May 2025

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Organic Law 1/2025: Between the Modernization of the Judicial System and Legal Uncertainty

On April 3, 2025, Organic Law 1/2025, of January 2, on efficiency measures for the Public Justice Service (hereinafter "LO 1/2025"), came into force. It introduces a series of key reforms to the Spanish judicial system, particularly in the civil law sector.

The reform aims to reduce court congestion by promoting out-of-court dispute resolution. To achieve this, it focuses on two main areas:

- An organizational reform—restructuring the judicial system, and
- A procedural reform—introducing alternative dispute resolution mechanisms (hereinafter "ADR").

Organizational Changes

The reform implements a restructuring of the judicial system. Starting in spring 2025, courts of first instance will be replaced by courts of instance. This change will affect approximately 3,800 courts, which will be reorganized into 431 new courts.

One of the goals is to strengthen judicial specialization. For example, personal insolvency proceedings will be handled by a limited group of commercial judges, allowing for more technical and consistent handling of cases, which in turn promotes coherence and predictability in rulings.

Additionally, Clerks of the Court (Letrados de la Administración de Justicia) will take on a more prominent role, with expanded responsibilities, including ensuring the legality of proceedings and rejecting irregular actions.

However, despite the advantages of this reform, there are questions about whether the available resources will be sufficient to handle the new structure without creating bottlenecks. Therefore, to ensure the success of the judicial reform, it must be supported by adequate human and material resources.

Procedural Changes: ADR Becomes Mandatory

On the procedural side, the reform introduces the mandatory use of ADR mechanisms before taking a dispute to court. These mechanisms allow parties to resolve conflicts through direct negotiation, mediation, conciliation, or a binding offer, among others.

In general, to make ADR accessible, the law does not require legal representation. However, in some cases, legal assistance is mandatory—such as for a binding offer when the disputed amount exceeds €2,000, in which both parties must be represented by a lawyer. This adds a layer of legal certainty to ensure parties understand the implications of the agreement, but it may discourage low-value claims, especially for individuals or small businesses.

Failure to prove an attempt at ADR is a procedural defect that leads to automatic dismissal of the claim. However, a claim can be rectified if it refers to an attempted ADR that lacks proper documentation, such as proof of receipt by the other party.

Moreover, the confidential nature of out-of-court negotiations means their content cannot be used as evidence, except to prove formal aspects such as dates or methods used. This limitation may make it difficult to prove that the legal requirement was fulfilled.

If the defendant cannot be located or resides abroad, the claimant may submit a responsible declaration instead. However, this provision has raised concerns among legal professionals due to the vague wording of the rule.

Sanctions for Bad Faith

The reform also provides for procedural sanctions in cases of bad faith. Unjustified refusal to participate in ADR may result in costs being imposed. Similarly, if a party concedes after unreasonably rejecting an out-of-court settlement attempt, they may also be ordered to pay costs if delaying tactics are proven.

Conclusion

Organic Law 1/2025 marks a significant transformation of the civil justice system, aiming to modernize and streamline legal proceedings. While it introduces positive elements such as judicial specialization and the consolidation of ADR mechanisms, its practical implementation leaves many questions unanswered, particularly regarding the availability of resources and the legal certainty for the parties involved.

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High Court of Justice of the Basque Country Shakes Things Up: Ruling on Capital Gains and Losses from Cryptocurrency Sales

The High Court of Justice of the Basque Country, in its Judgment 37/2025 of January 9, breaks away from the interpretation previously adopted by the tax authorities concerning the classification of cryptocurrencies as homogeneous securities. Consequently, it challenges the requirement to apply the FIFO (First In, First Out) method for calculating capital gains or losses arising from their sale.

What Are "Homogeneous Securities"?

The most accurate legal definition of homogeneous securities can be found in the Personal Income Tax Regulations, which, although found in different regional laws, share the same content. These regulations state:

> "Securities or units issued by the same entity will be considered homogeneous if they are part of the same financial operation or serve a unified purpose (including systematic financing), are of the same nature and transmission rules, and grant their holders substantially similar rights and obligations."

This definition (which includes stocks, shares, and recently even foreign currency trades) [1] requires taxpayers to maintain a personal inventory of their holdings, recording acquisition values and purchase dates. When calculating capital gains or losses, the law mandates using the FIFO method—meaning the oldest assets are considered sold first.

This approach limits taxpayer flexibility, as it forces the ordering of holdings regardless of which account or exchange the assets are held in—adding a layer of administrative complexity.

The Tax Authority's Previous Stance

The Spanish Directorate-General for Taxation (DGT) has consistently applied this homogeneous asset logic to cryptocurrencies, treating them like stocks or equity shares. For example, in Binding Consultation V1604-18 (June 11, 2018), the DGT argued that bitcoins, being derived from a specific protocol and sharing the same characteristics, are essentially identical and should be treated as homogeneous assets.

Therefore, the exchange used to buy or sell the cryptocurrency was deemed irrelevant. All bitcoins, regardless of the platform used, had to be considered collectively under the FIFO system when calculating acquisition dates and values.

This position was also defended by the Basque tax authority in this case [2]. However, the plaintiff (a taxpayer) argued that cryptocurrencies do not fit the legal definition of homogeneous assets under Spain's income tax regulations.

A New Legal Perspective

The Basque High Court refers to Article 3 of EU Regulation 2023/1114, which defines crypto-assets as:

> "A digital representation of a value or right that can be transferred and stored electronically using distributed ledger technology or similar technology."

Given this definition, and considering the novelty, uniqueness, and lack of legal adaptation of the regional tax framework to the crypto market, the Court concluded that cryptocurrencies cannot be equated to the traditional concept of homogeneous securities.

As a result, the Court rejects the DGT's and regional tax authority's position on using FIFO across exchanges. It finds that the acquisition date and purchase price of cryptocurrencies must be determined separately for each exchange.

Key Implications of the Ruling

This landmark decision has significant implications for Spanish taxpayers:

- Simplifies calculations of capital gains and losses from cryptocurrency sales. Taxpayers are no longer required to unify all crypto holdings into one master inventory.
- Allows greater flexibility for financial and tax planning. Taxpayers can now strategically manage sales based on differing acquisition values across multiple exchanges.

This ruling disrupts the existing tax doctrine and introduces greater autonomy for taxpayers—especially those with diversified crypto portfolios—by recognizing the reality of how these assets are traded in practice.

"1 Consultation dated December 22, 2022, from the Provincial Tax Authority of Bizkaia."

"2 CV0975-22, dated May 4, 2022; CV2005-22, dated September 20, 2022; CV2520-22, dated September 7, 2022, among others."

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Jurisprudential Nuances Regarding Paid Leave for Accidents or Serious Illness, Hospitalization, Surgery, or Home Rest of a Spouse, Family Member up to the 2nd Degree, or Co-Habitant

In recent times, companies have seen an increase in the number of paid leave requests submitted by workers. This trend has become particularly significant since the entry into force of Royal Decree-Law 5/2023, of June 28, which introduced important legal changes in the labor field—especially regarding work-life balance measures for parents and caregivers.

As a direct result, companies now face a wide range of leave requests. While the Workers' Statute includes various types of paid leave, one of the most commonly requested in practice relates to accidents, serious illness, hospitalization, or surgical intervention without hospitalization requiring home rest of a spouse, relatives up to the second degree of kinship or affinity, or co-habitants.

This type of leave has not remained untouched and has been subject to interpretation by judicial doctrine, especially following the enactment of the above-mentioned Royal Decree-Law. Thus, this article aims to analyze key jurisprudential considerations to avoid misinterpretation, prevent unintended acquired rights, and ensure workers can effectively exercise their right to paid leave. Below are some key considerations regarding this leave:

Article 37.3.b) of the Workers' Statute (ET):

Workers are entitled to five days of paid leave in the situations mentioned, provided that the cause involves certain relatives or cohabitants. Specifically, it includes grandparents or parents of the worker or their spouse; children or grandchildren of the worker or their spouse; as well as siblings of the worker or their spouse.
It is important to note that this does not apply when the cause involves aunts, uncles, or nieces/nephews of the worker.

Leave Taken on Working Days (Not Calendar Days):

According to the Supreme Court ruling of October 3, 2023 (No. 695/2023) and the National Court ruling of January 25, 2024 (No. 9/2024), this leave must be taken on working days, not calendar days.
Therefore, if the triggering event occurs on a non-working day, the leave will begin on the next working day.

Timing of Leave Is Flexible:

The National Court ruling of September 12, 2024 (No. 102/2024) clarified that the start of the leave does not have to coincide exactly with the date of the event. Workers can choose when to begin their leave depending on their work-life balance needs, as long as the triggering event is still ongoing when the leave is taken.

Leave Is Not Automatically Five Days:

While the leave allows up to five days, this does not mean that all five must be used if the cause for leave no longer exists.
It's important to distinguish between hospital discharge and medical discharge:

- Hospital discharge may still be followed by a prescribed period of home rest, in which case the leave continues.
- Medical discharge, on the other hand, signals the end of the situation.

This is particularly relevant in hospitalizations or surgical interventions without hospitalization, where the patient is discharged but still needs prescribed home rest. If no rest is prescribed, then leave beyond the hospitalization or procedure does not apply.

According to the National Court's ruling of July 24, 2024 (No. 101/2024), paid leave for hospitalization does not end with hospital discharge if home rest has been prescribed.
Furthermore, the latest National Court decision of February 6, 2025 (No. 18/2025) emphasized that hospital discharge is not the same as medical discharge and does not invalidate the worker's right to use the full five days of leave.

Conclusion:

If home rest is required, it must be prescribed by a qualified healthcare professional, and the worker must provide medical documentation proving this.
Otherwise, the worker will only be entitled to leave for the duration of the hospitalization or procedure itself.

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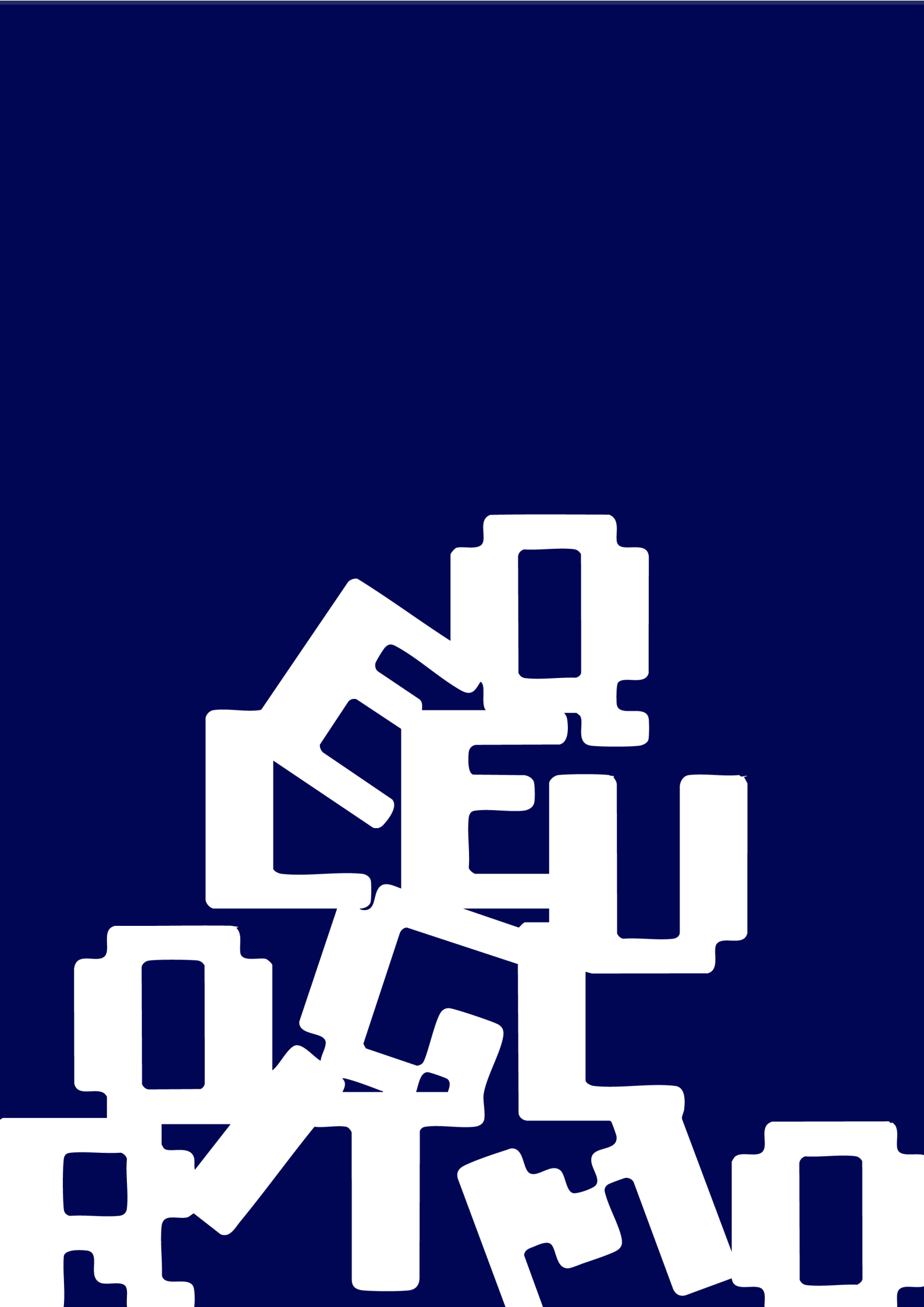

The Waste Collection Tax Is Now Mandatory: Who Has to Pay It—The Owner or the Tenant?

The Waste Collection Tax: A New Legal Challenge for Municipalities and Citizens

As of April 10, 2025, the controversial waste collection tax is now a reality. All municipalities with more than 5,000 inhabitants are required to implement a levy aimed at financing the collection, transportation, and treatment of urban solid waste. This measure, which falls within the framework of the transposition of a 2018 European Directive, seeks to meet ambitious recycling and reuse targets, aiming for 55% by 2025 and 65% by 2035. However, the lack of uniformity in its implementation is sparking controversy among various city councils.

Controversy Over Its Implementation

The new law, originating from Law 7/2022 on waste and contaminated soils for a circular economy, has been described by Luis Martínez-Sicluna, Secretary General of the Spanish Federation of Municipalities and Provinces (FEMP), as a "flawed regulation." According to him, the law creates disparities among municipalities, as each one can decide the criteria for applying the tax. This has led to significant differences in fees. In some cases, the tax can range from €30 to €120 per year, with an estimated average of around €80 per household.

How Is the Tax Calculated?

The law does not clearly establish how the amount should be calculated, so each municipality is free to set it according to its own rules. While some municipalities opt for a fixed fee, most choose variable systems based on factors such as the property's cadastral value, the number of registered residents, or water consumption. Additionally, the possibility exists for differentiated rates for vulnerable groups, taking into account factors like family income, employment status, or disability.

The Question of Owner vs. Tenant

Another contentious issue is who should bear the cost of the tax: the property owner or the tenant? The regulation states that the liable party is the occupant of the property, that is, the tenant, since they directly benefit from the waste collection service. According to the Urban Lease Law, in order for a cost to be passed on to the tenant, it must be expressly stipulated in the lease agreement. Therefore, tenants whose contracts were signed before the tax came into effect are not required to pay it.

In lease contracts signed after the tax's implementation, landlords may include the tax, provided they first consult the local municipality to determine the exact amount. It's important to note that, since this is the first year, the fee may be provisional and subject to adjustment in the future.

A Future of Uncertainty

The implementation of the waste collection tax is expected to bring changes to Spain's legal and social landscape. While the principle of "polluter pays" underpins this regulation, its application remains surrounded by uncertainties that affect both citizens and municipalities. Although some municipalities have already adopted similar systems, the challenge now lies in achieving a uniform and fair implementation that meets environmental goals without placing unnecessary financial burdens on citizens.

In short, the waste collection tax is a levy that will shape the future of urban waste management in Spain. However, while its implementation is necessary, it continues to be a source of debate and reflection in the legal and social spheres of the country.

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The High Court of Justice of Catalonia acquits former motorcycle racer and world champion Sito Pons of six tax fraud charges.

On December 21, 2022, the 8th Section of the Provincial Court of Barcelona issued a ruling acquitting former motorcycle racer and world champion Sito Pons of a total of six offenses against the Public Treasury. The Public Prosecutor had sought an excessive prison sentence of 24 years and fines exceeding 12 million euros for what it claimed was a failure to pay taxes in Spain between 2010 and 2014, despite being legally obligated to do so.

This ruling was appealed by the Public Prosecutor's Office, the State Attorney, and the Generalitat of Catalonia. However, all appeals were dismissed, and the decision was upheld by the High Court of Justice of Catalonia on April 7, 2025, thus bringing to an end a judicial process that lasted over a decade. During this time, the former racer endured the well-known "dock penalty" (i.e., the toll of being publicly accused), all while firmly resisting the ever-present temptation to reach a plea deal with the prosecution in exchange for reduced prison time and fines, and to avoid what would inevitably be a highly publicized trial.

In this case, the prosecution claimed in its indictment that between 2010 and 2014, Sito Pons defrauded the tax authorities by pretending to reside abroad—specifically in Monaco and London—when in fact, according to the Tax Agency, his main base of life and activities was in Spain. He was said to have had his racing team's headquarters in Castellbisbal (Barcelona), where he allegedly maintained a network of companies used as shell corporations to evade taxes, registered in tax havens or low-tax jurisdictions such as the Isle of Man or the Virgin Islands.

It is well known that if the Spanish Tax Agency can prove that a person (i) resided in Spain for more than 183 days in a calendar year—including temporary absences, unless fiscal residency in another country is proven—or (ii) has in Spain the main base or center of their economic interests or activities, either directly or indirectly (with some exceptions), that person is considered a Spanish tax resident and must pay taxes accordingly. Importantly, the burden of proof lies with the Tax Agency, which must demonstrate that these conditions are met.

However, in this case, the courts did not find sufficient evidence that Sito Pons was a tax resident in Spain between 2010 and 2014, for the following reasons:

1. Most of his financial interests and economic activities were located outside Spain, except for a few properties he owned within the country.

2. He had lived abroad for over 30 years. Specifically, during the years in question, he lived first in Monaco (2010–2012) and then in London (2012–2014). His defense presented rental contracts, utility bills, airline tickets, a car purchase in London, among other documents.

3. He spent more than 200 days traveling to racing circuits worldwide, and was not a tax resident in Spain.

4. The industrial warehouse of his racing team in Castellbisbal was merely a storage facility, while the company's official headquarters was in London, where he currently resides and holds the position of manager of Pons Racing.

5. Many of the surveillance operations on vehicles raised serious doubts about whether the person being followed was indeed Mr. Pons, as the vehicles could have been driven by other people.

Given these facts, the courts determined that the prosecution, which bore the burden of proof, failed to substantiate the alleged criminal acts. For instance, they did not even call witnesses such as the racers, mechanics, or sponsors to testify regarding where contracts were signed and where the work was carried out.

Undoubtedly, Sito Pons is not the first athlete to successfully defeat the tax authorities, having been preceded by others like Sete Gibernau and Xabi Alonso—although only after enduring the emotional toll of being a defendant for years and the accompanying public humiliation. Others, however, have not been as fortunate.

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New Developments in Labor Law According to the 2024 Labor Bill (DDL Lavoro)

Published in the Official Gazette, General Series No. 303 of December 28, 2024, Law No. 203 of December 17, 2024, entitled "Provisions on Labor Matters."

Probation Period in Fixed-Term Contracts

One of the most important new developments concerns the length of the probation period in fixed-term contracts. A previous provision in Legislative Decree 104/22 (Article 7) had already touched on this issue, albeit weakly, stating:

> "In fixed-term employment contracts, the probation period must be proportionate to the contract duration and the duties to be performed, considering the nature of the job. In the event of renewal of a contract for the same duties, a new probation period cannot be applied."

That provision lacked concrete guidance regarding the duration of the probation period. With the final approval of the 2024 Labor Bill, this gap has been addressed. Article 13 of the new law establishes:

> "Subject to more favorable terms under collective bargaining agreements, the probation period is set at one working day for every fifteen calendar days starting from the beginning of the employment relationship. In any case, the probation period cannot be shorter than two days or longer than fifteen days for contracts lasting no more than six months, and no longer than thirty days for those lasting more than six months and less than twelve months."

This is a very significant change, as most collective agreements do not specifically regulate the probation period for fixed-term contracts.

From the law's entry into force onward, any fixed-term employee subject to a longer probation period than the one prescribed, and who is dismissed for failing the probation, could challenge the termination in court.

Additionally, Article 7 of Legislative Decree 104/22 remains in effect, which provides that:

> "In the event of events such as illness, injury, or mandatory maternity/paternity leave, the probation period is extended by the duration of the absence."

Unjustified Absence, Dismissal, and NASPI (Unemployment Benefits)

After months of debate, the proposed law regarding **unjustified worker absences** has finally taken shape. To curb a common practice—where workers are absent without cause in order to be dismissed for just cause and thus become eligible for **NASPI**—the legislature has introduced a controversial new measure.

Article 19 of the 2024 Labor Bill states:

> "In cases of unjustified absence by a worker lasting beyond the period specified in the applicable national collective labor agreement—or, if not specified, beyond fifteen days—the employer shall notify the local office of the National Labor Inspectorate, which may verify the validity of the claim. The employment relationship shall be considered terminated by the worker's own will,"

without requiring formal resignation validation, which is normally needed.

It continues:

> "These provisions do not apply if the worker can prove that they were unable to communicate the reason for the absence due to force majeure or employer-related reasons."

In practical terms, if a worker disappears without explanation, the employer may choose—rather than initiating disciplinary proceedings and dismissal—to notify the Labor Inspectorate and treat the employment as terminated by resignation. This would prevent the worker from claiming NASPI.

However, it remains clear that the employer still has the option to proceed with a **disciplinary dismissal** for unjustified absence, in which case the worker would retain their usual eligibility for unemployment benefits.

Remote Settlements

Although remote settlements via video conferencing have become common practice, the 2024 Labor Bill formalizes this option. Article 20 provides:

> "Settlement procedures in labor matters, as outlined in Articles 410, 411, and 412-ter of the Code of Civil Procedure, may be conducted via telematic means and audiovisual connections."

In essence, even outside of emergency periods, employers and employees may finalize labor settlements **without meeting in person.**

Receiving Wage Support (Cassa Integrazione) While Working Another Job

Regarding work during periods of **wage support (Cassa Integrazione)**, Article 6 of the 2024 Labor Bill states:

"A worker who engages in subordinate or self-employed work during a period of wage supplementation is not entitled to wage support for the days worked. The worker loses the right to wage support if they fail to notify the local office of the National Social Security Institute (INPS) in advance about the work activity referred to in paragraph 1."

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