NEWSLABOUR

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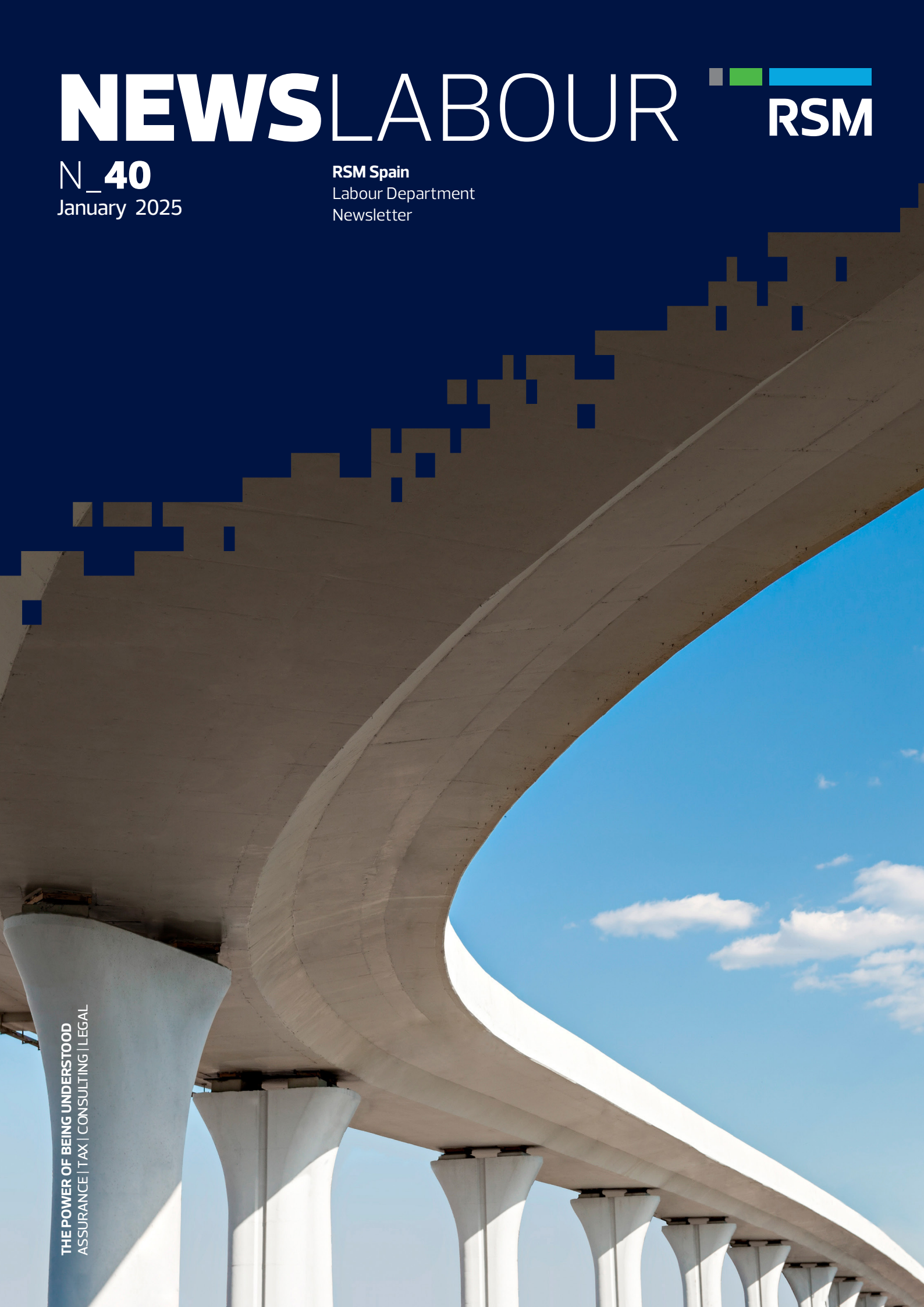
Labour Department
Newsletter



THE POWER OF BEING UNDERSTOOD
ASSURANCE | TAX | CONSULTING | LEGAL

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Editorial

Ignacio Hidalgo, Miguel Capel and Eduardo Gómez de Enterría.

We are now starting this new year 2025 and, as always, we are back with #NewsLabour!

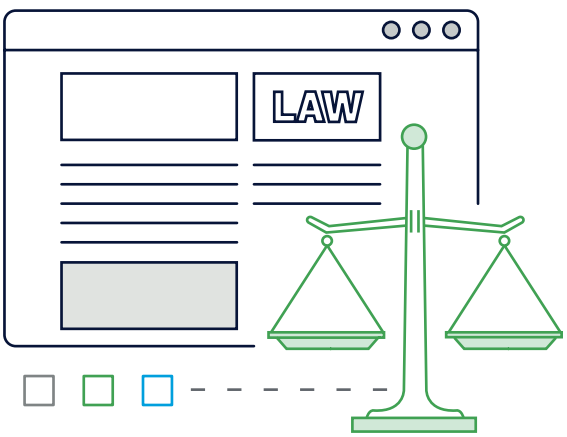
In this first edition of 2025 you will find both the most relevant judgements and practical everyday developments along with an analysis of recent cases.

Specifically, we will deal with very interesting judgements such as, among others, the one ruled by the Supreme Court on additional severance pay in cases of unfair dismissal that has been acknowledged by some High Courts of Justice.

Lastly, with a view towards this new year, we also analyse the new legislative developments that have come into force and will certainly be subject to a great deal of discussion in 2025.

Constantly informing and updating our readers and, as always, we remain at your entire disposal. ■

Welcome back!



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> The courts in a nutshe

What's new on the block?

As always, every month we can find judgements and legal news that particularly draw our attention due to their special features or importance; we provide an overview of some of them below:

Joaquín Rodríguez

The judgement of the High Court of Justice of Catalonia of 9 December 2024. The post-traumatic stress suffered by content moderators.

There are currently some companies responsible for moderating social media content and content on any other platform where individuals can discretionally upload content. Specifically, moderators act by banning content on any public platform if it could be particularly sensitive for viewers, such as advocating terrorism, suicide, torture, abusive language, threats or any other content that could violate fundamental rights or public freedoms.

The aforementioned judgement stipulated that moderators are exposed to violent material, according to the internal assessments made by the employer. Moreover, the judgement stated there was a lack of any psychological support programmes for the workers, bearing in mind the traumatic nature and intensive work they performed. Although the company undertook a commitment to implement measures aimed at reducing the workers' emotional burden, the employer had failed to apply suitable and relevant measures in order to avoid psycho-social risks for its workers, none of such measures being efficient and it had failed to protect their mental health.

The judgement of the High Court of Justice of Madrid of 18 November 2024. The worker filed a false report of harassment aimed at protecting his labour relationship.

During a worker's trial period, he submitted an internal report alleging certain facts against his hierarchical superior that could have implied work harassment. The investigation conducted, based on the company's current Harassment Protocol being activated, concluded that the report was false and the worker had only filed it for the purpose of protecting his labour relationship.

Specifically, the judgement determined that, in the last stages of his trial period and due to the worker's suspicions that his contractual relationship would probably be terminated because he had not passed the trial period, he filed a report against his superior to protect his contractual relationship. After this, in a group WhatsApp call, the worker stated that he was just trying to protect himself in case he possibly did not pass his trial period. He also boasted that he had used this tactic in other companies, stating that he would make at least €50,000. The High Court of Justice of Madrid decided that the purpose of the report was simply to protect the worker's labour relationship and fraudulently keep his job; it hence ruled that the dismissal was fair.

The judgement of the Supreme Court of 27 November 2024, (appeal number 88/2023). The worker's travel to the home of his/her first customer is not counted as effective work time.

The Labour Chamber of the Supreme Court, within the scope of a class action, ruled on whether or not the time spent by the workers to travel from their own homes to the homes of their first customers, as well as the time spent to return to their homes from the homes of their last customers where they rendered their services, must be considered effective work time.

After the Supreme Court had conducted an exhaustive analysis of previous rulings, it determined that, as a general rule, such periods must not be counted as effective work time because specific circumstances must exist in order for them to be considered work time, such as for example, they had previously been counted as effective work time when the workers needed to travel up to 100 km to arrive at and return from the homes of their first and last customers respectively or there was different and unjustified treatment between the groups that render the same kind of services, in which the time was counted for some of them but not for others. ■

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> Case of the month

The impact of the authorities failing to respond to a request; therefore resulting in approval related to implementation of equality plans.

Roberto Villón

The obligation of companies to create and register equality plans continues being a crucial topic in the Spanish labour field. This requirement, regulated by Spanish Act 3/2007 and developed by Royal Decree 901/2020, is aimed at ensuring effective equality between men and women in the workplace.

Fulfilment of this obligation often comes up against difficulties right from the start; in particular in situations when the workers have no legal representatives.

In these cases, the most representative trade unions must undertake the responsibility for negotiating the contents of the equality plans with the companies; however such negotiations can be hindered if the trade unions respond late or even fail to respond at all.

However, the Spanish courts have already dealt with this issue, determining that an equality plan can be drawn up unilaterally if the trade unions fail to respond or they do not appear in the process. In these cases, the company itself can submit the plan for its registration.

> An equality plan can be drawn up unilaterally if the trade unions fail to respond or they do not appear in the process.

But what happens when the authorities responsible for registering the plan fail to fulfil their obligations?

In this context, the Supreme Court's recent judgement 1361/2024 of 20 December 2024 highlighted that the failure of the authorities to respond to a request can play a crucial role in this process, pointing out the additional challenges faced by companies to comply with these regulations.

The Kutxabank case: A typical example

The legal action was filed due to an application being submitted on 18 May 2022 to register the Equality Plan **of Kutxabank, aseguradora, compañía de seguros y reaseguros S.A.U.** Although the formal and material requirements stipulated in the regulations had been met, the Directorate General for Employment adopted a decision to refuse the registration but after the term of three months granted to adopt such decision had already elapsed.

The expiry of the legally stipulated term implied that the authorities had failed to respond to the request; therefore resulting in approval, pursuant to Article 24 of Act 39/2015. For such purpose, the Supreme Court upheld that the administrative decision lacked any legal validity, since failing to respond to a request resulting in approval acted as a guarantee in the case of lack of action by the authorities, hence avoiding the rights of the parties concerned being violated

Key implications of the judgement:

- **Validity of failing to respond to a request; resulting in approval**: The judgement stressed that this principle not only provided companies with legal certainty but also restricted the authorities' margin of action. Once an application has been considered approved due to the authorities failing to respond to a request, any decision in the future against it would lack validity, unless specific review proceedings are filed.

- **The role of the trade unions in the negotiations of equality plans**: The ruling also dealt with the negotiations being at a standstill due to the trade unions' lack of diligence if, in this case, they did not actively take part in the process. The judgement determined that the lack of trade union representation cannot prevent registration of the plan, providing the company proves it has made all the necessary efforts to set up a negotiating committee.

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- **Legal precedent**: This ruling of the Supreme Court reinforced the doctrine already determined in previous judgements, such as judgement 543/2024 of the Supreme Court, consolidating an interpretation in favour of applying the failure of response by the authorities resulting in approval within the scope of equality plans.

Repercussions for companies

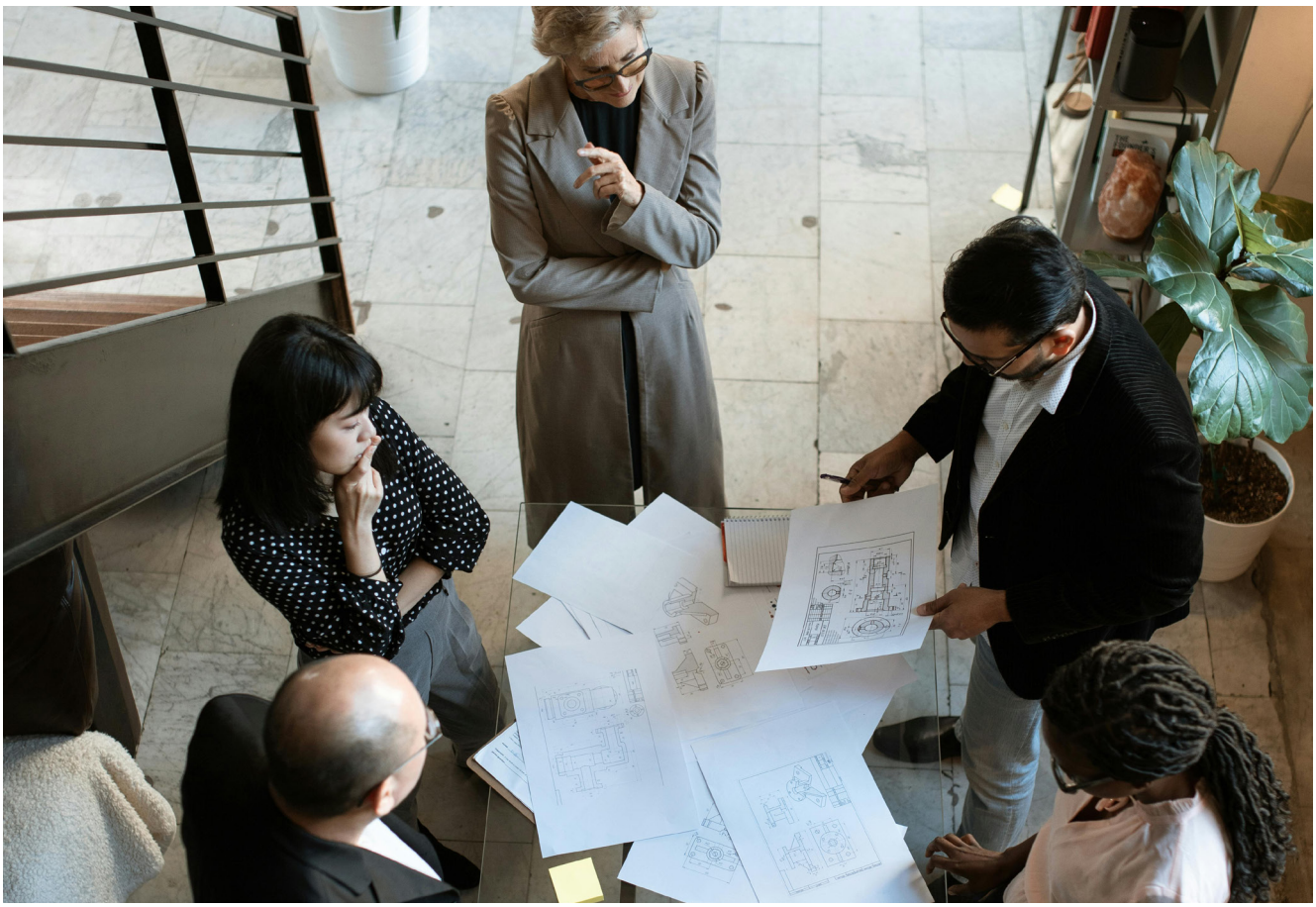
Therefore, the judgement has significant practical implications. For companies, it stresses the need to comply with the stipulated terms and to document each stage of the process to draw up and register their equality plans. Paying attention to these details not only ensures the legal validity of the plan but also protects companies from possible future disputes that could arise if the authorities fail to take action.

Moreover, the judgement highlighted the responsibility of the authorities for managing these procedures. The automatic approval due to the authorities failing to respond to a request occurs due to their not promptly dealing with the applications submitted by companies, determining a clear limit for administrative discretion.

The ruling also directly affected the role of the trade unions in these processes. Although their participation is crucial to ensure the legitimacy of equality plans, the judgement clarified that their failure to respond cannot result in an unsurmountable hindrance. This enables companies to comply with their legal obligations, even in situations when the union has brought the process to a standstill.

At RSM we are available to advise companies on the design, implementation and registration of equality plans, ensuring the regulations are fulfilled and avoiding disputes, such as the one analysed in the aforementioned judgement.

Please do not hesitate to contact us if you would like to know how this judgement could have an impact on your company or if you need help in drawing up an equality plan. ■



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› Judgement of the month

Can the legally stipulated severance pay for unfair dismissal be exceeded and improved through judicial channels?

Daniel Santamarina

Due to the different judgements ruled by some High Courts of Justice, the Supreme Court has now provided clarity and legal certainty regarding dismissal proceedings in which, in addition to a ruling that the dismissal was unfair, the rights of the plaintiff are also acknowledged a kind of additional severance pay to the 33 days worked stated in Article 56 of the Spanish Labour Relations Act.

Specifically, some High Courts of Justice have been considering that, in certain situations, the legally stipulated severance pay for unfair dismissal might not be sufficient to compensate workers for the damages caused due to their dismissal.

In this respect, by virtue of its judgement number 1350/2024 of 19 December 2024, the Supreme Court fully overturned the grounds of these courts that, by applying Article 10 of Convention 158 of the International Labour Organisation and Article 24 of the European Social Charter, had actually interpreted, when it was ruled there was no justification for the dismissal, it could, depending on the specific circumstances, order the company to pay the worker *"adequate compensation or such other relief as may be determined appropriate"* as compensation for the damages caused due to the specific circumstances.

However... What does the Supreme Court use to support not applying this interpretive trend?

In the case in question, the worker filed an action against her dismissal and claimed an amount, which was partly admitted by the Labour Court Number 6 of Barcelona, ruling that the dismissal was fair but ordering the company to pay the worker 15 days worked due to failing to provide prior notice of the objective dismissal.

The plaintiff filed an appeal for reversal against such judgement in the Labour Division of the High Court of Justice of Catalonia, which overturned the judgement of the lower court, ruling that the dismissal was unfair and ordered the company to either reinstate the employee or pay additional severance pay for the unfair dismissal calculated based on the proportional amount that would have been payable to the worker if she had been included in a possible redundancy plan, (ERTE in Spanish).

Specifically, the Labour Division of the High Court of Justice of Catalonia deemed that both Convention 158 of the International Labour Organisation and the European Social Charter would allow the *"possibility being acknowledged of supplementary compensation to the one legally calculated when the legal one is low and does not have a dissuasive effect for the company or it does not sufficiently compensate the worker's termination of employment, with clear and obvious illegality, fraud or abuse of law in the employer's decision to terminate the contract"*.

The Labour Division of the High Court of Justice of Catalonia, in the same way as other rulings of the High Courts of Justice, also argued that "the definition of *"adequate compensation" can include other items for compensation when the employer's conduct causes damages to the worker that exceed mere loss of earnings"*.

With this pretext, the Supreme Court analysed the case and decided that the question raised was simply to determine, once the dismissal has been ruled unfair by the courts, whether or not they can admit additional compensation to the one legally stipulated in the Spanish Labour Relations Act for the purpose of complying with the aforementioned provisions in Convention 158 of the International Labour Organisation and the European Social Charter.

However, since the Supreme Court did not consider the European Social Charter was applicable because it was not in force at the time of the dismissal, prior to dealing with the issue in-depth, the Supreme Court stated that it could not be considered Spain had incorrectly included Article **10 of Convention 158 of the International Labour Organisation** in its legal system since the regulations of the Convention of the ILO are merely aimed at

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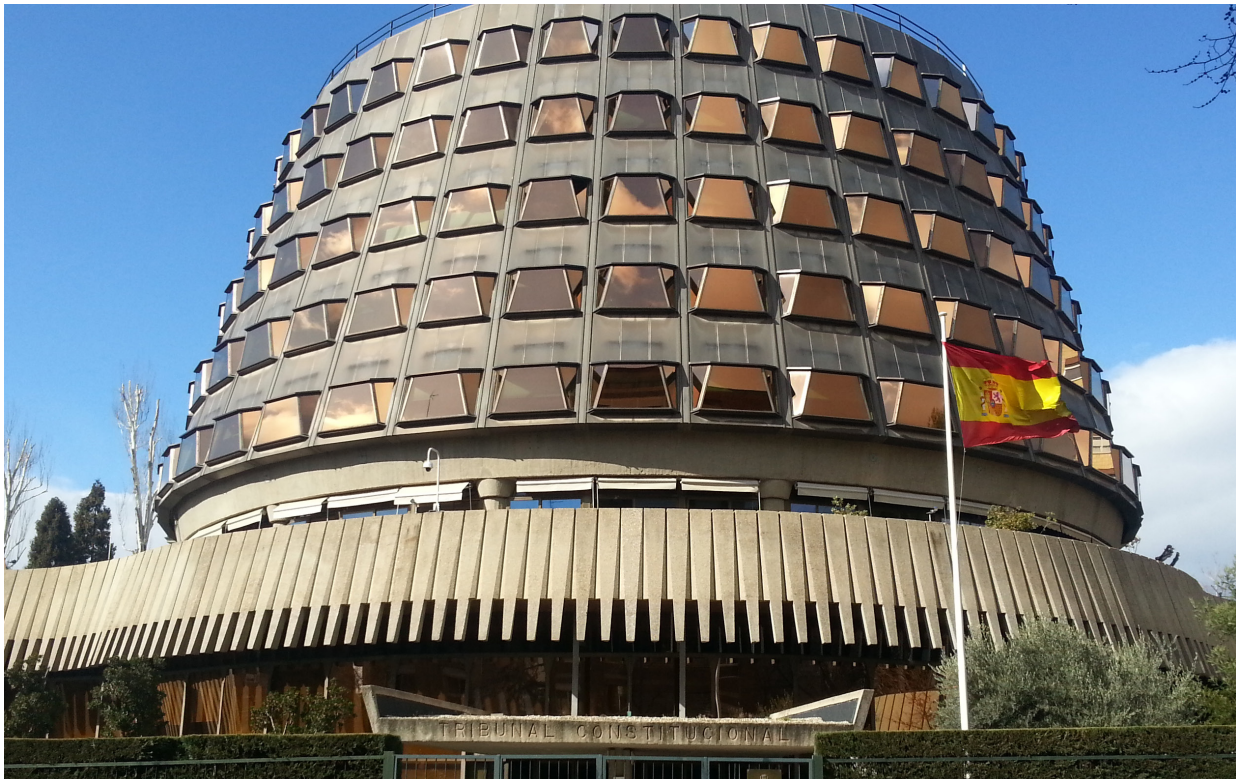
determining *"adequate compensation"* in the different internal legislations of each State, without stipulating a specific amount; therefore there would be different ways to comply with such premise.

Based on the foregoing, the Supreme Court sustained its arguments based on the fact that the Spanish legislator, according to the text of Article 56.1 of the Spanish Labour Relations Act, precisely complied with the mandate in Article 10 of Convention 158 of the International Labour Organisation, because the compensation formula provided in the Spanish Labour Relations Act takes into account objective criteria, **such as the worker's seniority and wages**, hence responding, in the words of the court, *"to her position for compensation due to the termination of her employment, which lacked the value of integral relief that it has sometimes been claimed to attribute to it since it is compensation that has been calculated and previously determined by law without civil criteria for calculating the damage being applicable nor is there any need to prove the damages caused ..."*.

This has also been ruled by the Spanish Constitutional Court, the doctrine of which is referred to in the judgement we are analysing here, sustaining that the internal Spanish regulations provide adequate compensation, as far as this case is concerned.

In fact, the conclusions we can draw from this clarifying judgement are that we can confirm the following: (i) Article 56.1 of the Spanish Labour Relations Act sufficiently includes the mandate stated in Article 10 of Convention 158 of the International Labour Organisation, (ii) the severance pay for unfair dismissal stipulated in the Spanish legal system acts as an instrument to compensate the worker for termination of his/her employment; hence it was not created as a mechanism for compensating the damages actually caused, (iii) the formula for calculating such severance pay is in accordance with legally calculated objective criteria, and (iv) by virtue of the foregoing, the Spanish courts are not authorised to grant or determine severance pay for unfair dismissal that is against or different to the contents of Article 56.1 of the Spanish Labour Relations Act.

If, after reading this article, you have any question about this specific matter or any similar labour situation, please do not hesitate to contact RSM's Labour Department, which will be delighted to help and advise you. ■



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> Advice of the month

Legal updating and personalised advice, both are fundamental in order to face 2025, a year full of new legislative developments with an impact on the framework of labour relations.

Enrique Mellado

Labour relations are undergoing a spiralling process of change that requires that two crucial professional merits must come into play at the same time to ensure our clients are fully satisfied: On the one hand, legal updating and, on the other hand, personalised advice adapted to our clients' needs. The former means finding out the new developments that have an impact on the framework of labour relations and the latter means adopting the required decisions to adapt to the future situation of change that will be coming soon at high speed, being aware of the special features of each company and the real situation of their businesses.

The production sector, (regarding both the employers and employees), is now facing 2025 that is deemed a crucial year for the immediate future of labour relations, at least as they are currently designed in Spain. The imminent reform of working hours, (and, it should not be overlooked, its economic impact on part-time contracts), the Internship Statute, additional severance pay still applied in an extraordinary manner in **dissuasive unfair dismissals**, (but who knows whether tomorrow it will be normal practice), remuneration for parental leave or termination of the labour relationship due to permanent disability, are just some of the challenges that in the short term will require preventive business policies to be adapted to the needs of the changing working world.

Moreover, since legal updating is the determining and crucial factor not only to find out the scope of the new developments that will have an impact on the framework of labour relations but also to design business strategies to enable them to be adapted to the new legislative situations, the main challenges for this anticipated turbulent year 2025 are as follows:

- **Shorter working hours, the eternal promise, the approval of which will soon be on the horizon**. The end of 2024 saw an agreement being reached between the Ministry of Employment and the trade unions to shorten working hours, the draft of which, (among many others), contains the following aspects:

  a. The joint committees for collective bargaining agreements, when the working hours exceed 37.5 hours a week, must make the relevant adaptations to comply with the new legislative requirements prior to 31 December 2025.

  b. The part-time contracts, when the working hours exceed 37.5 hours a week, will automatically become full-time contracts.

  c. The part-time contracts, when the working hours do not exceed 37.5 hours a week, will undergo a proportional increase in remuneration.

- **À la carte severance pay, applicable after the recent judgement of the Labour Chamber of the Supreme Court**. According to strict application of reasonable criteria that unquestionably provides legal certainty for the purpose of dismissals, the Plenary Session of the Labour Chamber deemed that the severance pay for unfair dismissal does not infringe Article 10 of Convention 158 of the International Labour Organisation; therefore it did not need to be increased pursuant to the special features involved in the specific case.

  In any case, since it is a decision that analysed a dismissal before the text of Article 24 of the European Social Charter, we must remain alert

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to any possible legislative reform that changes the severance pay system applied up to now, the amount of which is in accordance with objective criteria of seniority, wages and categorisation of the dismissal.

- Reasonable adjustments or change to a vacant and available job, undetermined aspects for which a definition is deemed crucial to know the scope of the **bill of law for modifying termination of the labour relationship due to total permanent disability for the worker's normal job or absolute disability to perform any work**.

- **Remote access to the working hours records by the Labour Inspection Department** and an individualised system of sanctions for each infringement.

- **Approval of the Bill of Industry Law and prior notice of closures**. On 10 December 2024, the Council of Ministers approved the Industry and Strategic Autonomy Act, which, (among others), is aimed at creating a reindustrialisation plan for companies that undergo a significant loss of industrial capacity and when this affects essential or strategic resources.

- **The Intern Statute: Is this the final regulation of the limits for training internships**? Compensation of expenses, the obligations that the tutor must fulfil, the maximum number of interns, depending on how many workers are on the company's staff, or economic sanctions for violating the rights of students taking internships are just some of the issues contained in the Bill of Law that has been submitted for a public hearing since 11 December 2024.

- **Remuneration for parental leave**. While we are waiting for the transposition of Directive (EU) 2019/1158 on paid parental leave contained in Article 48 bis of the Spanish Labour Relations Act, the recent judgement of the Contentious-Administrative Court Number 1 of Barcelona of 28 November 2024 acknowledged the right of a public employee to receive the salary corresponding to the period for which he was granted such leave. Watch out, because twists and turns are coming soon with doubts that will require correct and unambiguous criteria that must not be misleading.

Labour relations, (changing, dynamic and flexible just like life itself), as well as the emerging legislative challenges and the need to adapt to the new legal paradigms to be faced by the production sector will certainly require permanent updating so that personalised advice can be offered with an integral response to all the needs of the business sector that it will face in 2025 with transformations in the labour agenda.

For such purpose, at RSM we are at your entire disposal to provide you with advice, analyse any case and, of course, to advise you on the most appropriate actions to take in each situation. ■

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› Legislative news

Comments on Act 1 of 2 january 2025 on measures regarding the efficiency of the public justice service. An analysis of the labour implications.

Borja Ortas

On Friday, 3 January 2025, Act 1 of 2 January 2025 was published in the Official State Gazette (BOE), which includes significant measures aimed at improving the efficiency of the Public Justice Service. According to the contents of its Final Provision *Thirty-Eight*, this regulation will come into force three months after its publication, in other words on 3 April 2025, except in specific cases when the law stipulates a different system for its application.

These amendments are particularly important within the scope of the social jurisdictional system. The main implications of the reforms included in this regulation for such scope are listed below:

Firstly, as one of the most significant fields of impact, a **new organisational model of the Judicial Authorities** has been implemented.

In this respect, the new text of Article 94 of Act 6 of 1 July 1985 on Judicial Power replaces the single judge courts with courts of first instance. According to the text of this article, the **Court of First Instance** will be located in the capital city of each province and there will be a **Social Division** with jurisdiction covering the whole province. These courts will be supported by the **Offices of Justice**.

A significant reform has also been made with an impact on procedural scope, this is included in Chapter II with the title *Amendment of Procedural Laws*, the main developments structured by the reform are the following, among others:

- **Article 90.3**, the term for petitioning procedures to prepare evidence is extended from 5 to 10 days before the date of the trial, unless the summons must be served in a shorter period of time, in such case the term of 3 days will remain applicable. Whether such procedures are admitted or not will in all cases be decided according to the criteria of the judge during the trial.

- **Articles 82 and 84.1 and 3** have been amended in order to speed up the conciliation procedures with the prosecutor of the Judicial Authorities. There is now a possibility to summon the conciliation procedure separately and in advance, whether at the request of the parties or based on a decision adopted by the prosecutor, providing it is expected an agreement will be reached. This procedure must be held within a maximum term of 10 days, counted from when the claim is admitted, and at least 30 days before the trial. If an agreement is reached, it will not need to be repeated on the day of the hearing and, if signed by all the parties, a decision will be adopted within a term of 3 days.

- Regarding **Article 50,** the principle of the proceedings being held orally is reinforced. If all the parties have legal counsel and, after a judgement has been ruled orally, if they state their intention not to appeal it, it will be ruled absolute at such time.

- Lastly, **Articles 210 and 219.1 and 3** provide the possibility to publish agreements related to the extension and other requirements for the formalities and challenge by lodging appeals to the Supreme Court (cassation); moreover the cases are defined when it is considered there are reasons for lodging an appeal to the Supreme Court (cassation).

The recent reform has not only had an impact on the Spanish Judicial Act but significant changes have also been made to the **Spanish Labour Relations Act**, affecting the following key articles:

- **Article 50** includes just cause for termination of a contract linked to failure or delay in paying the worker's salary. This reason is deemed to exist when the worker's salary is not paid within 15 days after the agreed date, when the employer owes three full monthly payments in one year, even if not consecutive, or if there are delays in payment over a period of six months, even if not consecutive.

- **Article 53.4.b)** extends the labour protective measures, by including pregnant workers from the start of their pregnancy until the start of

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suspension for their maternity leave. Guarantees are also extended to include workers who request or benefit from the specific leave referred to in Article 37, (paragraphs 3.b, 4, 5 and 6), adaptations of working hours according to Article 34.8 or the leave of absence referred to in Article 46.3. In addition, protection is reinforced for victims of gender or sexual violence, guaranteeing their rights to the effective judicial aid and integral protection referred to in the regulations.

- **Lastly, Article 55.5.b)** includes similar measures as those mentioned in the previous article, applicable to the disciplinary field, specifically protecting pregnant workers from any actions that could violate their rights during such period.

In the same way, the **Organisation of the Labour and Social Security Inspection System Act** has been subject to amendment by including a new *Additional Provision Eleven*. This provision authorises the public employees referred to in Article 3 of the law to take part in conciliation, mediation and arbitration activities in labour disputes, providing these do not involve their inspection duties and are not of a permanent nature. These activities must be performed within the framework of the autonomous labour dispute resolution systems stipulated in interprofessional agreements, collective bargaining agreements or pursuant to Article 76 of the Spanish Labour Relations Act.

As a significant new development, these activities are now excluded from the incompatibility system included in Act 53 of 26 December 1984. This change means public employees can now take part in settling labour disputes, without this interfering with their normal duties and this will contribute to more efficient and speedy management in this field.

In conclusion, Act 1/2025 makes significant reforms in the judicial and labour fields, including reorganisation of the courts of first instance, speeding up procedural proceedings and increasing labour protective measures in specific situations. These amendments are sought to update the regulatory framework and improve its application in both the aforementioned fields. ■

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