

The Supreme Court questions the legality of sanctions imposed in proceedings in which non-civil servants have been significantly involved

23th September 2020

Regarding the Supreme Court's Ruling No. 1160/2020

In [Judgement nº 1160/2020, of 14 September](#), the Supreme Court establishes doctrine on the participation of contract workers in the processing of sanctioning procedures.

The sentence is issued on the occasion of the participation of the employees of the public company TECNOLOGÍAS Y SERVICIOS AGRARIOS, S.A. ("**TRAGSATEC**"), a subsidiary of TRAGSA, in the processing of the sanctioning procedures, within the remit of the Confederación Hidrográfica del Guadiana - *Guadiana River Basin Authority* ("**CHG**"). In accordance with the existing management assignment, TRAGSATEC staff carried out the *preparation of dossiers, the assessment of the viability of the sanctioning file, the analysis and assessment of the allegations of the interested party, the preparation of summary notes and drafts - both of the statement of objections and of the proposal for resolution, the resolution itself and the resolution of any administrative appeal that may be lodged - as well as the material possession and effective impetus of the administrative file.*

The question that is of interest to the house is to determine whether the functions entrusted to TRAGSATEC (which is an executive organ of the CHG) include the exercise of these functions in the processing of sanctioning procedures whose resolution is the responsibility of the CHG. The staff of the CHG is limited, in essence, to signing the proposals for resolutions drawn up by TRAGSATEC. TRAGSATEC assumes the processing of the proceedings. In the opinion of the Supreme Court, it is in the interest of the company to determine whether the staff of a public company can intervene in the essential procedures of a sanctioning procedure.

The Supreme Court declares that: **"the processing of administrative procedures, insofar as they constitute the indispensable, technical and ordinary activity of the Administrations, is reserved for the public officials integrated in the respective bodies that have assumed the corresponding competences"**. Another thing, in the opinion of the High Court, would be *"that the Administrations may be assisted by third parties for the material execution of what is decided in the resolution that puts an end to the administrative procedures, but not for their processing; or even that they may be asked, also on occasion, for some action of the procedure"*



of the type of technical reports that the very means of the Administration would make difficult to carry out".

In this way, the High Court opens the door to appeal against those sanctions in which the participation of contracted workers is not conceived as merely occasional, punctual or of help in the material execution of the decisions that are dictated putting an end to the administrative procedures.

The Supreme Court does not expressly rule on the participation of interim staff in the processing of administrative sanctioning procedures. The High Court's pronouncement, however, "pilloried" such a possibility and put out of play a widespread administrative practice in the different public administrations, in times of low replacement rates, freezing of public employment offers and major adjustments of staff expenditure. We will return to this on another occasion.

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