drafting, conditional formulations, and a clear separation between facts

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				and interpretations.
Concurrence of sanctions	Non bis in idem.	Concurrence of sanctions (Art. 31)	Consider concurrence and assess other known circumstances.	Determine grading if there is accumulation of infringements.

4.- CONCLUSION.

In conclusion, preliminary actions, together with the report deriving from their processing, constitute an essential instrument by means of which the Education Inspectorate can carry out a provisional legal-technical analysis of situations of interest in order to guarantee the proper functioning of the Administration. They may lead to the initiation of disciplinary proceedings or to other prior instruments that help staff to correct irregular conduct.

Although they are discretionary in nature and, in principle, lack autonomous probative value, their necessary connection with the general principles of sanctioning law — legality, typicity, presumption of innocence, proportionality, among others — confirms their nature as pre-procedural measures that must safeguard both legality and the fundamental rights of interested parties.

Through the careful handling of these measures, the Education Inspectorate positions itself as guarantor of rights and as a technical filter, avoiding unfounded or precipitate initiations or those that may incur nullity. Their relevance also lies in the coherence, foundation, and legitimacy that they provide to a possible disciplinary response by the Administration, whose legal quality begins, to a significant extent, with the quality with which preliminary actions are conducted.

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In this regard, the role of the Education Inspectorate is decisive in assessing, indicatively, whether the facts are of sufficient substance to be provisionally subsumed under a disciplinary type, seeking from the outset an appropriate fit with the objective and subjective elements of that type, and in assessing whether circumstances exist advising initiation, non-initiation, or redirection of the situation through other forms of intervention already mentioned. Thus, inspectorial action must proceed with objectivity, technical prudence, and brevity, with full respect for procedural safeguards and for the rights of the persons involved, which have been progressively delimited by case law.

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