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PUBLIC SERVICE EXAMS AND JUDICIAL REVIEW OF QUESTIONS AND ANSWER CORRECTIONS

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ABSTRACT: This paper examines the limits and possibilities of judicial intervention in cases involving the correction of questions and answers in public service entrance exams in Brazil. Based on a literature review that provides historical context for public competitions, the study discusses two key theoretical frameworks: technical discretion and the principle of adherence to public notice. These are then analyzed through case studies involving the jurisprudence of the São Paulo State Court of Justice, which demonstrate how material errors, non-compliance with examination notices, and inconsistencies in evaluation criteria have led courts to intervene to ensure fairness and equal conditions for candidates. The article further analyzes the positive and negative effects of this judicialization, concluding that a combined reading of the legal framework and court decisions is essential for an incremental understanding of the legal regime governing public service exams and the potential impacts of Law No. 14.965/2024.

KEYWORDS: Public service examinations; judicialization; technical discretion.

CONCURSOS PÚBLICOS E O CONTROLE JUDICIAL INCIDENTE SOBRE QUESTÕES E CORREÇÕES DE PROVAS

RESUMO: O trabalho examina os limites e possibilidades de atuação do Poder Judiciário em ações que discutem a correção de provas em concursos públicos. A partir de revisão bibliográfica que contextualiza historicamente os concursos públicos no Brasil, passa-se a tratar dos eixos teóricos que ilustram esse estudo: a discricionariedade técnica e o princípio da vinculação ao edital. Por meio de estudos de casos, tais eixos teóricos passam a ser confrontados com a jurisprudência do Tribunal de Justiça do Estado de São Paulo, na qual se identificam situações em que erros materiais, descumprimento do edital ou critérios de avaliação têm justificado a atuação do Poder Judiciário para assegurar a justiça e a igualdade de condições nos processos seletivos. Por fim, discutem-se os efeitos positivos e negativos dessa judicialização, concluindo-se pela necessidade de uma leitura conjugada dos marcos normativos e das decisões que desaguam nesse controle judicial para análise incremental do regime jurídico aplicável aos concursos públicos e dos potenciais impactos da Lei nº 14.965/2024.

PALAVRAS-CHAVE: Concursos públicos; judicialização; discricionariedade técnica.

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1. Introduction

Public service examinations are fundamental to ensuring fair and impartial access to public positions, preserving the principles of administrative morality and impersonality.

In 2020, statistics showed that public service jobs accounted for 12% of employment in Brazil. According to the Atlas of the Brazilian State (Ipea, 2025), the country had approximately 11.5 million public servants (latest data includes federal, state, and municipal levels), and 90% of these individuals were hired through public examinations, as required by the Constitution (Constituição Federal, Article 37, II). These examinations contribute to the efficiency and improvement of public administration by ensuring that qualified and properly selected individuals carry out public functions. Thus, holding public competitions in Brazil is essential for filling public administration roles, given the public interest inherently associated with these processes.

When conducted within legal limits, public exams ensure that positions are filled fairly, selecting candidates who will carry out their duties efficiently. Given the significance of these selection processes, the organization and implementation of exams must adhere to the constitutional principles of legality, impersonality, morality, publicity, and efficiency.

However, litigation involving candidates and public exams has been a growing phenomenon, reflecting the need for judicial intervention to correct irregularities in test questions and grading. In this context, in 2011, the Federal Supreme Court (Supremo Tribunal Federal [STF]) acknowledged the general repercussion of the controversy regarding whether courts could review the grading of public exams in Extraordinary Appeal No. 632.853/CE, reported by minister Gilmar Mendes (Theme No. 485). The thesis established that "[...] it is not for the Judiciary to replace the examination board to reassess the content of questions and the grading criteria used, except in cases of illegality or unconstitutionality" (Brasil, 2015, translated by authors).

The ruling in Theme 485 aligns with the doctrinal understanding that courts should not re-evaluate grading criteria or replace examiners except in clear cases of illegality or constitutional violations. Nonetheless, a closer reading of the precedent reveals that judicialization is not entirely precluded. Since then, there have been numerous precedents from both the STF and the Superior Court of Justice (Superior Tribunal

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de Justiça [STJ]) discussing the parameters of illegality and unconstitutionality, and even broadening the scope of judicial review, such as in cases of "gross errors" or evidence flaws, including: (i) inconsistency between the exam content and the answer key; (ii) material errors in the question or official answer; and (iii) exceptional circumstances in the scoring process. In practice, therefore, judges have been responsible for interpreting the boundaries of "illegality" and "unconstitutionality," which has led to several cases where courts have reviewed public exam questions and corrections.

The research problem can, therefore, be summarized as follows: how has the Judiciary intervened in the correction of public service exam answers, and to what extent has this intervention affected the legal framework governing such exams? The hypothesis is that judicial intervention has, in practice, gone beyond the limits commonly stated in legal doctrine and set out in Theme No. 485. According to doctrinal parameters and the STF's decision in the case that originated Theme 485, judicial review of exam corrections is legitimate only when there is a clear and evident material error that compromises the legality and fairness of the selection process. Additionally, the recent enactment of Law No. 14.965/2024, which outlines general rules for public service exams, provides further context.

To address the research question, the article draws not only on constitutional and statutory principles but also, using an inductive method, on the practical implications of judicial decisions, which contribute to a deeper understanding and academic discussion on public examinations in Brazil.

2. Public service exams in Brazil

The modernization and transformation of Public Administration over time have directly influenced the evolution of public service examinations in Brazil, particularly regarding the pursuit of standardization and professionalism. During the colonial period and early Empire, public positions were mostly filled through political appointments and personal recommendations, reflecting an administrative structure shaped by the interests of dominant social groups of the time (Nohara, 2012). This practice resulted in a public service lacking technical competencies and heavily influenced by private interests.

During the colonial period and the First Republic, the selection of public agents in Brazil predominantly followed a patrimonialist model, where candidates were favored

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with public positions based on personal loyalty and mutual trust with local or central authorities (Carvalho Filho, 2020).

Later, under Getúlio Vargas's administration, political centralization intensified, altering the power dynamics between the federal government and regional oligarchies. In his 1930 inauguration speech, Vargas highlighted the need to simplify legislation and reform the civil service to eliminate redundancies and unnecessary positions, prioritizing a leaner and more efficient administration.

According to Di Pietro (2020, p. 39), it was only with the 1930 Revolution and Vargas's rise to power that the centralization of authority and strengthening of the Brazilian state created a more favorable environment for implementing structural reforms in Public Administration.

The enactment of the Electoral Code through Decree No. 21.076 on February 24, 1932, marked a significant milestone against the coronelismo system, as it introduced the secret ballot and granted women the right to universal suffrage (Nohara, 2012, p. 17). This development directly influenced the 1934 Constitution, which, in Article 170, became the first to stipulate that appointments to public office must be made through qualification exams and, when necessary, based on titles – aiming to eliminate clientelism and promote an impersonal and professional Public Administration based on competencies.

Continuing with Nohara (2012, p. 21), urban growth outpaced industrialization, leading to employment challenges in large cities and making it harder to maintain clientelist relationships, which had persisted since the early republican period. It was from the 1934 Constitution and the creation of the Administrative Department of Public Service (Departamento Administrativo do Serviço Público [DASP]) that a new paradigm emerged in Brazilian Public Administration, centered on meritocracy. The requirement for public examinations gained legal force, and mechanisms for controlling and rationalizing the administrative structure began to be rigorously implemented (Nohara, 2012; Meirelles, 2016).

On October 28, 1936, Law No. 28 was enacted, classifying civil servants as either public employees or temporary staff (Brasil, 1936). According to the law, those entering through public exams gained access to various rights, while temporary workers were often hired for specific tasks based on political or personal connections.

In 1937, Getúlio Vargas established the Estado Novo, an authoritarian regime that further centralized power and solidified the state's role in various areas (Carvalho

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Filho, 2020). Within this context, a significant administrative reform was initiated to modernize and enhance the efficiency of Public Administration. This reform brought several structural changes, laying the groundwork for the professionalization of public service and for overcoming lingering clientelist practices (Nohara, 2012).

The 1988 Federal Constitution solidified public exams as the standard procedure for filling permanent positions, incorporating this requirement into the set of administrative principles outlined in Article 37. Legality became a boundary for public agents' actions, while impersonality and morality aimed to ensure equitable and ethical governance (Meirelles, 2016; Di Pietro, 2020).

Despite these regulatory advances, contemporary challenges remain – particularly regarding the need to update selection methods. Criticisms of the rigidity of traditional bureaucracy and the difficulty of adapting exams to the technological and social demands of the 21st century have led to calls for permanent modernization (Bresser-Pereira, 1996). One example is Law No. 14.965/2024, which introduced general regulations for public exams, offering greater flexibility in assessing skills and competencies – for instance, through document preparation and task simulations relevant to the job.

Another important wave of innovations pertains to the gradual evolution of the legal framework for public exams, with an emphasis on inclusion, diversity, and historical reparation. Affirmative action policies for quota systems and initiatives to reduce candidates' expenses stand out. Notably, Federal Law No. 13.656 of April 30, 2018, exempts from registration fees "[...] candidates whose families are enrolled in the Federal Government's Social Programs Registry (CadÚnico) and whose per capita household income is equal to or less than half the national minimum wage" (Brasil, 2018, translated by the authors). Further, Decree No. 11.722 of September 28, 2023, established the Unified National Exam, which "[...] consists of a joint model for conducting public exams to fill permanent positions in the federal public administration, conducted simultaneously across all states and the Federal District" (Brasil, 2023, translated by the authors).

Ultimately, the professionalization of public services through the widespread use of exams has yielded significant gains in efficiency. Rational resource use, administrative continuity, and staff autonomy are essential for modern management that is committed to the public interest (Bresser-Pereira, 1996; Diniz, 1999).

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3. Legal framework governing public service exams

The constitutional principles guiding Public Administration, especially those stated in Article 37 of the 1988 Federal Constitution, serve as foundational elements for establishing a democratic, ethical, and efficient state. Legality, impersonality, morality, publicity, and efficiency form the normative structure that directs public managers and shapes the institutional design of public exams as a method for accessing public service (Brasil, 1988; Meirelles, 2016; Di Pietro, 2020).

These principles not only provide legal security but also set ethical and operational standards for public governance. Legality imposes clear limits on administrative actions, requiring that all state actions have explicit legal backing. Meanwhile, impersonality and morality safeguard the collective interest, combating favoritism and ethical breaches in public management (Meirelles, 2016; Bandeira de Mello, 2003).

In this context, public service examinations emerge as fundamental tools to ensure that access to public administration is based on objective and impartial criteria. The publicity of administrative acts and the ongoing pursuit of efficiency complement this system, demanding transparent, fair, and merit-based selection processes (Carvalho Filho, 2020).

However, applying these principles requires specific regulations to organize the operational details of entering public service. Law No. 8.112/1990, which establishes the legal regime for federal civil servants, is one of the primary laws governing public service exams. It stipulates, for instance, that assuming a public position is only permitted after passing an exam and sets legal parameters for appointments, inductions, probation, and functional readjustments.

Brazil's federative diversity means that states and municipalities draft their statutes, provided they adhere to constitutional guidelines. Although Law No. 8.112/1990 serves as a reference, each jurisdiction can tailor its legal regime to meet local needs and characteristics. This flexibility allows for improvements in human resources policies, but also creates challenges in harmonization (Bastos, 2024; Santos, 2019).

The legal framework for federal public exams in Brazil has evolved through institutional advancements aiming for rationalization, transparency, and efficiency in managing access to public service. One of the key milestones was Decree No. 6.944 of August 21, 2009, which sought to establish general guidelines for conducting exams

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within the federal public administration. This decree introduced technical and administrative requirements for exam authorization and implementation, such as proof of staffing needs, minimum intervals between announcement and exam dates, prohibitions against generic waiting lists, and stricter parameters for title evaluation. It also reinforced the principle of legality by emphasizing the normative authority of the public notice and requiring objective and transparent criteria in selection processes.

With the enactment of Decree No. 9.739 of March 28, 2019, the regulations were partially revised to align with new administrative priorities focused on efficiency and cost reduction. This new decree repealed some previous provisions and mandated more robust assessments of workforce needs, vacancy-institutional goal alignment, and compatibility with organizational strategic planning as prerequisites for holding exams. It also encouraged modernization through digital technologies and electronic platforms while reaffirming the discretionary nature of decisions to fill vacancies – even when they exist. Though it retained the importance of impartial examining boards and the binding nature of public notices, the decree introduced a more managerial perspective, aligning staffing management with performance and results.

Internal regulations and ministerial orders also play a critical role. For instance, Ministry of Economy Order No. 1.289/2019 requires that examining boards include technically qualified specialists. This ensures fairness and integrity in candidate evaluations, safeguarding the principles of legality and impersonality (Pires, 2020).

Most recently, Law No. 14.965 of May 13, 2024 – referred to as the new "Public Service Exam Law" – represents a significant legislative leap, adding legal weight to principles previously regulated only through sub-legal norms. Scheduled to take effect in 2028 (with optional early adoption), this law creates a comprehensive legal framework focused on ensuring impartiality, transparency, and integrity in selection processes. Key provisions include conflict-of-interest prevention, mandatory public records of examining board meetings, and regulation of control mechanisms and administrative appeals, guaranteeing candidates' legal rights. By incorporating these elements into formal law, the new statute aims to enhance legal certainty and standardize practices across different government levels, fostering fairer and more reliable public exams.

In comparison, we observe a progressive strengthening of both normative and institutional frameworks. Decree No. 6.944/2009 established procedural guidelines emphasizing formalization and objectivity. Decree No. 9.739/2019 introduced a

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managerial inflection, linking exams to administrative efficiency and results. Law No. 14.965/2024 goes further, covering not only the procedural structure but also the ethical and rights-based underpinnings of exams, with a strong emphasis on constitutional principles. Thus, this new legal framework not only consolidates principles already recognized by courts – like adherence to the public notice and due administrative process – but also reinforces them with legal status, addressing regulatory gaps that previously created uncertainty and interpretative disputes. The combination of this legal corpus with evolving jurisprudence may usher in a new era of institutional refinement in Brazil's public exams, centered on legality, transparency, and the protection of candidates' fundamental rights.

4. Judicial review of exam corrections

Jurisprudence plays a central role in interpreting and applying the rules governing public service exams in Brazil. It serves not only as a legal source but also as a tool for monitoring legality and administrative morality. Superior Courts such as the Federal Supreme Court (Supremo Tribunal Federal [STF]) and the Superior Court of Justice (Superior Tribunal de Justiça [STJ]) have developed consistent positions that uphold candidates' rights, bind the Administration to the public notice, and reinforce adherence to the constitutional principles that guide administrative conduct – legality, impersonality, publicity, morality, and efficiency.

Beyond ensuring the application of existing laws, jurisprudence performs an incremental function in improving the legal-administrative framework applicable to public service exams. It contributes to the evolution of administrative practices by applying constitutional parameters. As such, it plays a crucial role in improving the performance of examining boards, particularly by requiring greater transparency in decision-making, adherence to administrative morality, and compliance with due process. Courts have consistently required boards to justify their decisions, ensure the right to adversarial proceedings, and treat candidates equitably – especially in the context of appeals or objections to grading criteria.

This role is evident in landmark decisions concerning tie-breaking criteria, document requirements, and failures by examining boards (Brasil, 2022; Brasil, 2024). Courts have also permitted the supplementary application of federal statutes, such as Law No. 8.112/1990, to fill legislative gaps at the municipal level (Bastos, 2024).

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Through this approach, jurisprudence promotes normative coherence and protects rights within Brazil's decentralized legal landscape.

Judicial review extends beyond correcting formal errors. It functions as a guardian of constitutional values, preventing abuses and ensuring that public exams remain legitimate instruments for democratic access to civil service. The STF, for example, has ruled that the violation of constitutional principles renders an exam invalid, as seen in ADPF No. 311. The STJ has emphasized the need for clear and objective grading criteria, as in REsp 1.798.105/RS, reinforcing the principle of impersonality.

Jurisprudence also plays a structural role, correcting administrative practices that compromise the legitimacy of exams while simultaneously helping to construct interpretive standards that guide the Administration. This guiding function of the Judiciary is essential for ensuring the stability and credibility of public service exams. Uniform decisions avoid conflicting interpretations, thereby protecting candidates' equal treatment and legal certainty.

STF rulings on tie-breaking criteria and document requirements illustrate how jurisprudence ensures equitable application of public notice rules, demanding that predefined criteria be applied objectively. A lack of clarity or publicity in defining these criteria violates the principles of impersonality and transparency as established by Article 37 of the 1988 Federal Constitution (Brasil, 1988).

Thus, sub-legal regulation and jurisprudence function in a complementary and dialogic manner, strengthening the institutional framework of public service exams. While legislation sets out the foundational rules and procedures, jurisprudence adds normative depth to these rules and enhances their application based on constitutional values.

In conclusion, jurisprudence not only interprets and complements the existing legal framework but also serves as a driver of transformation and refinement of the legal regime governing public service exams. It ensures that selection processes are conducted with greater fairness, transparency, and respect for candidates' fundamental rights.

5. Jurisprudence and study of cases

5.1 Favorable arguments for judicial review

As seen in the interpretation of Theme 485, the Federal Supreme Court (STF), when ruling on RE 1.114.732 AgR / MS – reported by Minister Edson Fachin on October 18,

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2019, and published on October 30, 2019 – reaffirmed that judicial intervention in public service examinations must be limited to the control of legality. It is permissible for the Judiciary to annul questions only when there is an unequivocal material error. This demonstrates that courts may correct errors made by the Public Administration in public exams, especially when the mistake is immediately evident (*primo ictu oculi*), i.e., at first glance, without the need for in-depth analysis.

The STF's decision highlights the need to reconcile the autonomy of the examining board with the possibility of judicial intervention. The prevailing rule is that the Judiciary should not interfere in the formulation and correction of exams, upholding the separation of powers and respecting administrative discretion. However, in exceptional situations – when there is a clear and indisputable error compromising the legality of the selection process – the annulment of the question becomes necessary. This exception is justified by the impossibility of allowing administrative discretion to serve as a shield for maintaining evident illegalities. Additionally, the ruling emphasizes the *writ of mandamus* as the appropriate legal remedy to challenge such flaws. According to Article 5, item LXIX, of the Federal Constitution, writ of mandamus (*mandado de segurança*) can be used whenever there is a threat to or violation of a clear legal right, as in cases where candidates are harmed by material errors in the exam.

Thus, judicial intervention in such cases does not constitute undue interference with the examining board's powers but rather the exercise of judicial control to uphold the constitutional principles of legality and equality.

Another important area where judicial control is exercised is in the review of public notices (*editais*). These notices, as binding instruments that link the Public Administration to legal and regulatory provisions, cannot set arbitrary criteria for candidate selection. Although the *edital* must be respected by both the Administration and candidates, it is not immune to errors that may compromise the impartiality and regularity of the selection process. In such cases, judicial intervention is essential to correct administrative acts that exceed legal limits or constitute abuses of power.

It is worth noting that Decree No. 9.739/2019, referenced in several analyzed decisions, replaced Decree No. 6.944/2009 to establish measures aimed at improving efficiency in federal public administration exams. More recently, Law No. 14.965/2024 was enacted to provide general rules for public service exams in Brazil, focusing on modernization, standardization, and inclusion – especially within the

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federal government. One of the most significant and controversial innovations is the possibility of online exams. Given its recent enactment, there is not yet a significant body of case law addressing the law's impact in this context.

Judicial decisions reveal, for example, that the lack of required bibliographies in *editais* often hinders judicial control over examining boards' decisions, a scenario present in both Decree No. 9.739/2019 and Law No. 14.965/2024.

Another significant example of judicial control in public exams involves the subjective right to appointment for approved candidates – either within or even beyond the number of vacancies provided – particularly when the Administration appoints candidates from another exam before the current one's validity period ends. This understanding is consolidated in STF's Binding Precedent No. 15, which states: "During the validity period of a public exam, an approved candidate has the right to be appointed when the position is filled without regard to classification" (Brasil, 1963, translated by the authors). The issue was thoroughly addressed in Extraordinary Appeal No. 837.311, reported by Minister Luiz Fux, under Theme 784 of the STF's system of general repercussion, reaffirming the importance of this right.

The term "approved candidate" includes not only those ranked within the number of vacancies stated in the *edital* but also those who meet the criteria established by law. According to Article 39 of Decree No. 9.739/2019, the responsible agency must publish the list of approved candidates in the Official Gazette, respecting the limits of Annex II. The same decree emphasizes the Administration's obligation to follow legal and regulatory standards strictly, ensuring that exams cover the defined programmatic content and respect candidate classification.

These criteria reinforce the importance of ranking and the limits established by the *edital* to determine who is effectively considered approved. Thus, judicial control of public exams remains a crucial mechanism to uphold the constitutional principles of legality and equality.

It is also important to emphasize that current regulations – represented by Decree No. 9.739/2019 – aim to standardize and bring greater predictability to selection processes, reducing arbitrariness and enhancing legal certainty. Nonetheless, further regulatory advances are needed to address the remaining gaps.

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5.2 Specific judicial interventions

This section presents a detailed examination of judgments issued by the Superior Court of Justice (Superior Tribunal de Justiça [STJ]) and the São Paulo State Court of Justice (Tribunal de Justiça do Estado de São Paulo [TJSP]), illustrating the circumstances under which judicial control became essential in the context of public service exams. The goal is to assess the extent of judicialization of public exams in Brazil and determine where judicial responses deviate from traditional doctrinal understandings of administrative discretion in these matters – suggesting a broader interpretation of Theme 485.

These interventions are particularly significant in cases involving material defects, such as poorly formulated questions, grading errors, or issues in the publication of results. Such flaws undermine the integrity of the process and violate constitutional principles like legality, impersonality, morality, and publicity. While the public notice (*edital*) is considered the "law of the exam" and binds both the Administration and the candidates, its authority is not absolute when it contravenes constitutional provisions or contains glaring errors.

In these instances, the Judiciary does not replace administrative merit but rather protects fundamental rights and constitutional principles governing public administrative actions. The aim is to correct deviations that, if unaddressed, could compromise the legitimacy of the selection process and erode public trust in competitive exams as a fair means of accessing public positions.

Below is an expanded analysis of key legal precedents identified in jurisprudence.

Case 1: Poorly Formulated Question – STJ; RMS No. 30.246/SC

ORDINARY APPEAL IN WRIT OF MANDAMUS. PUBLIC SERVICE EXAM. POSITION: CIVIL POLICE DELEGATE. REQUEST TO ANNUL MULTIPLE-CHOICE QUESTIONS. PRELIMINARY ISSUE: NECESSARY LITISCONSORTIUM UNDER ARTICLE 47 OF THE CIVIL PROCEDURE CODE – NOT APPLICABLE. ALLEGATION OF NON-COMPLIANCE WITH SUBJECT MATTER IN THE PUBLIC NOTICE. PARTIAL RELEVANCE. ANNULMENT OF QUESTION 17. VIOLATION OF THE PRINCIPLE OF PUBLICITY. APPEAL PARTIALLY GRANTED.

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1. As a rule, annulling an exam question may affect the ranking list. However, in this case, although item 14.6 of the Public Notice stipulated adjustments in scores for annulled questions, citing other candidates as necessary parties under Article 47 of the CPC was not required.
2. According to the STJ's settled case law, judicial review of public exam questions is permitted to verify compliance with the programmatic content, provided the review does not require specialized expertise. The Administration must adhere to the rules in the public notice. Observance of the principle of publicity.
3. The administrator has the authority and duty to exercise discretion in selecting exam content but is bound by the public notice once it is published.
4. Questions must address the programmatic content defined in the public notice. In this case, question 17 did not.
5. Appeal partially granted
(Brasil, 2010, translated by the authors).

In this case, it was found that question 17 covered content not listed in the public notice, violating established rules and the principle of publicity. Judicial intervention was deemed appropriate because the Public Administration must strictly adhere to the defined programmatic content when preparing the exam.

The decision emphasized that administrative discretion cannot justify violations of constitutional principles or established norms, as this would jeopardize the equality of opportunity among candidates.

Case 2: No Correct Answer – STJ; REsp No. 471.360/DF

ADMINISTRATIVE LAW. PUBLIC EXAM. MULTIPLE-CHOICE TEST. MATERIAL ERROR. NO CORRECT ANSWER AVAILABLE. OFFICIALLY CONFIRMED BY EXPERT REPORT. JUDICIAL ANNULMENT VALID. VIOLATION OF LEGALITY. PRECEDENTS. SPECIAL APPEAL DENIED.
1. The STJ has held that in cases of material error – perceptible *primo ictu oculi* (at first glance) – courts may exceptionally annul a multiple-choice question.
2. In this case, a judicial expert, unchallenged by the opposing party, confirmed that the question lacked a correct answer, conflicting with the official answer key and the public notice, thus violating the principle of legality.
3. Special appeal denied
(Brasil, 2006, translated by the authors).

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In this instance, an official expert confirmed that one exam question had no correct answer. This was classified as a material defect. The lack of a valid answer not only invalidated the question's assessment value but also directly violated the principle of legality, which underpins public administrative actions.

Case 3: Recognition of Material Error by the Examining Board – STJ; RMS No. 39.635/RJ

> 1. In General Repercussion Theme 485, the Federal Supreme Court ruled that it is not within the Judiciary's scope, in its legality review role, to replace an examining board in evaluating candidates' answers and assigning scores, except in exceptional cases involving a clear mismatch between the question content and the exam notice (RE 632.853/CE, Rapporteur: Min. GILMAR MENDES, Full Court, DJe 29.6.2015).
> 2. In the present case, it is clear that the examining board itself, in response to candidates' appeals, corrected the official answer key by replacing option D with option A, thereby recognizing a material error caused by the exam commission.
> 3. In such situations, the board should have annulled the question and awarded points to all candidates, as required by item 13.7 of the exam notice. However, it failed to do so, prompting the filing of the present action.
> 4. Therefore, the decision aligns with the general repercussion understanding established by the Supreme Court, affirming that judicial intervention is justified when there is a blatant violation of the rules in the exam notice.
> 5. As such, there is no reason to amend the decision, which remains valid
> (Brasil, 2017, translated by the authors).

In this case, the examining board acknowledged a material error in the official answer key of a multiple-choice question by changing the correct answer from "D" to "A" following candidates' appeals. However, it did not take the appropriate administrative steps to rectify the problem – such as annulling the question and awarding points to all candidates – as required by the notice. The Superior Court of Justice, relying on the STF's Theme 485, ruled that the board's inaction violated the rules of the notice and justified judicial intervention.

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Case 4: Questions Based on Nonexistent Legal Premises – TJSP; Mandatory Judicial Review No. 1005388-57.2019.8.26.0176

> MANDATORY JUDICIAL REVIEW – Writ of Mandamus – Action filed by the Public Prosecutor's Office seeking annulment of a question in the essay portion of the exam for selecting members of the Tutelary Council of the District of Embu das Artes – Judgment granting the writ – Upheld – Question contained a gross error, clearly perceptible *primo ictu oculi*, relying on legal premises not recognized by Brazilian law, making it impossible for candidates to answer it as guided by the exam notice – Judicial intervention is warranted in such cases – The annulment, due to gross error, does not violate the STF's ruling in General Repercussion Theme 448 – Precedents – Mandatory review denied (São Paulo, 2020, translated by the authors).

In the present case, the Public Prosecutor's Office filed a writ of mandamus seeking to annul a discursive question administered during the selection process for members of the Guardianship Council of the Judicial District of Embu das Artes. The disputed question presented premises not contemplated within the Brazilian legal framework, rendering its resolution unfeasible by the candidates and constituting a manifest error perceptible *primo ictu oculi* (at first glance).

The Court of Justice of the State of São Paulo, in upholding the lower court's ruling that granted the writ, emphasized that judicial intervention in this context was justified due to the flagrant illegality in the formulation of the question. The ruling underscored that such errors violate the principle of legality, as well as the obligation of the Public Administration to ensure transparency, predictability, and fairness in public examinations.

It is observed that the Judiciary has played a significant role in correcting errors committed by the Public Administration, in observance of the principle of inalienability of judicial protection, along with the principles of legality, impersonality, morality, publicity, and efficiency. Following an analysis of the possibility of judicial correction of public examination grading, the study turned to specific cases concerning civil and military police entrance exams in the State of São Paulo. Jurisprudential research from the São Paulo Court of Justice indicates that judicial authorities may indeed rectify administrative acts that infringe upon constitutional principles.

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As an example, it is noted that several administrative decisions have been overturned by the Judiciary of the São Paulo Court of Justice in cases involving material errors in candidate lists, question drafting, and official answer keys. See:

> APPEAL. WRIT OF MANDAMUS. PUBLIC EXAMINATION FOR POLICE INVESTIGATOR CAREER POSITIONS (IP 1/2023). Judicial interference in the criteria adopted by examining boards in drafting and correcting public exam questions is impermissible, except in cases of illegality or unconstitutionality. Observance of the precedent set by Theme No. 485/STF. Illegality evident icto oculi due to a gross error in question no. 73 of the preliminary test. The answer marked as correct by the examining board uses a term not included in the exam notice and misleads candidates. There is a semantic difference between "Feminist Criminology" (as included in the exam notice) and "Female Criminology," which was not part of the notice but appeared in the answer key. The ruling is partially modified to annul question no. 73. Appeal partially granted, with remark. (São Paulo, 2024).

The case concerned an appeal against a ruling that denied relief in a writ of mandamus filed by a candidate contesting the official answers to questions no. 61 and no. 73 of a public examination for the position of Police Investigator. The petitioner claimed both questions should be annulled due to grammatical errors

According to the assigned reporting judge, an error was confirmed in question no. 73, as the examining board failed to use the terminology specified in the exam notice, and there was a semantic discrepancy between "Female Criminology" and "Feminist Criminology." The gross error was thus deemed apparent, establishing the occurrence of illegality by the responsible authority and leading to the annulment of the question.

The next case involved an appeal against a judgment denying a claim by a candidate who failed the Military Police Officer Training Course in the State of São Paulo. The plaintiff alleged that their research project had been approved but that their name was not included in the list of successful candidates. The appellate judge concluded that the candidate's research project had indeed been approved and that they possessed a valid master's degree in police sciences. Accordingly, the reviewing judge determined that the examining board had erred and granted the appeal, ruling in favor of the candidate.

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Case 5: Evident Material Error in Exam Questions – TJSP; Civil Appeal 0054896-76.2013.8.26.0506

In this appeal against a ruling that rejected a candidate's claim in an internal Military Police exam, the appellant sought to annul questions 03, 14, 16, and 18, alleging they contained clear material errors that rendered it impossible to determine the correct answers and compromised fairness.

The judge of the first instance denied the request, arguing that question formulation and grading were discretionary acts by the Administration and not subject to judicial review except in exceptional situations.

Upon appeal, the São Paulo Court of Justice ruled in favor of the candidate, recognizing that the contested questions had serious and undeniable flaws requiring annulment.

According to the rapporteur's opinion, the mistakes were material and evident, identifiable *primo ictu oculi* (at first glance), without requiring expert analysis. Thus, the Judiciary's involvement was not an improper interference with the examining board's discretion but rather a legitimate judicial control to uphold public administration principles.

> Shielding the formulation of public exam questions behind administrative merit grants excessive arbitrary power to the Administration. Interpreting this in a way that forbids scrutiny of the exam's appropriateness contradicts the ideal framework of the Democratic Rule of Law (São Paulo, 2017, translated by the authors).

The 9th Chamber of Public Law annulled all four contested questions and ordered the candidate's reevaluation, also shifting the burden of legal costs:

> Question no. 3 involved morphological classification. The prompt required identification of a word morphologically equivalent to "outro," an indefinite pronoun. The answer deemed correct contained a tonic oblique personal pronoun – rendering morphological equivalence impossible and leaving no correct option. Question no. 14 asked for identification of a highlighted word equivalent to a definite article. The selected answer contained an indefinite article – again, no correct alternative. Question no. 16 required the identification of a syntactic figure analogous to a quoted passage, which conveyed a stylistic rather than syntactic figure – an evident

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> misjudgment by the examiner, invalidating the question. Question no. 18 repeated the same flaw, further highlighting the inadequacy of the question's formulation. (São Paulo, 2017).

As shown, judicial intervention is essential when the Public Administration commits manifest errors in exam questions, candidate ranking, or in violating the exam notice. Such action upholds the constitutional guarantee of judicial review enshrined in Article 5, item XXXV, of the Federal Constitution.

6. Conclusion

The role of the Judiciary in overseeing administrative actions concerning the formulation of questions and the grading of public service examinations highlights the importance of judicial review in upholding the constitutional principles that govern public administration –namely, impersonality, morality, publicity, and efficiency.

Although examining boards are granted technical discretion, such prerogative is not absolute and remains subject to the rules and standards set forth in the public notice (*edital*), which constitutes the "law of the competition." Whenever such provisions are disregarded or manifest illegalities occur, judicial intervention becomes necessary to safeguard candidates' rights and preserve the integrity of the selection process.

In this context, it is important to note that challenges to exam questions and answer keys may hinder the efficiency of public administration and impair the timely and orderly execution of competitive examinations. Furthermore, contradictory or overly broad judicial decisions may lead to legal uncertainty, adversely affecting both candidates and the organizing entities.

The need to improve the regulatory framework governing public examinations has long been acknowledged. The enactment of Law No. 14.965 of 2024 reinforces objective parameters for the conduct of examining boards and establishes administrative mechanisms to enhance internal control over public examination processes. However, the new law does not address specific deadlines for challenging exam questions, nor does it set forth clear guidelines for the presentation or review of answer keys – matters which, as evidenced by the referenced case law, continue to be the subject of litigation.

This study centers on analyzing the boundaries of judicial intervention in the review of public examination questions, seeking to determine under which circumstances judicial interference becomes indispensable, and when such interference may

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unduly infringe upon administrative discretion, particularly in light of Precedent 485. Said precedent provides that "[...] it is not for the Judiciary to replace the examining board in re-evaluating the content of questions and the grading criteria applied, except in the case of illegality or unconstitutionality" (Brasil, 2014, translated by the authors).

To address this issue, the study adopted an inductive approach, relying on a literature review and jurisprudential analysis, with the aim of tracing the evolution of legal understanding on the matter and identifying the criteria employed by the courts to determine the admissibility of judicial review.

The case analysis revealed that the judicialization of public examinations arises in various scenarios, particularly where there is an evident material error, a discrepancy between the public notice and the answer key, or deficiencies in question formulation that render it impossible to identify a correct answer. Thus, the findings support the hypothesis that judicial review of administrative acts related to the organization, question formulation, and grading of public examinations reflects the general stance of the Federal Supreme Court concerning the limits of judicial oversight over public administration, although courts tend to interpret the expression "illegality or unconstitutionality" broadly.

The study also emphasized that such judicial oversight, according to the courts, cannot extend to the point where the Judiciary supplants the examining board in technical matters or re-assesses the substance of exam questions, as this would undermine the separation of powers and engender legal uncertainty. In practice, the Judiciary intervenes to correct procedural flaws that violate legality and equal treatment among candidates, thereby ensuring a fair and transparent selection process.

It is therefore concluded, based on the decisions analyzed, that judicial review is admissible even in relation to discretionary acts, provided that it does not entail a reassessment of administrative merit. This affirms the supremacy of the constitutional framework, particularly the principles of legality and constitutionality, leaving no area immune from judicial oversight.

Jurisprudential analysis further indicated that judicial intervention in public examinations most frequently occurs in four types of situations: when there is an evident material error; when the answer key conflicts with the content of the public notice; when questions are poorly formulated such that they yield multiple correct answers or none at all; and when the examining board acknowledges an error but fails to remedy it administratively.

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In such circumstances, judicial action is not only justified but essential to prevent candidates from being harmed by errors that cannot be corrected through other means. The study also highlighted the challenges and consequences of judicialization. On one hand, judicial review corrects injustices and safeguards candidates' rights; on the other, it may delay the appointment of successful candidates, overburden the judiciary, and potentially infringe upon the principle of separation of powers.

It is expected that improvements in the planning and organization of public examinations introduced by Law No. 14.965/2024, combined with the preventive role of internal control bodies – as also stipulated by the new law – will enhance the transparency of examination procedures and reinforce public trust in the system, thereby reducing litigation. Clear standards for judicial review and the extensive body of case law interpreting Precedent 485 may guide administrative behavior and the exercise of internal controls. These developments reaffirm the importance of a selection model based on legality, meritocracy, and fairness, ensuring that public administration can rely on qualified civil servants who were selected through procedures that fully respected their rights.

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