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Case law review

CASE LAW REVIEW 5TH CHAMBER SUPREME COURT

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JURISPRUDENCE REVIEW 5TH CHAMBER OF THE SUPREME COURT

Summary: 1.- Sentence: 20/11/2025. Upholding. 2.- Sentence: 30/10/2025. Upholding. 3.- Judgment: 02/10/2025. Dismissal. 4.- Sentence: 18/09/2025. Dismissal. 5.- Sentence: 14/07/2025. Partially upheld. 6.- Sentence: 02/06/2025. Second Sentence of the Chamber after the Special Chamber of Article 61 of the LOPJ upheld the appeal for review lodged by the appellant against the Sentence of this Fifth Chamber which ruled on this military disciplinary appeal. - Replacement of the very serious disciplinary offence for which he had initially been punished with a serious offence. Partially upheld. 7.- Judgment: 22/05/2025. Dismissed. 8.- Judgment: 09/04/2025. Dismissed. 9.- Sentence: 02/04/2025. Dismissed. 10.- Sentence: 12/03/2025. Rejected 11.- Sentence: 22/01/2025. Rejection

Scope of analysis: Disciplinary rulings in the year 2025.

1.- Sentence: 20/11/2025. Upholding

Subject matter:

Very serious offence of final conviction for a crime causing serious harm to the Administration and citizens, as defined in article 7.13 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil.

Facts:

The ordinary military contentious-disciplinary appeal focuses on the decision of the Minister of Defence, which imposed on the appellant the sanction of dismissal from service for committing a very serious offence, specifically a fraudulent offence that caused serious harm to the Administration and citizens. That fact gave rise to the current proceedings, since the appellant claims that that decision is null and void on the ground that the disciplinary proceedings have lapsed.

Pleas in law:

Lapse of the disciplinary file and closure of the disciplinary file.

In the alternative, he seeks the penalty of suspension from employment or loss of his post in the career bracket for three years.

Grounds of law:

FOURTH.With regard to the allegation concerning the expiry of the disciplinary proceedings, it should be noted that Article 55 of Organic Law 12/2007, on the Disciplinary Regime of Guardia Civil, under the heading "Periods of investigation", establishes that the procedure for serious and very serious offences "will respect the established time limits, without the investigation of the case being able to exceed six months", and in Article 65.1 under the heading of "expiry" states that "The resolution referred to in Article 63 of this Law ("The resolution that ends the procedure...") and its notification to the interested party must be made within a period that shall not exceed six months from the date of the agreement to initiate the proceedings. Once this period has elapsed, the proceedings shall lapse".

However, regarding the provision that the notification of the sanctioning resolution, which ends the sanctioning procedure, must be made within a period not exceeding six months from the date of the agreement to initiate the proceedings, it must be taken into account that the aforementioned Article 65 establishes that this period may be suspended for a maximum period of six months, by agreement of the Director General of the Police and the Guardia Civil, at the proposal of the instructor, in the cases specified therein, and that, likewise, in Article 43.4 of the aforementioned LORDGC, states that: "The computation of the time limits shall be suspended by the instructor, by means of a reasoned agreement, for the essential time, when, for reasons attributable to the interested party, it is not possible to carry out within the time limits any diligence necessary for the resolution of the proceedings or the notification of any procedure. No appeal may be lodged against such a decision separately from the appeal that may be lodged against the resolution of the proceedings".

And so, in the present case, having examined the proceedings, it appears that, as stated in the preceding legal grounds, the disciplinary proceedings instructor, in accordance with the provisions of the aforementioned article 43.4 of the LORDGC, on 5 March 2025, agreed the suspension of said maximum period of processing of the file, as it was necessary to notify, in legal form, the proposal of the sanctioning resolution, remaining suspended until by agreement of 18 March 2025, agreed its resumption, and, therefore, from the calculation of the aforementioned maximum period of six months for processing the disciplinary proceedings, the aforementioned days of suspension must be deducted, for reasons attributable to the appellant, which this Chamber considers to be in accordance with the law and which, in no case, has been questioned.

And so, in the present case, if we take as the starting date for calculating the six-month limitation period the date on which the proceedings were opened, 11 October 2024, and we add the thirteen days which, by agreement of the instructor, its processing was legally suspended - from 5 March 2025 to 18 March 2025 - we would find that the limitation period would end on 24 April 2025, and, therefore, since the notification of the sanctioning decision to the appellant was carried out in person on 25 April 2025, as it appears from folio 218 of the proceedings, although the appellant defers it to 6 May 2025, the date on which it is stated on folio 218 of the proceedings, although the appellant postpones it to 6 May 2025, to the appellant, was carried out in person on 25 April 2025 - as stated on page 218 of the proceedings, although the appellant defers it to 6 May 2025, the date on which the edicts were published in order to be notified of the sanctioning decision -, there is no doubt that the expiry of the file would have come into play and what would proceed would be its filing, without prejudice to the fact that, in accordance with the provisions of Article 95.3 of Law 39/2015, 1.1.3 of Law 39/2015 of 1 October, on the Common Administrative Procedure of the Public Administrations, a new one may be initiated if the statute of limitations of the alleged offence pursued has not elapsed and without the time invested in processing the expired procedure having interrupted the time limit.

Conclusions:

In the periods indicated by days, as in the case in question - two attempts to notify the sanctioning decision within three days - it is understood that these are working days, excluding Sundays and declared public holidays.

Therefore, as the two attempts to notify the sanctioning decision were made on public holidays, they cannot be considered to be in accordance with the law, as, having been made on days that are not working days, they lack effectiveness and, therefore, cannot be considered valid for carrying out an administrative activity, such as that which was carried out in the case in question, to be able to consider the sanctioning decision to have been notified, within the legal deadline, given that, in accordance with the provisions of Article 43 of the aforementioned Organic Law 12/2007, of 22 October on the Disciplinary Regime of Guardia Civil, in the periods indicated by days - to make two attempts to notify the sanctioning resolution within a period of three days - these are understood to be working days, excluding Sundays and those declared public holidays.

2.- Sentence: 30/10/2025. Upholding

Matter:

Very serious misdemeanour of final conviction for a crime causing serious harm to the Administration and citizens, typified in article 7.13 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil.

Facts:

The Director General of Guardia Civil agreed, in accordance with the prior report of Guardia Civil's Legal Adviser and "on his own grounds of fact and law", which were given as reproduced, to return the proceedings to his Instructing Officer, "in order that:

a) - Proceed to annul the Statement of Charges as well as the proceedings subsequently carried out...".

- The report of the Legal Department of Guardia Civil, which serves as grounds for the aforementioned resolution of the Director General of Guardia Civil, states in its First Ground of Law that "there are elements that can be assessed for the purposes of determining proportionality that would not justify the imposition of a sanction in its minimum extension, but that, on the contrary, there are abundant reasons that lead to the imposition of a sanction in its minimum extension, There are abundant reasons that lead us to consider the suitability of proposing the sanction of dismissal from the service", and it goes on to state that "[this] conclusion is reached because the accused has been sentenced to the high penalties of 23 months in prison, as well as the prohibition to possess and carry weapons until February 2030, among others", and its proposal is to "RETURN the file to its instructor, in accordance with the provisions of article 62 of L. O. 12/2007, of 22 December 2007, of 22 December 2007, of the Spanish Criminal Code.O. 12/2007, of 22 October, of the Disciplinary Regime, so that the statement of charges may be annulled and a new one may be formulated with a proposed sanction of separation from service in the terms expressed in the first legal basis, and continue with the processing of the case".

- In compliance with the mandate received, on 22 July 2024, the Instructing Officer issued a new statement of charges (folios 133 to 138) in which she stated that "taking into account the seriousness and circumstances, as well as the vicissitudes that concurred in the author, it would be appropriate to impose the sanction of SEPARATION FROM SERVICE". Resolution of the Minister of Defence dated 24 February 2025, which

partially modifies, without modifying the sanction, the resolution by virtue of which the sanction of dismissal from service was imposed on the appellant for committing a fraudulent offence that caused serious harm to the Administration and citizens.

The main dispute revolves around the proportionality of the sanction imposed, and whether it was appropriate to the facts and circumstances of the case, given that the appellant argues that the original sanction of three months and one day's suspension was more appropriate.

Grounds of challenge:

The appellant articulates his claim around the lack of proportionality of the sanction imposed, an allegation which he substantiates on various facts and legal grounds.

Grounds of law:

THIRD... Special attention should be paid to the annulment of both the indictment and the subsequent acquiescence given by the accused, annulments ordered to be carried out by the Director General of Guardia Civil in a resolution dated 9 July 2024, following a report from his Legal Department, the content of which we have described in the fourth factual background of this judgment.

While the plaintiff refers, among the facts on which his claim was based, to the statement of charges proposing the imposition of the sanction of three months and one day of suspension from employment, to the agreement given to this statement by the accused and to the annulment of both by the Director General of Guardia Civil, in his written conclusions he highlights as a relevant fact the "Change of the statement of charges to the maximum sanction without new facts"; issues which, however, are not referred to by the State Attorney's Office, nor by the Court of Appeals in its ruling. However, the State Attorney's Office does not refer to these issues either in its defence or in its written pleadings.

In the Chamber's view, the aforementioned annulments of both the statement of objections issued on 27 June 2024 by Ms. In the Chamber's view, the annulment of both the statement of charges issued on 27 June 2024 by the investigator of the disciplinary proceedings and the acquiescence of the accused on the same date are not covered by our legal system, since the aforementioned statement of charges, issued on the initiative of the investigator in the light of the evidence adduced up to that time, and also the subsequent acquiescence of the accused on the same date, are not covered by our legal system, and also the subsequent acquiescence of the accused were in accordance with the provisions contained in Article 57 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil, in its sections 1 -Once the proceedings and proceedings referred to in section one of the previous article have been carried out, the instructor will formulate, if necessary, the corresponding statement of charges, the corresponding statement of charges, which shall include all the alleged facts, the legal qualification and the sanction deemed appropriate-, 4 -When the case is opened for disciplinary offences arising from a criminal conviction, the statement of charges shall be accompanied by the conviction-, and 6 -When the interested party, in writing or by appearance before a court or tribunal, submits a statement of charges, the statement of charges shall be accompanied by the conviction, in writing or by appearance before the

instructor and secretary, shows his or her agreement with the statement of charges, the case shall be referred to the competent authority to decide - of article 57 of Organic Law 12/2007, of 22 October, on the disciplinary system of Guardia Civil, without, on the other hand, the aforementioned statement having been the subject of any challenge.

In accordance with the provisions of Articles 47 and 48 of Law 39/2015, of 1 October, on the Common Administrative Procedure of the Public Administrations - of supplementary application with respect to what is not provided for in Organic Law 12/2007, as established in the First Additional Provision of the latter law -, the annulment of the aforementioned investigatory proceedings would only be possible, either if any of the grounds for nullity determined in the first aforementioned article had been present in them or if these proceedings had incurred in any infringement of the legal system. And in any event by means of a duly and sufficiently reasoned decision in law.

Having analysed the case before us in the light of the above doctrine, we find that the annulment decision of the Director General of Guardia Civil lacked the necessary legal grounds. Director General of Guardia Civil lacks both legal coverage and sufficient reasoning to explain the reasons why it deprives the defendant's agreement to the charge sheet of validity and effectiveness, and it is also evident to the Chamber the negative impact that said decision had on the fundamental rights of the accused to a trial with all the guarantees and to a defence, since, in addition to predetermining at such an early stage of the proceedings the penalty to be imposed - regardless of the evidence already taken or which could still be taken - it seriously limited the defendant's possibilities of defence, since he had already acknowledged his guilt and the classification of the offence committed as a very serious offence.

As we have already pointed out, in the opinion of the Chamber, both the initial statement of charges formulated by the investigating judge and the acquiescence given by the accused were in line with the provisions contained in article 57 of Guardia Civil disciplinary law, including the proposed sanction, which, although certainly lenient, is among those provided for in article 11.1 of the same law to punish very serious offences, without us therefore finding any cause to justify the annulment of those proceedings.

The rights and freedoms recognised in Chapter Two of Title I of the Constitution are binding, in their entirety, on all Judges and Courts and are guaranteed under their effective guardianship;2. In particular, the rights set out in Article 53.2 of the Constitution shall be recognised, in all cases, in accordance with their constitutionally declared content, without judicial decisions being able to restrict, undermine or inapply this content; 3. Judges shall protect legitimate rights and interests, both individual and collective, without in any case being able to cause defencelessness [...].the Chamber considers that the re-establishment of the legal order disturbed by the serious defects that we have noted in our previous Ground of Law, entails, together with the upholding of the appeal, the annulment of all the actions carried out by the Administration subsequent to the consent given by the accused to the statement of charges issued on 27 June 2024, and the imposition on the Guardia Civil, Mr. Carlos Alberto, in accordance with the provisions of the previous Ground of Law, of a penalty imposed by the Court of First Instance. Carlos Alberto, in accordance with what is proposed in said statement of charges with his agreement, the disciplinary sanction of three months and one day of suspension from employment, as the author of the very serious misdemeanour foreseen in article 7.13 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil,

consisting of "committing any offence that causes serious harm to the Administration and citizens"; with the legal, administrative, economic and any other effects that are derived in in favour of the appellant as a consequence of the substitution of the sanction of separation from service annulled by that of three months and one day of suspension from employment.

For all of the above reasons, it is understood that the disciplinary sanction of dismissal from service, reasonably proposed by the Instructing Officer and favourably reported by the Director General of Guardia Civil, the Minister of the Interior and the General Legal Advisor of the Ministry of Defence, is fully in accordance with and appropriate to the principles of proportionality and individualisation, as the seriousness of the accused's conduct and the discrediting judgement that the facts entail - due to the degree of impact projected on the service, the image, prestige and good name, the image and good name of Guardia Civil, the reputation, the prestige and good name of Guardia Civil and the good name of the Ministry of Defence, the image, prestige and good name of the Meritorious Institute and the intensity of the breach of the inexcusable duties inherent to his status as a Guardia Civil and military officer and of the most elementary and primordial principles and rules of conduct that govern the behaviour of members of the Armed Institute - demonstrate the incompatibility of the accused to continue belonging to the Guardia Civil Corps".

From Ground IX of the decision rejecting the appeal for reconsideration:

"And as regards the choice of the sanction imposed on the offender, there are no reasons to suggest that it should be replaced. Case law has reiterated that the raison d'être of the sanctioned offence derives from the need to protect the legitimate interest of the Administration, and from the need for members of Guardia Civil to be irreproachable, since "the exercise of legal coercion by public administrations through police officers requires them to behave in an exemplary manner in their dealings with citizens [...] which requires that those who carry it out must be exemplary in their dealings with them [...] and that those who carry it out must be exemplary in their dealings with citizens [...]....] which requires that those who carry it out do not engage in conduct which they themselves must prevent or whose punishment they must facilitate when it is carried out by others" (Constitutional Court Judgement 234/1991, 10 December), and the dignity, the good name of the Institute and its effectiveness as a State Security Corps "are harmed if those in charge of carrying it out could be accused of those very acts which, in the interest of society as a whole, have to be punished by the police, in the interests of society as a whole, their mission is to prevent, since the Law cannot be totally dissociated from the people who have to coercively impose its compliance" (Constitutional Court Judgement 180/2004, of 2 November), there can be no doubt as to the serious impact on the credit that the institution of Guardia Civil should deserve from citizens if one of its members is convicted of crimes with similar characteristics to those detailed above.

[...Moreover, factors such as the assessment in the judgment of the Court of the mitigating circumstances of reparation of the damage and undue delay, and his meritorious professional record, cannot determine the substitution of the sanction imposed, in view of the seriousness of the offences for which he was convicted, the appreciation of the offences, of particular sensitivity and social repudiation, in contravention of the powers attributed to the Institute - repression of the criminal offence

-, the damage caused to the Administration and to the victim, and the damage to the image of the Institute in the terms set out above".

In the function of reviewing and controlling the legality of the actions of the sanctioning Administration, which is the responsibility of this Chamber, we consider that a careful reading of the above reasoning, correctly framed within the criteria for grading sanctions established in article 19 of the current Organic Law on the disciplinary regime of Guardia Civil - especially taking into account the provisions of section g) of the aforementioned article - and in accordance with the case law of the Constitutional Court and this Chamber, which they cite, disproves the accusation of the criminal offence, they refute the appellant's allegation that there was a lack of reasoning in the determination of the sanction imposed, and at the same time comply with the canon of reinforced reasoning that we have been demanding when the sanction imposed is the maximum sanction provided for by law.

None of the other arguments put forward by the appellant tarnish the arguments of the sanctioning Administration for imposing the penalty of dismissal, since, as the Disciplinary Authority points out, the mitigating circumstances of reparation of damage and undue delay, as assessed by the criminal courts, although they are circumstances specifically provided for in the Criminal Code which, for reasons of criminal policy, are to be taken into account in the case of a dismissal from service, for reasons of criminal policy, are endowed with certain favourable effects for the accused when determining the sentence to be imposed, they do not diminish the seriousness of the conduct for which he was convicted or the gravity of the harm caused to the victim and to the Administration, nor do they mitigate the good professional record of the defendant.

As for the judgment of this Chamber of 8 July 2002 (no.: Roj. No. STS 5046/2002), which STS 5046/2002) which the plaintiff cites in support of his claim, we do not consider that it can be used as a valid point of comparison with the case under examination, firstly because it was handed down in application of a Guardia Civil disciplinary law different from the one currently in force, and the elements of the disciplinary type applied do not coincide, and, secondly, because, contrary to what the appellant claims, the facts which were the subject of the conviction in that case bear no resemblance to those referred to in the present proceedings, even though one of the two offences which are the subject of the conviction in the present proceedings shares the legal classification of threats with the single offence found in that judgment.

Consequently, the final allegations in the application alleging infringement of the principles of proportionality and individualisation of penalties must also be dismissed and, with that, the appeal must be dismissed in its entirety.

Conclusions:

Once the defendant had signed the acquiescence, the subsequent annulment decision lacked both a legal basis and a sufficient statement of reasons explaining why it deprived the defendant's acquiescence to the statement of objections of its validity and effectiveness.

3. Judgment: 02/10/2025. Dismissal.

Subject matter:

Very serious misdemeanour of final conviction for a crime causing serious harm to the Administration and citizens, typified in article 7.13 of Organic Law 12/2007, of 22 October, on the disciplinary regime of Guardia Civil.

Facts:

Resolution of the Minister of Defence dismissing the appeal for reconsideration lodged by the appellant against the resolution, which imposed on the Guardia Civil the sanction of separation from service for committing a fraudulent offence convicted by final judgement, generating serious damage to the Administration and citizens. This situation arose following the criminal conviction of the appellant, which led to the opening of disciplinary proceedings.

Pleas in law

- Infringement of Article 65 of Organic Law 12/2007 by reason of the expiry of the administrative file, which renders the sanction null and void.

- Infringement of the administrative disciplinary procedure.

- Infringement of the principle that the administration is prohibited from acting against its own acts.

- infringement of the principle of proportionality.

Infringement of the principle of proportionality.

"Certainly, according to the provisions of the Law (Article 27 LORDGC), the person in charge of the Ministry of Defence is the only authority vested with competence for the imposition of the most severe disciplinary sanctions, and this is the case here. However, this does not mean that the then Director General of Guardia Civil was not competent to order the initiation of the disciplinary proceedings against the appellant.

"In relation to this allegation, we have recently said in two similar cases (judgments numbers 72 and 80/2018, of 18 July and 25 September), that the First Additional Provision of Organic Law 12/2007, of 22 October, on the Disciplinary Regime of Guardia Civil, which, under the heading "Rules of supplementary application", provides: "In all matters not provided for in this Law, Law 30/1992, of 26 November, on the Legal Regime of the Public Administrations and Common Administrative Procedure, shall be of supplementary application....", a reference that nowadays, as the latter law has been repealed, must be understood to refer to Law 39/2015, of 1 October, on Common Administrative Procedure for Public Administrations, as it is a supplementary regime of the first degree that would only apply in the event of a lack of provision or gap in the Organic Law on the Disciplinary Regime of Guardia Civil itself, which in matters of calculation of deadlines does not occur, as it contains a clear and specific rule in this regard, as is contemplated in art. 43 of the same.

Therefore, since Organic Law 12/2007 itself contains a complete specific regulation of disciplinary proceedings, the claim to resort to the general law on administrative procedure by invoking it in a supplementary capacity [...]".

[...] descending to the case at hand, it is considered that the proposed sanction of dismissal from service is proportionate to the seriousness and circumstances of the conduct that motivates it and, acting under this principle of proportionality, makes an appropriate weighing of the criteria referred to in Article 19 of the LORDGC.

Thus, the intentionality of the conduct must necessarily be assessed, and especially the intentionality of the conduct, which is undoubtedly appreciable as the accused has been convicted for the commission of two fraudulent offences, and which is easily established without any difficulty, without the need for further explanation , To this is added, with aggravating effects, that the criminal conduct that is the object of criminal reproach was not punctual but prolonged in time, the sentencing body appreciating the existence of a continuous crime of threats and a crime of habitual violence.

On the other hand, it cannot be overlooked that underlying the conduct reproached in criminal proceedings is a very serious violation of essential professional duties, as set out in the basic professional statute applicable to members of the Benemérito institute, with the result that conduct such as that set out in the criminal conviction, totally contrary to the values and principles of integrity, dignity and respect for the law that are the hallmarks of Guardia Civil and govern the professional life of the members of the Corps in all its facets, irremediably break the bond of trust that its members maintain, by tarnishing the image of exemplary behaviour that they should project.

Finally, it should be particularly taken into account that section g) of article 19 of the LORDGC expressly provides that in the very serious misdemeanour in question "the amount or nature of the sentence imposed by virtue of a final judgement shall be specifically assessed [...]", with the result that in this case "the amount or nature of the sentence imposed by virtue of a final judgement shall be specifically assessed [...]".]", with the result in this case that, not being a requirement of the disciplinary type that the penalty be a custodial sentence (for all, judgement of the Fifth Chamber of the Supreme Court of 29 November 2016), the accused has been sentenced to two prison sentences - of 5 months and 5 months and 15 days, respectively-.

Conclusions

- As the two attempts at home notification of the proposed decision were unsuccessful, it was essential to carry out the notification by means of edicts on the notice board of his unit of posting or framing and in the Official Gazette of Guardia Civil, as determined by article 44.3 of the Organic Law on the disciplinary regime of Guardia Civil, and it was fully justified for the Instructing Officer to suspend, by means of a reasoned agreement and for the period necessary to do so - in this case ten days - the calculation of the time limits for processing the case.

- The head of the Ministry of Defence is the only authority vested with the power to impose the most severe of disciplinary sanctions, and this is the case here. However, this does not mean that the then Director General of Guardia Civil was not competent to order the initiation of the disciplinary proceedings against the appellant.

- The Organic Law on the Disciplinary Regime of Guardia Civil, which regulates the time limits applicable to disciplinary proceedings, provides for a specific calculation that is different from that established in the Law on Administrative Procedure 39/2015. Thus, article 43.1 of the L.O.R.G.C. excludes from the calculation of time limits only Sundays and public holidays, in such a way that Saturdays continue to be working days for the purposes of the application of the disciplinary law itself.

4.- Sentence: 18/09/2025. Dismissal

Matter:

Minor offence of inaccuracy in compliance with safety and internal rules, specifically in relation to uniformity during driver service.

Facts:

By resolution dated 20 November 2023 the Illustrious Captain, Commander-Director of the Naval Military School, imposed on the Seaman of the General Corps of the Navy Mr. Basilio the sanction of one day's arrest, as the perpetrator responsible for the minor offence provided for in article 6.12 of Organic Law 8/2014, of 4 December, on the Disciplinary Regime of the Armed Forces, consisting of "[i]naccuracy in compliance with the rules of security and internal regime, as well as in matters of obligatory reserve, in relation to the IRI of ENM no. 22150 in its point 4. RULES FOR DRIVERS, as well as in the Daily Order of the day of the facts (the same as successive days) in its section 2. UNIFORMITY".

Pleas in law:

- Infringement of the principle of legality, in its aspect of typicality (art. 25.1 C.E.), due to improper application of the disciplinary type contained in Article 6, section 12, of Organic Law 8/2014, of 4 December, on the Disciplinary Regime of the Armed Forces.

- Infringement of the right to the presumption of innocence recognised in Article 24.2 of the Spanish Constitution, in relation to error in the assessment of evidence, and infringement of Article 24 of the Spanish Constitution, with regard to the rights to effective judicial protection, to defence and to the use of the relevant means of evidence in law. Finally,

- "Substantiation of the concurrence of an objective interest in the case and of the appropriateness of a pronouncement by the Administrative Chamber of the Supreme Court" [sic].

Grounds of law:

In other words, there is homogeneity between the acts actually committed and the normative elements that support the material content of the wrongful act, as the appellant's conduct was incardinated in art. 6.12 LORDFAS, in relation to inaccuracy in compliance with the rules of the internal regime, rules that were specified in the sanctioning resolution, by relating the disciplinary type to "the lRl of the ENM no. 22150 in its point

4. RULES FOR DRIVERS, as well as in the Daily Order of the day of the facts (the same as successive days) in its section 2.UNIFORMITY."[sic].

Conclusions:

- The right to sanctioning legality in its aspect of the typicity of the conducts does not require that the disciplinary types exhaustively provide for each and every one of the conducts that deserve sanctioning reproach, provided that, as in the present case, the sanctioning rule contains the essential core of the prohibition, thus producing a referral to the rules of internal regime.

- The right to evidence is not absolute in nature, nor does it entitle to demand the admission of all evidence that may be proposed by the parties in the process, but only attributes the right to the reception and practice of that which is pertinent, pertinence being understood as the relationship between the proven facts and the thema decidendi, with the judicial bodies being responsible for examining the legality and pertinence of the evidence requested.

5.- Sentence: 14/07/2025. Partially upheld.

Matter:

Very serious offence under article 8.14 of the Disciplinary Regime of the Armed Forces. Requirements demanded by this type of discipline.

Facts:

Disciplinary sanction consisting of dismissal from service for a very serious offence, as defined in Article 8.14 of Organic Law 8/2014, after having been convicted of a criminal offence.

Allegations.

The appellant argues that the elements required by the disciplinary type are not met and that, if so, the sanction is disproportionate.

Law.

In the light of the appellant's statement that 'we must focus on the conviction and not on the specific offence', it should be recalled that, as stated in the decision imposing the penalty, 'In accordance with what the High Court has repeatedly held since its judgment of 7 November 2003, followed by the judgments of 7 February 2003, the Court of First Instance has held that the penalty is disproportionate, - followed by those of 27 February 2004, 7 April 2006, 11 December 2009, 4 February 2010, 31 May 2011, 30 May 2012, 5 December 2013, 6 November 2014 and 21 December 2016, and revalidated in subsequent rulings of 12 February 2019 (rec. 78/2018), 9 June (rec. 89/2019) and 16 December 2020 (rec. 13/2020), and 20 May 2021 (rec. 65/2020), which teach that in order to know the seriousness of the conduct, in the case of the very serious misconduct we are considering, it is essential to assess the criminal conviction, which in turn means taking into consideration the facts that make up the offence charged and the penalty imposed, which

are decisive not only for the purposes of inclusion in the disciplinary type used but also with regard to the sanctioning results, since the disciplinary reproach is ultimately based on such essential data and its consideration is essential as the first and fundamental criterion for individualisation.

On the other hand, it is also necessary to remember that, as has been pointed out by this Chamber, conviction for an intentional offence by means of a final judgement will constitute a very serious offence under article 8.14 of Organic Law 8/2014 of 4 December, on the Disciplinary Regime of the Armed Forces, when the convicted intentional offence "Affects the service, the public image of the Armed Forces, military dignity or causes damage to the Administration", It is sufficient for only one of these results to occur for the disciplinary offence to be perfected, as they are alternative and not cumulative, nor, therefore, as the appellant maintains, "simultaneous" (see, among others, judgments of May 2012, 17 October 2013, 11 May 2015).

Therefore, it is considered that the conviction of a member of the military to a prison sentence for an intentional crime, with the consequent criminal record - unless the conviction itself, taking into account both the facts and the sentence imposed, entails a social repudiation which, in the opinion of anyone, clearly implies that a person who commits acts of this nature cannot continue to perform duties in the Armed Forces - cannot be sufficient reason to automatically impose the most serious penalty provided for very serious misconduct, i.e. dismissal from service, cannot be sufficient grounds for automatically imposing, without further ado, the most serious sanction foreseen for very serious misconduct, i.e. dismissal from service, i.e. expulsion from the Armed Forces, as it would be necessary for the legislator to expressly determine that this is the case.

The judgments of conviction which are the subject of the aforementioned judgments of this Chamber, invoked by the sanctioning decision, in order to consider that, in the case in question, the imposition of the most serious sanction, dismissal from service, imposed on the appellant, should also be upheld, as we are faced with "similar convictions to confirm the appropriateness of dismissal from service", it transpires that, unlike the conviction at issue in the present case, those convictions were not only for convictions for different, more serious offences, but also that, in all the cases resolved by the judgments referred to in the decision imposing the penalty, the convictions were not for a single act - they were for habitual abuse within the family, as provided for and punishable under Article 173.2 of the Criminal Code,

Therefore, in the case at hand, not only is there a great and substantial difference with the cases resolved by this Chamber in the sentences invoked in the sanctioning decision, in relation to both the offence or offences convicted and the sentence or sentences imposed, but also, in the case at hand, apart from being a one-off event, the now appellant was assessed and applied the mitigating circumstance of reparation of harm in Article 21.5 of the Criminal Code.

Consequently, this Chamber considers that we are not dealing with a conviction for an intentional offence similar to the "similar convictions" for the offences which were the subject of the judgments of this Chamber, referred to in the decision to impose the sanctions of separation from service imposed therein, and, therefore, taking into account both the facts which were the subject of the conviction and, in addition, the existence of the mitigating circumstance of attenuating circumstance of attenuating circumstances,

and the sentence imposed, nine months' imprisonment, -applied to the upper half of the sentence for the offence committed, as the act occurred in the marital home, although they were in the process of divorce (divorce proceedings contentious no. 84/20) and shared the same home, as no provisional measure had been adopted in this regard, we consider that the conviction for very serious misconduct, from which this ordinary military disciplinary appeal arises, although not sufficiently serious for the appellant to be dismissed from the Armed Forces, is nevertheless reprehensible, and taking into account both the nature and circumstances of the facts that led to the conviction of the appellant and the other penalties of deprivation of liberty, as well as the other disqualifications which, together with the sentence of nine months and one day's imprisonment, were imposed on him, and the fact that his military records show another sentence imposed for committing an offence against road safety, we consider it appropriate and proportionate to impose on the appellant the sanction of suspension from employment for a period of one year.

Conclusions:

- The conviction for an intentional offence by means of a final judgement, will conform to the very serious misdemeanour of Article 8.14 of Organic Law 8/2014 of 4 December, on the Disciplinary Regime of the Armed Forces, when the convicted intentional offence "Affects the service, the public image of the Armed Forces, military dignity or causes damage to the Administration", it being sufficient for only one of these results to occur for the disciplinary offence to be completed, as they are alternative and not cumulative, nor, therefore, as the appellant maintains, "simultaneous" (see, among others, judgments of 30 May 2012, 17 October 2013, 11 May 2015).

- Although any conviction of a member of the military to a prison sentence for an intentional crime, in application of laws other than the Military Criminal Code, entails behaviour that is not in keeping with military dignity, with the decorum that must govern his actions, and could be reproachable under the Disciplinary Regime of the Armed Forces, in the context of which the appellant has been punished, nevertheless, when determining the sanction to be imposed, of those foreseen for very serious offences, it will be necessary to carry out an individualised treatment of each case, taking into account, among other circumstances, the seriousness of the fact or facts declared proven in the conviction, the sentence imposed and the circumstances of the convicted person.

6.- Sentence: 02/06/2025. Second Sentence of the Chamber after the Special Chamber of Article 61 of the LOPJ upheld the appeal for review lodged by the appellant against the Sentence of this Fifth Chamber which ruled on this military disciplinary appeal. - Replacement of the very serious disciplinary offence for which he had initially been punished with a serious offence. Partially upheld.

Subject matter:

Very serious misconduct consisting of "committing serious misconduct, having noted, without cancelling, a serious and a very serious misconduct", provided for in Article 7 paragraph 26 of Organic Law 12/2007, of 22 October, on the Disciplinary Regime of Guardia Civil.

Facts:

The main issue in dispute is the review of the sanction imposed on a Guardia Civil, who was initially sanctioned with a one-year suspension from employment for a very serious misdemeanour. The first procedural action stems from the decision of the Minister of Defence of 14 February 2022, which reduced the sanction to nine months after partially considering the appeal lodged. However, the annulment of one of the offences taken into account for the sanction led to a review of the case by the Special Chamber of Article 61 of the Organic Law of the Judiciary, which determined that the very serious offence was not applicable, which made it necessary to re-examine the sanction imposed.

Law grounds:

Specifically, the sanction of eight months' suspension from employment imposed on the appellant as the perpetrator of a very serious offence under Article 7.22 of Organic Law 12/2007, of 22 October (offence consisting of "using the technical means regulated in the legal rules on video cameras for purposes other than those provided for therein"), taken into account to integrate the type of very serious offence under Article 7.26 of the said Organic Law, which is challenged in the present appeal 35/2022, was finally annulled by the Central Military Court by Judgment of 8 May 2023, this annulment having been confirmed by this same Fifth Chamber in its Judgment 1/2024, of 24 January.

3.As we have been explaining, in the present case the possibility of sanctioning for the offence provided for in section 26 of article 7 of the Organic Law of the Disciplinary Regime of Guardia Civil consisting of "Committing a serious offence having noted down, without cancelling, a serious and a very serious offence" has disappeared, but there is no doubt that the appellant committed the serious offence provided for in art. 8.29 of the Organic Law of the Disciplinary Regime of Guardia Civil, but there is no doubt that he committed the serious offence provided for in art. 8.29 of the Organic Law of the Disciplinary Regime of Guardia Civil. 12/2007, of 22 October 2007, consisting of "Conviction by virtue of a final judgment for an intentional crime, provided that it does not constitute a very serious offence, or for an intentional misdemeanour when the criminal offence committed is related to the service, or causes damage to the Administration or to the public", which has not yet received the corresponding disciplinary reproach, it being clear that the elements of the type of the latter serious misconduct emerge by themselves from the proven facts of the resolution of the Minister of Defence of 14 February 2022 , here contested, as we have reflected in the Second Precedent of Fact of this Judgment.

Conclusions:

- The annulment of an offence taken into account for sanctioning under Article 8.26 prevents the very serious offence from being considered to have been committed.

- Notwithstanding the above, the last serious misconduct committed would not go unpunished, since it can be corrected independently, in the corresponding disciplinary procedure, without relating it to the other serious misconduct that the accused may have committed.

7.- Sentence: 22/05/2025. Dismissed.

Matter:

Minor offence, typified in section 35 of article 6 of Organic Law 8/2014, of 4 December, on the Disciplinary Regime of the Armed Forces, of non-observance of the seventh, eighth, ninth, eleventh and sixteenth rules of military behaviour of art. 6.1 of Organic Law 9/2011, of 27 July, on the rights and duties of the members of the Armed Forces (LODDFAS); as well as those defined in articles 5, 7, 8, 14, 16, 17, 19 and 20 of the Royal Ordinances, approved by Royal Decree 96/2009, of 6 February.

Facts:

The main issue in dispute is the non-compliance by sailor driver of the order to transfer to hospital, in official vehicle, a student of the Naval Military School, interested by the Infirmary of said educational centre, alleging illegality of the order.

Allegations.

- Unlawfulness of the order.

- Principle of legality (typical nature).

-Effective judicial protection.

- Presumption of innocence.

- Right of defence.

Fundamentals of law.

In relation to the first "plea" of the appeal, it is appropriate to recall here, once again, that, as we have repeatedly pointed out - for example, SSTS, 5th, nos. 43/2022, of 19 May and 91/2022, of 19 October - "sustaining the violation of the principle of legality in facts other than those declared proven in the judgment under appeal "is contrary to the rules governing appeals, in particular Article 87 bis of Law 29/1998, of 13 July, regulating Contentious-Administrative Jurisdiction, according to which the appeal in cassation shall be limited to questions of law, "to the exclusion of questions of fact", without prejudice to the power conferred on the Supreme Court by Article 93.3 of the same law. It also clashes head-on with the case law of this Court -SSTS, 5th , nos. 77/2020, of 10 November, 15/2021, of 1 March, and 17/2022, of 14 February, among the most recent-, which has repeatedly considered that the examination of a claim based on an infringement of the principle of legality, in its criminalisation aspect, must start from the most scrupulous respect for the facts declared proven by the judgement under appeal".

From what has been said so far, it is easy to deduce the character of an official service that any act related to the guardianship that the Training Centre exercises over its students has, and therefore, obviously, that of their transfer in an official vehicle to a hospital when, as occurred in the present case, the health unit of the Centre - specifically

the Infirmary of the Naval Military School - so assessed and requested the Captain of the Detachment of the School itself to do so.

This being the case, we must point out that, as is clear from the provisions of Articles 45 ("He shall obey orders, which are commands relating to the service that a soldier gives to a subordinate, in an appropriate manner and within the powers that correspond to him, to carry out or omit to carry out a specific action. He must also comply with the requirements he receives from a military officer of higher rank concerning the provisions and general rules of order and behaviour");48 ("If the orders involve the execution of acts constituting offences, in particular against the Constitution and against persons and property protected in the event of armed conflict, the military officer shall not be obliged to obey them. In any case, he shall assume the grave responsibility for his action or omission"),and 49 ("If he considers it his duty to object to the order received, he shall raise it with the person who gave it. If his failure to do so would prejudice the mission entrusted to him, he shall reserve his objection until it has been carried out"),of the Royal Ordinances for the Armed Forces, orders must always be obeyed and carried out, unless they constitute a crime, in which case they would not give rise to any kind of liability.

In the exercise of his rights of defence, the appellant may disagree with the reasoning of the Court of First Instance and even criticise the content of the articles of the Royal Ordinances for the Armed Forces on which that reasoning is based, but this disagreement does not lead to the conclusion either that the contested decision lacks a statement of reasons or that the appellant's right to effective judicial protection, in relation to the right of defence, has been infringed by this non-existent lack, since, as the case law of the Constitutional Court and of this Chamber, set out in our judgment no. 91/2022, of 19 October 2003, states, the appellant's right to effective judicial protection, in relation to the right of defence, has been infringed. 91/2022, of 19 October, cited by the plaintiff himself:

"What does form part of the basic content of the fundamental right to effective judicial protection common to both procedural parties are the rights of access to jurisdiction, to obtain a decision founded in law and for that decision to be reasoned, that is, for it to contain sufficient explanation to arrive at the decision it adopts. In the words of the Constitutional Court - STC 308/2006 - "the right to effective judicial protection, guaranteed in art. 24.1 EC, includes the right of litigants to obtain from the Judges and Courts a reasoned and well-founded decision in law on the merits of the claims made by the parties in the process, which, nevertheless, may also be inadmissible if there is legal cause for this and the judicial body considers it reasonable (SSTC 63/1999, of 26 April, FJ 2; 206/1999, of 8 November, FJ 4; 198/2000, of 24 July, FJ 2; 116/2001, of 21 May, FJ 4, among others). This Court has also said that the rights and guarantees provided for in Article 24 EC do not guarantee the legal correctness of the action or interpretation carried out by the common judicial bodies, as there is no right to correctness (among many others, SSTC 151/2001, of 2 July, FJ 5; and 162/2001, of 5 July, FJ 4), and neither do they ensure the satisfaction of the claim of any of the parties.

Conclusions:

- In order to assess the existence or not of an order, we must start from the concept set out in Article 8 of the Military Criminal Code, which defines orders as "orders relating to the

service which a soldier gives to a subordinate, in an appropriate manner and within the powers corresponding to him, to carry out or omit to carry out a specific action".

- As is clear from the provisions of Articles 45 ("He shall obey orders, which are commands relating to the service which a soldier gives to a subordinate, in an appropriate manner and within his powers, to carry out or omit to carry out a specific action. He must also comply with the requests he receives from a military officer of higher rank concerning the provisions and general rules of order and behaviour");48 ("If the orders involve the execution of acts constituting an offence, in particular against the Constitution and against persons and property protected in the event of armed conflict, the military officer shall not be obliged to obey them. In any case, he shall assume the grave responsibility for his action or omission"),and 49 ("If he considers it his duty to object to the order received, he shall raise it with the person who gave it. If his failure to do so would be prejudicial to the mission entrusted to him, he shall reserve his objection until it has been carried out"), of the Royal Ordinances for the Armed Forces, orders must always be obeyed and carried out, unless they constitute a crime, in which case they would not give rise to any kind of liability.

- In the present case, it is clear that the order given to the appellant, consisting of the transfer of a student to a hospital, was not a criminal offence, and therefore, Seaman Baldomero was obliged to carry it out, and his refusal to do so gave rise to the corresponding disciplinary reproach.

On the other hand, the order given to the seaman was related to the service, it was within the powers of the officer who gave it, it was transmitted in an appropriate and personal manner, and its content was clear and known to the seaman, so that the order can be classified as legitimate, and consequently, the seaman was obliged to obey it. Moreover, it should be specified that, even if the order given to the seaman had been illegitimate, as the order did not constitute a crime, he would still be obliged to obey it.

8.- Sentence: 09/04/2025. Dismissed.

Subject matter:

Very serious offence of "carrying out acts that affect the sexual freedom of persons. or involve sexual harassment", provided for in article 8. 12º of the L.O. 8/2014, on the Disciplinary Regime of the Armed Forces.

Facts:

"FIRST.- From the investigation carried out, it has been accredited that on the 3rd of June 2023 at around 8:15 in the morning, the soldier Eugenia received a message on her phone via the social network Instagram sent by the 1st sergeant Casimiro, the content of which was a pornographic video, which led the soldier to think that he was a slut, although she did not give it more importance. After replying with a question mark, as she did not understand the 1st sergeant's behaviour, he sent her two photos showing him accompanied by 1st sergeant Serafín and his girlfriend, from which the soldier deduced that they had gone out and had been drinking excessively and that they were joking at that time of day.

Even so, Eugenia contacted Sergeant Jesús María and told him what had happened, who advised her to delete the video, as Sergeant Casimiro, when he drank, "was a bit out of control". The latter followed this advice and proceeded to delete the video.

During the rest of the day, Sergeant Casimiro continued to bother the soldier by sending her another pornographic video, a photo of a dog and finally a video on in which he masturbated. She proceeded to block him as he ignored the messages in which the soldier asked him to stop sending her content.

These events provoked great indignation in the soldier Eugenia, who considered that what he had done was not right, so she proceeded to bring it to the attention of her superiors.

Sergeant Casimiro and Eugenia had no previous relationship, nor have they had one since.

SECOND.- There are various medical documents in the proceedings which refer to Sergeant Casimiro's dependence on toxic substances such as cocaine and alcohol which caused him episodes of intoxication with amnesia of what happened during them and led to a recommendation to admit him to a centre for detoxification.

After what happened, the sergeant contacted the specialised addiction rehabilitation centre (CEDA), based in Cullera (Valencia), where he has been since 1 September 2023.

A report from CEDA was requested and issued on 9 October 2023, stating that "Cocaine affects the PSD-95 protein, which is directly related to the ability to remember or learn about people, places or things. Alcohol, based on a history of use, causes the person to lose control, balance and memory.

These substances mixed together potentiate each other and can cause impulsive behaviour and amnesia situations".

Allegations.

- Infringement of his right to the presumption of innocence.

- Infringement of the principle of legality, in relation to the nature of the offence.

- Infringement of the principle of proportionality in the imposition of the penalty.

Legal grounds.

This Chamber fully agrees with the aforementioned reasoning, which it considers to be appropriate and which more than justifies the choice of the sanction of dismissal from service, despite being the most serious of the legally possible sanctions, as it is the one that adequately responds to behaviour that is unworthy and dishonourable both for the appellant and for the Armed Forces (as stated in the contested decision), considering, in

fact, that such conduct is totally incompatible with the principles of probity, rectitude, integrity and respect for the law required of members of the Armed Forces.

Following these considerations, which the Chamber shares, the contested decision states that the appellant's conduct "affected military dignity, defined as an indeterminate legal concept that represents the gravity and decorum of the military in the way they behave in all areas of their actions, and incorporates into the general concept of dignity that extra standard of morality required of all members of the military", and adds that behaviour such as that of the appellant, in addition to being "dishonourable for the person engaging in it, undermines the dignity of any professional in the Armed Forces and, consequently, of the institution of which he is a member".

This assessment of the appellant's own military dignity is not excluded in this case by the provisions of the aforementioned Article 22.1º in fine, of Organic Law 8/2014, of 4 December, on the Disciplinary Regime of the Armed Forces, since in the disciplinary subtype applied ("carrying out acts involving sexual harassment") this affectation is not a factor taken into account by the law when describing any of the offences provided for in section 12 of article 8 of said Law, nor is it so inherent to it that without its concurrence the offence could not be committed.

On the other hand, in Law 29/2014, of 28 November, on the Regime of Guardia Civil personnel, after stipulating in article 6 "Code of conduct", that "Civil guards shall carry out their duties with absolute respect for the Constitution and the rest of the legal system. They shall act in accordance with the principles established in article 5 of Organic Law 2/1986, of 13 March, on Security Forces and Corps, and in Title III of Organic Law 11/2007, of 22 October, regulating the rights and duties of members of Guardia Civil, as well as the rules of behaviour established in the following article, which form the basic rules of their code of conduct", then in article 7 "Rules of behaviour of the Guardia Civil" it establishes, among others, that: "2. He shall make every effort to preserve the safety and well-being of citizens, without any discrimination on grounds of sex, racial or ethnic origin, religion or ideology, sexual orientation or identity, age, disability, or any other personal or social condition or circumstance, always acting with dignity, prudence and honesty", and that "3. He shall carry out his duties and obligations accurately, driven by a sense of honour, the true hallmark of Guardia Civil", and in section 13, that "He shall avoid any behaviour that could compromise the prestige of the Corps or the effectiveness of the service it provides to society".

Rules, which have been expressly collected and compiled in Royal Decree 176/2022, of 4 March, which in compliance with the provisions of the aforementioned Law 29/2014, of 28 November, approves the Code of Conduct for Guardia Civil personnel, and, in which after establishing in Chapter I, in relation to the Fundamental Values and Institutional Principles, that "Honour must be the main motto of the men and women of Guardia Civil, a true sign of identity and a guide to accurately fulfil their duties and obligations" (Article 1), it goes on to state that "They shall always act with rectitude and honesty. For this reason, they shall resolutely oppose any form of corruption and under no circumstances shall they accept offers, favours or gifts which, directly or indirectly, may compromise their honesty and professional performance" (Article 2. Integrity); "they shall guarantee public safety, respect and ensure respect at all times for fundamental rights and public liberties and protect their free exercise; they shall always bear in mind in their actions the utmost respect for the life, dignity and physical and moral

integrity of persons". (Article 11. Respect for fundamental rights and public freedoms); "They shall ensure that the prestige of the Corps is maintained and enhanced, acting in an exemplary and exemplary manner in order to earn the trust of citizens and institutions" (Article 20. Prestige), and that "the actions of the men and women of Guardia Civil shall be subject to compliance with the duties of reserve and secrecy. To the duty of reserve, understood as secrecy or discretion over everything that personnel may learn on the occasion of, or by reason of, the performance of their duties, must be added the duty of secrecy over all matters, acts, documents, information, data, objects and materials whose knowledge by unauthorised persons could damage or jeopardise the performance of police work, to any citizen or, ultimately, to the security and defence of the State, paying special attention to the protection of the image of citizens, as well as other data known to them that may serve to individualise and identify them to third parties outside the police function" (Article 27. Confidentiality with regard to the service). Finally, the appellant states that the process which led to the aforementioned conviction began almost eighteen years ago, that he has not re-offended or committed any other reprehensible act, that his conduct has been exemplary and that, consequently, no account has been taken of anything that might have favoured him when determining and individualising the sanction imposed, and that he should be given a second chance.

Taking into account that the conduct of the appellant, as is set out in detail in the sanctioning decision, was in total contravention of the essential duties of members of Guardia Civil at all times and under all circumstances, it is considered that the sentence imposed and the particular nature and seriousness of the facts that gave rise to it, justifies, on its own, and more than enough, the appropriate proportionality and individualisation of the disciplinary sanction of dismissal from service, without the favourable data alleged or the good professional behaviour of the accused being able to compensate or temper the seriousness of the conduct and lessen the importance of the reproach and the sanction, nor do they serve to undermine the judgement of unworthiness and discredit that the facts entail and that demonstrate the appellant's incompatibility to continue serving in the Guardia Civil (for example, judgments of 5 July 2011, 6 March 2014 and 3 April 2024), since it is clear that, once he has been convicted - until then he enjoyed the fundamental right to the presumption of innocence - it is difficult to assume that the appellant, as a member of Guardia Civil Corps, will continue to serve in the Guardia Civil, due to the absolute lack of dignity, honesty and discredit that the facts that led to the conviction entail both for the Guardia Civil Corps and for the interested party.

Conclusions:

- The legal right that is violated with this type of conduct of violence against women in any of its forms, both physical and psychological, constitutes - in the words of the explanatory memorandum of Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence - "one of the most flagrant attacks on fundamental rights such as freedom, equality, life, safety and non-discrimination proclaimed in our Constitution", and is therefore considered a scourge that affects and involves all citizens and requires a global and coordinated response from all public authorities.

- The choice of the sanction of dismissal from service, despite being the most serious of the legally possible sanctions, is the one that adequately responds to behaviour that is unworthy and dishonourable both for the appellant and for the Armed Forces (as stated

in the contested decision), considering, in effect, that such conduct is totally incompatible with the principles of probity, rectitude, integrity and respect for the law required of members of the Armed Forces.

9.- Sentence: 02/04/2025. Dismissed.

Matter:

Very serious offence provided for in article 7.13 of Organic Law 12/2007, of 22 October, on the Disciplinary Regime of Guardia Civil, consisting of "committing a fraudulent offence convicted by final judgement, which causes serious harm to the Administration and citizens."

Facts:

The ordinary military disciplinary contentious appeal focuses on the decision of the Minister of Defence imposing the sanction of dismissal from service on the Guardia Civil Mr Salvador for having committed a fraudulent offence causing serious harm to the Administration and citizens.

Grounds of challenge:

- Proportionality and individualisation of the penalty imposed;

- Serious harm to the public is not present.

- Being the object of "persecution and animosity".

Legal grounds:

Well, starting from the proven facts in the aforementioned sanctioning decision, transcribed in the second factual background, what is appropriate is to examine and determine whether, in the case at hand, all the elements required by the aforementioned disciplinary type, for which the appellant has been sanctioned, concur, namely: a) the status of Guardia Civil, b) committing an intentional offence convicted by final judgment, and c) that the intentional offence for which he has been convicted is related to the service or causes serious harm to the Administration, to citizens or to entities with legal personality.

Conclusions:

- The elements required by the disciplinary type are:

a) the status of Guardia Civil, b) committing an intentional offence convicted by final judgement, and c) that the intentional offence for which he/she has been convicted is related to the service or causes serious damage to the Administration, citizens or entities with legal personality.

- The rationale behind the classification of the disciplinary offence in question stems from the need to protect the Administration's legitimate interest in the irreproachable criminal

conduct of members of Guardia Civil, since "the exercise of legal coercion by public administrations through police officers demands exemplary behaviour in their dealings with citizens [----], which requires that those who carry out this task, and the dignity, the good name of the Institute and its effectiveness as a State Security Corps "are harmed if those in charge of carrying out those acts which, in the interest of society as a whole, they are charged with preventing, since the Law cannot be totally dissociated from the people who have to coercively impose compliance with it".

- The measure of cessation of the offender's duties for a period not exceeding three months has no other effect than the cessation of the accused in the exercise of his or her usual duties.

- The suspension from duty for a maximum of three months is not considered a disciplinary sanction but a precautionary measure legally established in the Disciplinary Regime of Guardia Civil.

10.- Sentence: 12/03/2025. Dismissal

Subject matter:

Sanction for the commission of four fraudulent offences.

Facts:

"By conformity judgement of 1 April 2024, final on the same date, issued within the Abbreviated Proceeding 42/2023 of the Criminal Court No. 1 of Badajoz, the Guardia Civil Mr. Adrián was convicted as criminally responsible for four offences, according to the following proven facts:

a) A crime of habitual mistreatment in the context of gender violence, provided for and punishable under Article 173.2 of the Criminal Code, without the concurrence of circumstances modifying criminal liability, to a sentence of twenty-one months' imprisonment, with special disqualification from exercising the right to passive suffrage during the time of the sentence, deprivation of the right to possess and carry weapons for a period of four years and a ban on approaching the victims, their homes, places of work or any other places where they are located, at a distance of less than 500 metres, as well as from communicating with them by any means whatsoever, for a period of two years for both prohibitions.

b) Two offences of ill-treatment in the context of gender-based violence, provided for and punishable under Article 153.1 of the Criminal Code, without the concurrence of circumstances modifying criminal liability, with the following penalties for each of them: sixty days of community service, in maximum working hours of eight hours a day, deprivation of the right to possess and carry weapons for a period of one year and one day and prohibition of approaching the victim, their home, workplace or any other place where they are located, at a distance of less than 500 metres, as well as of communicating with them by any means whatsoever, for a period of one year for both prohibitions.

c) An offence of mistreatment in the area of domestic violence, provided for and punishable under Article 153.2 and 3 of the Penal Code, without the concurrence of

circumstances modifying criminal liability, to sixty days of community service, in maximum shifts of eight hours a day, deprivation of the right to possess and carry weapons for a period of two years and a ban on approaching the victim, his or her home, place of work or any other place of work, for a period of one year, and from communicating with him by any means whatsoever, for a period of one year and six months for both prohibitions, and a civil liability of six thousand euros for the non-material damage caused to the victim.

Pleas in law:

- On the one hand, he considers that the principle of typicality-legality has been infringed and, on the other hand, because the principle of proportionality has been breached as regards the penalty imposed.

Law:

The appellant's first plea focuses on the lack of criminality, since neither the objective nor the subjective elements of the offence have been established, 'in particular the need for the conduct to cause serious damage to the administration or to the person concerned'. It considers that a penalty should be imposed on the appellant for the commission of a serious misdemeanour (art. 8 par. 29 L.O. 12/2007).

The complaint must be rejected.

The appellant was punished in accordance with Article 7.13 of Organic Law 12/2007 of 22 October 2007 on the Disciplinary Regime of Guardia Civil, which contains the very serious offence of "committing a fraudulent offence convicted by final judgment, related to the service, or any other offence causing serious harm to the Administration, citizens or entities with legal personality".

This disciplinary offence contains two types of disciplinary offence: a) committing an intentional offence convicted by final judgement, related to the service; and, b) committing any other offence convicted by final judgement, when such offence, although not related to the service, nevertheless causes serious damage to the Administration, to citizens or to entities with legal personality.

In the case we are examining, we are dealing with the type of sanction in the aforementioned section b), which requires two elements: on the one hand, the existence of a final conviction for the commission of an offence not related to the service; and, on the other hand, that such offence causes serious harm to the Administration, to citizens or to entities with legal personality.

There is no doubt that the first element is present, since the appellant was convicted by Criminal Court No. 1 of Badajoz, in a judgment dated 1 April 2024 (in accordance with and final on the date of the judgment), handed down in summary proceedings No. 42/2023, for the intentional commission of four offences: one offence of habitual abuse in the context of gender violence, provided for and punishable under Article 173.2 of the Criminal Code; two offences of ill-treatment in the context of gender violence, provided for and punishable under Article 153.1 of the Criminal Code, and one

offence of ill-treatment in the context of domestic violence, provided for and punishable under Article 153.2 and 3 of the Criminal Code.

As for the second element, this Court has already repeatedly stated that in order to determine whether "serious harm" has been done, we must look to the sentence to take into account the specific offence for which the defendant was convicted at the time. In the present case, he was convicted of the offences of habitual abuse in the context of gender violence; of ill-treatment in the same context and of ill-treatment in the context of domestic violence. As we said, it is necessary to examine the offence in question and the proven fact, which means that the concreteness of this element is not necessarily linked to the sentence imposed, so that it is not a typical requirement that the sentence be deprivation of liberty. In other words, the offence does not have to be punishable by imprisonment, nor does it have to be a so-called serious offence. The seriousness of the damage referred to in the type of sanction is linked to the importance that the sanction for this offence may have for the Administration, citizens or entities with legal personality, when the perpetrator is a member of Guardia Civil Corps; only in this way can it be understood that this (very serious) disciplinary offence also covers, where appropriate, cases of offences committed through imprudence. There is no doubt as to the importance of the aforementioned offences and their impact on citizens, but neither is there any doubt as to the serious impact on the credit that the institution of Guardia Civil should have with citizens if one of its members is convicted of such offences, as it is undoubtedly in the legitimate interest of the Administration that those who belong to it - and even more so if as agents of the Authority they must investigate and prosecute offences - have not been convicted of this type of conduct.

The disciplinary type applied is aimed at the offence committed and, where appropriate, the consequences expressed in the sanctioning type must be drawn from this. Therefore, it is not an offence of result, but of mere activity, which is centred on the commission of the offence. Therefore, causing serious damage to the administration, citizens or legal entities is an adjective of the offence committed, and for this only the criminal judgment (proven fact, the sanction imposed and the reasoning, if applicable) must be examined.

This second element, for the reasons indicated, is therefore also present. Consequently, the classification of the offence is correct, which means that the facts cannot be subsumed under the serious misdemeanour established in art. 8 no. 29 of Organic Law 12/2007, of 22 October.

THIRD: Finally, the appellant considers that the principle of proportionality has been infringed. The plea cannot succeed, since, as the Constitutional Court pointed out in its judgement 180/2004 of 2 November, the "task of Guardia Civil is, among others, to investigate crimes and prosecute criminals in order to bring them before the courts. We said then with regard to the police, and we must now reiterate, that the effectiveness of this service would be undermined if those responsible for carrying it out could be accused of committing the very acts which, in the interests of society as a whole, they are charged with preventing, since the Law cannot be totally dissociated from the People who must coercively enforce it. It is not, as has sometimes been said, that members of the security forces and corps are permanently on duty, but that this requires that those on duty do not engage in conduct which they themselves have to prevent or whose punishment they have to facilitate when it is carried out by others. The irreproachable criminal liability of those

who perform police functions is a legitimate interest of the Administration, as distinct from the dignity of members of the security forces and bodies , and therefore, when disciplinary sanctions are imposed on those who have been subject to criminal convictions, the ne bis in idem principle is not infringed".Thus, given the nature of the facts that gave rise to the criminal conviction, it is proportional to the facts that the Administration decides that the perpetrator should be punished with dismissal from the service, since taking into account the importance of the criminal irreproachability of public officials in general, and even more so for those whose mission is to investigate and prosecute crimes, it is proportionate that when a member of Guardia Civil commits a criminal offence, the response of the administration should be dismissal from the service. There is a full and proportionate correlation between the motivating event and the sanctioning response produced.

In short, the antecedents are proportional to the consequences when there is an equality of reason. Therefore, proportionality implies equality in a series of reasons, and in the case at hand there is such equality between the reason for the commission of the intentional offence and the reason for the separation from service. In effect, proportionality requires compliance with three controls: a) the control of appropriateness (or suitability, which sometimes leads to reasonableness); b) necessity (which, in reality, can mainly appear as a problem of legislative options); and, c) weighting (which constitutes proportionality in a strict sense). Thus, proportionality implies that there is a correlation and adequacy of the sanction with the fact that motivates it (its seriousness) and with the purpose that justifies it. In this respect, the need for an appropriate balance is often affirmed. In its examination, on the one hand, the legal good protected by the rule is usually examined, in this case the criminal irreproachability of the persons whose tasks include the investigation of crimes and the pursuit of criminals in order to bring them to justice; a legal good which is an end worthy of protection given the implications it has for confidence in the system of social coexistence. And, on the other hand, with the perpetrator of the act, which is carried out through the analysis of guilt, i.e. the concrete imputation to the person in question.

Thus, as we have indicated, proportionality has not been breached in the present case and the sanction imposed meets the requirements of the test or the controls to which we have referred.

The arguments put forward by the appellant that it is a less serious penalty and that his service record has not been taken into account cannot be accepted. To the first argument, it has already been answered above that the disciplinary type does not require serious offences and that it even covers offences committed through recklessness. As for the second argument, the Service Record would provide us with his record, but there is no doubt that he committed the acts for which he was convicted, so he cannot be considered to be of unimpeachable conduct.

Conclusions:

- The sanctioning type requires two elements: on the one hand, the existence of the final conviction for the commission of an offence not related to the service; and, on the other hand, that such an offence causes serious damage to the Administration, citizens or entities with legal personality.

- It is not an offence of result, but of mere activity, which is centred on the commission of the offence. Therefore, the fact that it causes serious damage to the administration, citizens or legal entities is an adjective of the offence committed, and for this only the criminal judgment (proven fact, the penalty imposed and the grounds, if applicable) must be examined.

- Given the nature of the facts that gave rise to the criminal conviction, it is proportional to them that the Administration decides that the perpetrator should be punished with dismissal from the service, since taking into account the importance of the criminal irreproachability of public officials in general, and even more so for those whose mission is to investigate and prosecute crimes, it is proportionate that when a member of Guardia Civil commits a fraudulent offence, the response of the administration should be dismissal from the service. There is a full and proportionate correlation between the motivating event and the sanctioning response produced.

11.- Sentence: 22/01/2025. Dismissal

Matter:

Refusal of precautionary measure; dismissal from service, as a consequence of very serious misconduct, art. 7.13 LORDGC, of 22 October.

Facts:

Suspension of disciplinary sanction in the military sphere and requirements for its concession.

Fundamentals of law:

FIRST.- In accordance with the provisions of article 513 of Organic Law 2/1989, of 13 April, on Military Procedure, the lodging of a contentious appeal will not prevent the sanctioning Administration from executing the act which is the object of said appeal, unless the Court, at the request of the plaintiff, agrees to suspend it.

This provision establishes that: "Suspension of sanctions for serious misconduct and extraordinary penalties may be agreed:

a) When the contestation of the contested act is based on any of the grounds for nullity as provided for in Article 47(1) of the Law on Administrative Procedure and the Court considers this to be the case.

b) If, during the processing of the disciplinary appeal, the suspension of the contested act has already been agreed under the provisions of Article 54 of the Disciplinary Law.

c) If the sanction appealed against is that of loss of post and entails the forced transfer of the person sanctioned outside the locality where he/she has been residing up to that time.

d) If the execution of the sanction would cause damage or harm that would be impossible or difficult to repair.

In this regard, it is necessary to point out that this Court has repeatedly established, inter alia, by order of 22 July 2016, that: "Even if any of these cases occur, the suspension is not automatic and the Court must carry out a reasoned weighing of all the interests in conflict, and it should be remembered, as the Constitutional Court points out (STC 148/1993, among many others), that the precautionary incident involves a limited cognition trial in which the judicial body must not pronounce on the issues that must be resolved in the main proceedings, but it must verify the concurrence of a danger of legal damage to the right whose protection is sought as a result of the pendency of the proceedings, the delay in issuing the final ruling and the appearance that the plaintiff holds the right invoked with the consequent, probable or plausible illegality of the administrative action, assessing, on the other hand, the damage to the general interest that the adoption of the requested precautionary measure would entail". The orders of 7 March 2017 and 20 June 2019, among others, further support this criterion.

SECOND - In support of his claim for suspension of the penalty of separation from service, the appellant, after stating that he is seeking suspension of the contested measure 'on the grounds that the conditions necessary for the adoption of the interim measure sought are met:

a) "Fumus boni iuris" or appearance of good law, inasmuch as the presumption of legality of the contested act (LPAC art. 38 and 39.1) is weakened in the present case by the following causes, which augur a foreseeable success of the appeal that is now lodged against it:

b) "Periculum in mora", since the execution of the act could cause the appeal to lose its legitimate purpose. This would result in the deprivation of the appellant's active service from the notification of the sanction until the Court reaches a decision", then, without further consideration, it simply alleges that "In accordance with article 513 LO 2/1989, in accordance with the wording of LO 8/2014, the filing of the contentious-disciplinary appeal will not prevent the sanctioning Administration from executing the act that is the object of the appeal, unless the Court agrees, at the request of the plaintiff, to suspend it. However, the suspension of sanctions for disciplinary offences may be agreed: a) When the contested act is based on any of the grounds of full nullity provided for in the LPAC and this ground is appreciated by the Court. b) If, during the processing of the disciplinary appeal, the suspension of the contested act has already been agreed. c) If the execution would cause damage or harm that would be impossible or difficult to repair".

THIRD.- As stated in the unfavourable report issued by the sanctioning authority, none of the reasons invoked by the appellant that allow the suspension of sanctions derived from very serious offences and which are expressly provided for in article 513 of the aforementioned Organic Law 2/89, of 13 April, on Military Proceedings, are present, nor are they applicable in the present case.

Indeed, in relation to the pleas in law, on the one hand, as stated in the unfavourable report issued by the sanctioning authority, "the appellant does not invoke or give any minimal reasoning, in support of his claim, as to the existence of any cause

of radical and absolute nullity of the kind referred to in Article 47.1 of the current Law on Common Administrative Procedure, or express violation of any of his constitutional rights, and therefore, as it is presented without due legal or argumentative reasoning and lacks the obvious, evident and manifest nature required by the doctrine of the appearance of good law to understand it to be affected by the charge of nullity, the disputed issue must necessarily be dismissed".

And, in relation to the allegation regarding the possible irreparability of the damage that the dismissal could cause the appellant, it should be recalled that it is constant case law of this Court (orders of 23-2-2004, 9-5-2005, 1-9-2005, 25-7-2006, 1-10-2008, 23-12-2008, 7-5-2009, 21-10-2009, 21-10-2009, 30-11-2009, 26-5-2010, 27-7-2013, 10-3-2014 and 8-4-2015), according to which the execution of the disciplinary sanction of dismissal from service, even in its maximum seriousness in congruence with its nature as a sanction corresponding to the commission of a very serious misdemeanour, does not in itself cause damage which cannot be remedied if the legal claim is successful and the penalty is annulled, since the possible upholding of the appeal would result in the appellant being restored to the legal position affected by the disciplinary proceedings and the annulment of the penalty already imposed, with full restoration of his professional and financial rights and with the guarantee of the corresponding compensation for the damage caused.

On the other hand, it should not be forgotten that, as has been established by this Chamber, the analysis of a request for suspension of the sanction imposed, as in this case, requires weighing up to what extent the alleged private interest must prevail over the general interest protected by the sanctioning rule, and so, in the case in question, in view of the factual assumption determining the sanction imposed, for the commission of a very serious offence provided for in article 7.13 of Organic Law 12/2007 of 22 October 2007 on the Disciplinary Regime of Guardia Civil, consisting of "committing a fraudulent offence convicted by final judgement, which causes serious harm to the Administration and citizens", as established in the aforementioned unfavourable report, the general interest, given the nature of the facts that led to the imposition of the sanction and which are reproduced in order to avoid further repetition, is specified in the discipline, protection and reserve of the service, as well as the dignity of the Institution of Guardia Civil, without this entailing a pronouncement on the substantive issues raised in the appeal lodged against the sanction imposed.

Conclusions:

- Suspension of penalties for serious misconduct and extraordinary penalties may be agreed:

a) When the contestation of the appealed act is based on any of the grounds of nullity of full nullity provided for in Article 47(1) of the Law on Administrative Procedure and the Court so finds.

b) If, during the processing of the disciplinary appeal, the suspension of the contested act has already been agreed under the provisions of Article 54 of the Disciplinary Law.

c) If the sanction appealed against is that of loss of post and entails the forced transfer of the person sanctioned outside the locality where he/she has been residing up to that time.

d) If the enforcement of the sanction would cause damage or harm that would be impossible or difficult to repair.

- Even if any of these circumstances apply, the suspension is not automatic and the Court must carry out a reasoned weighing of all the conflicting interests.

- The analysis of a request for suspension of the sanction imposed, as in this case, requires weighing up the extent to which the alleged private interest must prevail over the general interest protected by the sanctioning rule.

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