February 2026

b-today

Law and Economics

Dividend Distribution
Inbound workers
Workplace Harassment
Homeowner's associations
Article 268 and family businesses

Bufete Barrilero
y Asociados

Get to know all the legal and economic ***news*** from ***multiple perspectives***

Dividend Distribution: A Shareholder's Right or a Company Obligation?

One of the issues that most frequently gives rise to disputes within capital companies is the distribution of dividends. Does a shareholder have an effective right to receive profits? Can the majority decide indefinitely not to distribute them? When does the accumulation of profits cease to be legitimate and become abusive?

The Spanish Capital Companies Act (Ley de Sociedades de Capital, hereinafter "**LSC**") provides some answers, but it has ultimately been case law that has shaped the boundaries of this delicate balance between the company's interest and the protection of minority shareholders.

The starting point is Article 93 of the LSC, which recognises as one of the essential rights of shareholders the right to **participate in the distribution of company profits**. However, this right does not automatically translate into the annual receipt of dividends, as its effectiveness depends on the resolutions adopted by the general shareholders' meeting. Indeed, pursuant to Article 160 of the LSC, it is for the general meeting to **approve the annual accounts and resolve on the allocation of profits**, including deciding whether profits are to be distributed as dividends or allocated to reserves. Dividend distribution is therefore not automatic, but rather the result of a corporate decision.

Is there a legal obligation to distribute dividends? The LSC does **not establish a mandatory minimum percentage of profits to be distributed**. Traditionally, companies have enjoyed broad discretion to decide whether to reinvest profits or distribute them among shareholders, taking into account their financial needs, expansion plans or economic situation. However, this discretion is not unlimited. It is restricted by Article 348 bis of the LSC, which seeks to prevent situations in which the majority repeatedly blocks dividend distribution to the detriment of minority shareholders. This provision grants shareholders a **right of withdrawal** where, having recorded their objection in the minutes, the general meeting fails to agree to distribute as dividends **at least 25% of the profits of the previous financial year**, provided that:

- The profits are legally distributable; and
- The company has generated profits during the previous three financial years.

This right operates as a pressure mechanism against repeated decisions not to distribute dividends. Nevertheless, the law provides for a significant exception: **the right of withdrawal does not arise** if the total dividends distributed over the previous five years amount to at least 25% of the legally distributable profits for that period.

In practice, many companies have opted to set dividend distributions at this 25% threshold, not due to a direct legal obligation, but in order to avoid triggering the right of withdrawal.

The absence of a clear statutory rule on the percentage of profits to be distributed has shifted the conflict to the courts. So-called "lower court case law" (Provincial Courts) has produced divergent responses.

On the one hand, there are judgments that **do not consider the accumulation of profits to be abusive**, particularly where the company demonstrates economic, financial or strategic reasons justifying the retention of earnings.

On the other hand, some decisions uphold challenges to profit allocation resolutions on the grounds that the accumulation of profits constitutes an **abuse of majority power to the detriment of minority shareholders**. In such cases, the courts have adopted different approaches:

- Limiting themselves to declaring the resolution null and void, on the basis that they cannot replace the corporate will;
- Ordering the company to submit a reasonable dividend distribution proposal to a new general meeting;
- Or, in certain cases, directly ordering the distribution of profits.

The Supreme Court has reinforced the idea that profit retention resolutions may be **contrary to the company's interest** when adopted systematically and without objective justification, with the sole purpose of harming minority shareholders.

The key factor is not so much the specific percentage of undistributed profits, but rather the **reasonableness of the decision**, the company's financial situation and the existence—or absence—of unjustified harm to certain shareholders.

In conclusion, dividend distribution is neither an automatic obligation nor a decision immune from judicial scrutiny. Legislation and case law seek to preserve a delicate balance between corporate autonomy and shareholder protection, avoiding both abuse by the majority and the substitution of corporate decision-making by the courts. It should not be overlooked that allowing courts to determine the amount to be distributed would undermine the general meeting's own powers, as the body competent to decide on profit allocation. In this context, a clear, consistent and well-justified dividend policy remains the most effective tool for preventing corporate disputes and unnecessary litigation.

Patricia Martínez Romo

Graduated in Business Law from the University of Deusto.
Holds a Master's Degree in Access to the Legal Profession and Corporate Law from the Bizkaia Bar Association and the University of Deusto.
Member of the Corporate Law Division of Bufete Barrilero y Asociados.

p.romo@barrilero.es

Special TAX regime for inbound workers: Compatibility between the former regime and the new grounds for exercising the option

With Binding Ruling V1207-25 of 3 July 2025, the Directorate General for Taxation (Dirección General de Tributos, "DGT") has issued a decision of particular practical relevance concerning the continued application of the special tax regime for inbound workers (commonly known as the "Beckham law") when there is a change in the circumstances that originally justified opting for the regime prior to the entry into force of the new wording of Article 93 of the Personal Income Tax Act (IRPF).

The case analysed concerns a taxpayer who moved to Spain in the 2021 tax year and opted for the special regime. Subsequently, in 2024, the employment relationship that prompted the relocation came to an end and, several months later, the taxpayer became a remunerated director of a Spanish company in which he held a shareholding exceeding 25%—a circumstance that, under the wording of Article 93 of the IRPF in force in 2021, prevented access to the regime.

The key issue addressed in this ruling is whether taxpayers who opted for the regime prior to the reform enacted in the 2023 tax year may rely on the new grounds for exercising the option in order to maintain its application in cases where the employment relationship that originally gave rise to the option has ceased.

On this basis, the DGT reasons that a strictly formal interpretation of the original qualifying ground could lead to automatic exclusion following termination of employment. However, it adopts a purposive interpretation and concludes that, where the taxpayer comes to fall within a new qualifying circumstance, and provided that the remaining requirements of Article 93 of the IRPF continue to be met under its current wording, the regime should not cease to apply.

In short, Binding Ruling V1207-25 reinforces a clear principle: taxpayers who were already applying the Beckham law prior to the 2023 tax year may continue to do so when the new qualifying situation arises as a result of one of the circumstances introduced by the reform.

Jorge Callejas

Double Degree in Law and Business Administration
(Colegio Universitario de Estudios Financieros)
Double Master's Degree in Access to the Legal Profession and Tax Advisory
(University of Navarra)
Member of the Tax Law Division at Bufete Barrilero y Asociados.

j.callejas@barrilero.es

The Progressive Expansion of the Concept of Workplace Harassment

In recent years, workplace harassment has become one of the most widely debated issues in employment law. This complexity largely stems from the fact that harassment did not originate as a legal concept, but rather in occupational psychology, and was gradually incorporated into the legal sphere to address certain forms of conduct that undermine employees' dignity and personal integrity.

This gradual legal recognition has been accompanied by a significant increase in harassment claims. However, not every reported situation can be legally classified as workplace harassment. In many cases, the underlying issue involves organisational disputes, management shortcomings or workplace tensions which, although potentially objectionable, do not reach the level of severity required to constitute harassment in constitutional terms. This distinction is crucial, as workplace harassment does not protect ordinary employment rights, but rather the fundamental right to physical and moral integrity enshrined in Article 15 of the Spanish Constitution.

The decisive role of case law

The absence of a precise statutory definition of workplace harassment has conferred a decisive role on case law in shaping its scope and protective framework. In this regard, Constitutional Court Judgments 56/2019 of 6 May and 28/2025 of 10 February mark a turning point in the doctrinal evolution of this area.

Judgment 56/2019 introduced a significant departure from the traditionally restrictive approach, which required violent or repeated conduct or clinically proven psychological harm. Instead, the Constitutional Court placed the protection of the fundamental right to moral integrity at the centre of the analysis. From this perspective, what matters is not the formal classification of the conduct, but its objective capacity to cause — or place at risk — physical, psychological or moral suffering.

The doctrine established in this judgment is structured around three key elements:

> (i) the existence of deliberate conduct or conduct causally linked to the harmful outcome;
> (ii) the occurrence of harm, or at least the objective suitability of the conduct to cause it, without the need to demonstrate actual damage; and
> (iii) the presence of a humiliating or degrading purpose, or the objective capacity of the conduct to produce such an effect.

Particular emphasis is placed on the second element, as the Court expressly held that protection under Article 15 of the Constitution cannot be made contingent upon proof of harm already suffered, as this would effectively deprive fundamental rights protection of its substance.

Along these lines, the Court rejected the notion that situations such as prolonged professional inactivity or functional marginalisation may be regarded as neutral or purely organisational simply because they are not accompanied by explicit violence. In certain circumstances, keeping an employee outside the normal channels of professional activity may constitute an impairment incompatible with personal dignity.

Consolidation of the doctrine

This approach was confirmed and reinforced by Judgment 28/2025. While it did not represent a new interpretative shift, it consolidated the existing doctrine and clarified how lower courts should assess such situations. In particular, the Court emphasised that workplace harassment cannot be assessed in a fragmented manner by examining each act in isolation and justifying it individually. Rather, it requires a holistic and contextual evaluation of all the concurrent indicators.

Judgment 28/2025 also underscores the evidentiary framework applicable to fundamental rights claims. Once the employee presents reasonable indicia of a violation, the burden of proof shifts to the employer or public authority, which must demonstrate that its conduct was entirely unrelated to any form of harassment. Requiring full proof of harassment or neutralising indicia through isolated justifications constitutes, according to the Court, an incorrect application of the constitutional standard.

Practical implications

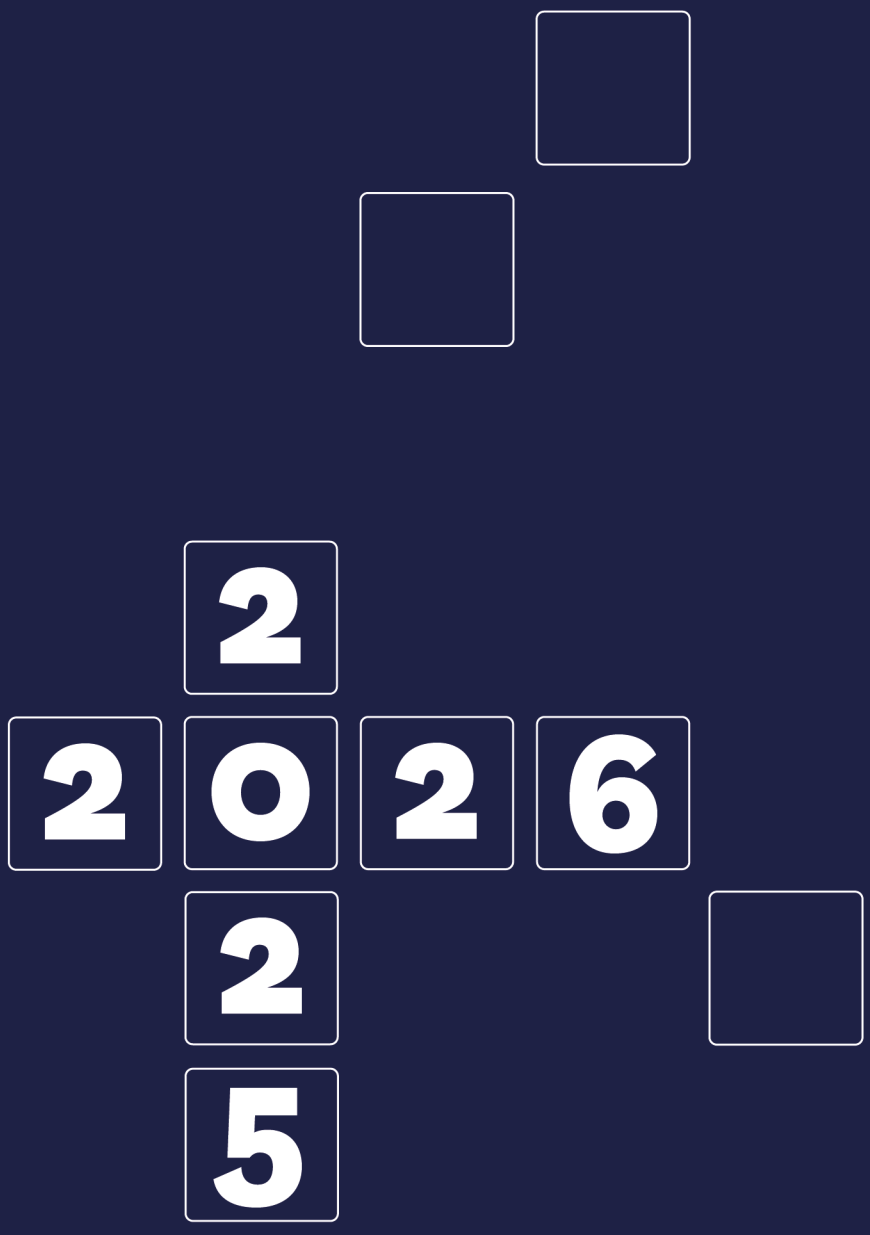
The application of this doctrine by lower courts has not been entirely uniform. Some decisions, while formally endorsing Constitutional Court case law, continue to adopt a cautious and restrictive approach, stressing that the expansion of the concept of harassment does not mean that every unfavourable or irregular managerial decision amounts to a violation of moral integrity. Others, however, have applied the doctrine more rigorously, adopting a holistic and contextual assessment of employer conduct and recognising harassment even where certain actions may appear formally lawful.

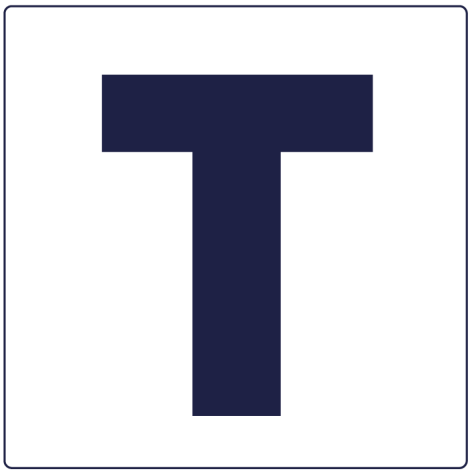
In conclusion, the concept of workplace harassment and the legal protection afforded against it have progressively expanded, shifting the focus away from the subjective intent behind the conduct and towards whether it is objectively capable of undermining the employee's dignity and moral integrity. This evolution does not, however, imply that every workplace conflict or situation of tension constitutes harassment; each case continues to require a careful contextual analysis and an assessment of the evidence in accordance with the criteria established by the Constitutional Court.

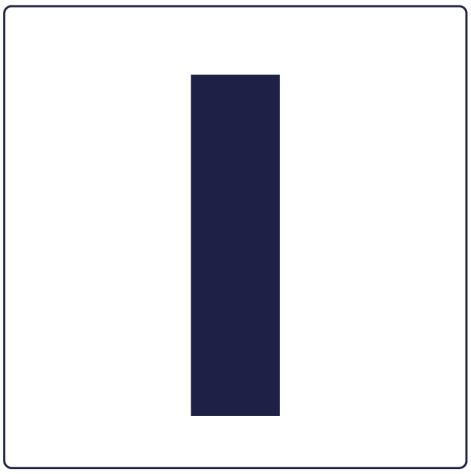
Martina Serna

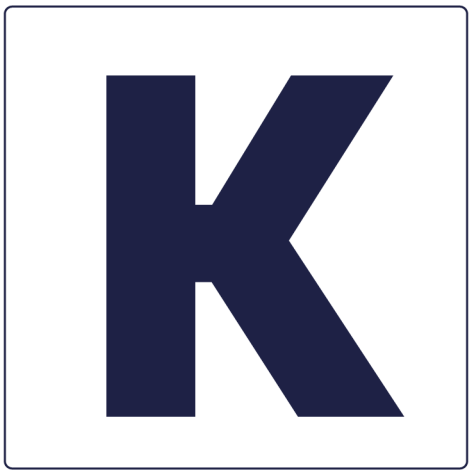
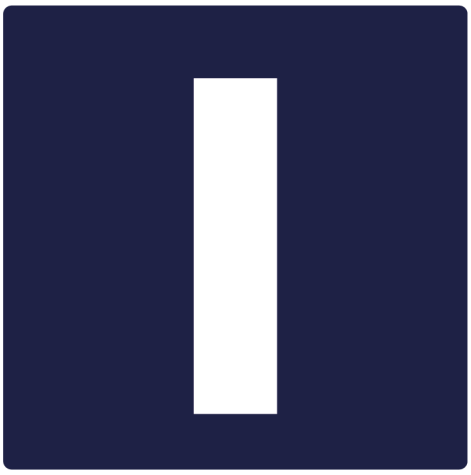
Law Degree (Universidad CEU San Pablo).
Double Master's in Access to the Legal Profession and Procura, and in Labor Law and Employment Legal Advisory (Centro de Estudios Garrigues).
Member of the Labor and Social Security Division at Bufete Barrilero y Asociados.

m.serna@barrilero.es


2
2026
2
5

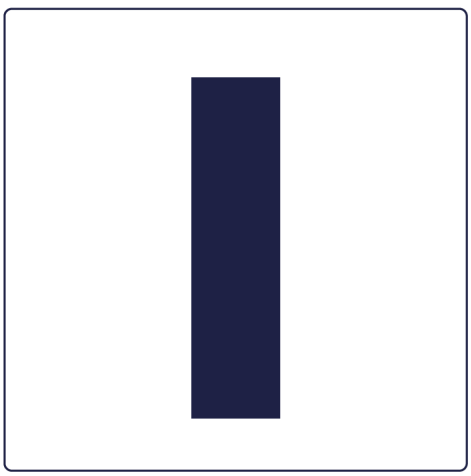

T

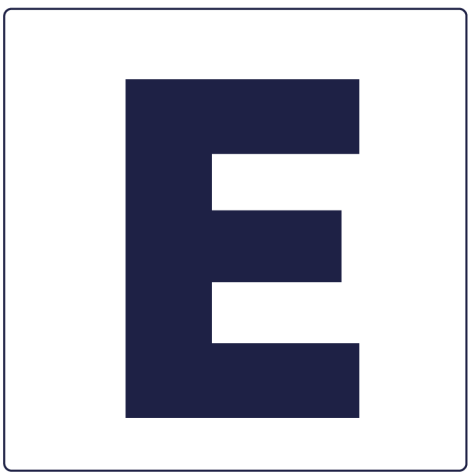
H

I

N

K

I

N

G

W

I

S

E

Homeowner's Associations and Public Domain: A Legal Boundary Defined by the Supreme Court

The Third Chamber of the Spanish Supreme Court delivered a judgment on 5 November 2025 resolving a cassation appeal of particular relevance in the field of Administrative and Coastal Law. The case examined whether a homeowners' association may be the holder of an administrative concession for the occupation of maritime-terrestrial public domain.

The dispute originated in relation to a building located in the municipality of Andratx, on the island of Mallorca, subject to the horizontal property regime. The property included a solarium and a swimming pool partially constructed on maritime-terrestrial public domain. These elements had been covered by an administrative concession granted in 1970 to the former owner of the building. Once the concession period expired and the reversion to public domain took place, the homeowners' association applied for a new concession in order to maintain such occupation.

The Administration archived the application on the grounds that the homeowners' association lacked legal personality and, therefore, could not be the holder of an administrative concession. This decision was upheld by the National High Court, which found the archiving of the proceedings to be lawful, leading to the filing of a cassation appeal before the Supreme Court.

The Supreme Court begins by referring to settled case law according to which homeowners' associations governed by the Horizontal Property Act do not have their own legal personality, but instead constitute communities of property formed by the co-owners of the individual dwellings and commercial premises within the building. Although the legal system recognises that they have broad capacity to act in legal transactions — such as entering into contracts, litigating, managing funds or being subject to tax obligations — this capacity is explained by the system of organic representation through the community president, and not by the existence of an independent legal personality, which could only be recognised through an express legislative reform.

The Court then states that legal personality constitutes an essential requirement in order to be the holder of an administrative concession over maritime-terrestrial public domain. Demanial concessions grant registrable real rights, allow exclusive and permanent occupation of public domain through fixed works or installations, and generate a stable legal relationship with the Administration, which requires a fully identifiable subject with its own legal capacity. Furthermore, both property and coastal legislation provide for the extinction of the concession upon the extinction of the concessionaire's legal personality, confirming that this characteristic is structural to the concession regime.

Nevertheless, the judgment introduces a relevant qualification by stating that the lack of legal personality does not prevent the homeowners' association from intervening in the concession procedure. By virtue of the organic representation provided for in the Horizontal Property Act and the standing of the co-owners to act in the interest of the community, the association may apply for the concession and process the administrative procedure before the Administration. However, such action is merely instrumental and does not attribute formal ownership of the concessionary right to the association.

The Court establishes that, should the concession be granted, ownership must lie with all the co-owners of the affected common element, distributed in proportion to their respective participation quotas, thus ensuring that no owner is excluded from the rights and obligations deriving from the concession. The lack of unanimity among the co-owners does not prevent the processing of the application, but it does condition the final award, as the Administration cannot impose the ownership of a concessionary right on those who have not given their consent.

Finally, the Supreme Court rejects the argument that the temporary administrative authorisations previously granted to the homeowners' association for the installation of sun umbrellas on public domain may be regarded as binding acts. Such authorisations are revocable and allow a limited and provisional use of public domain, whereas a demanial concession has a different legal nature, as it involves permanent occupation and the constitution of a real right.

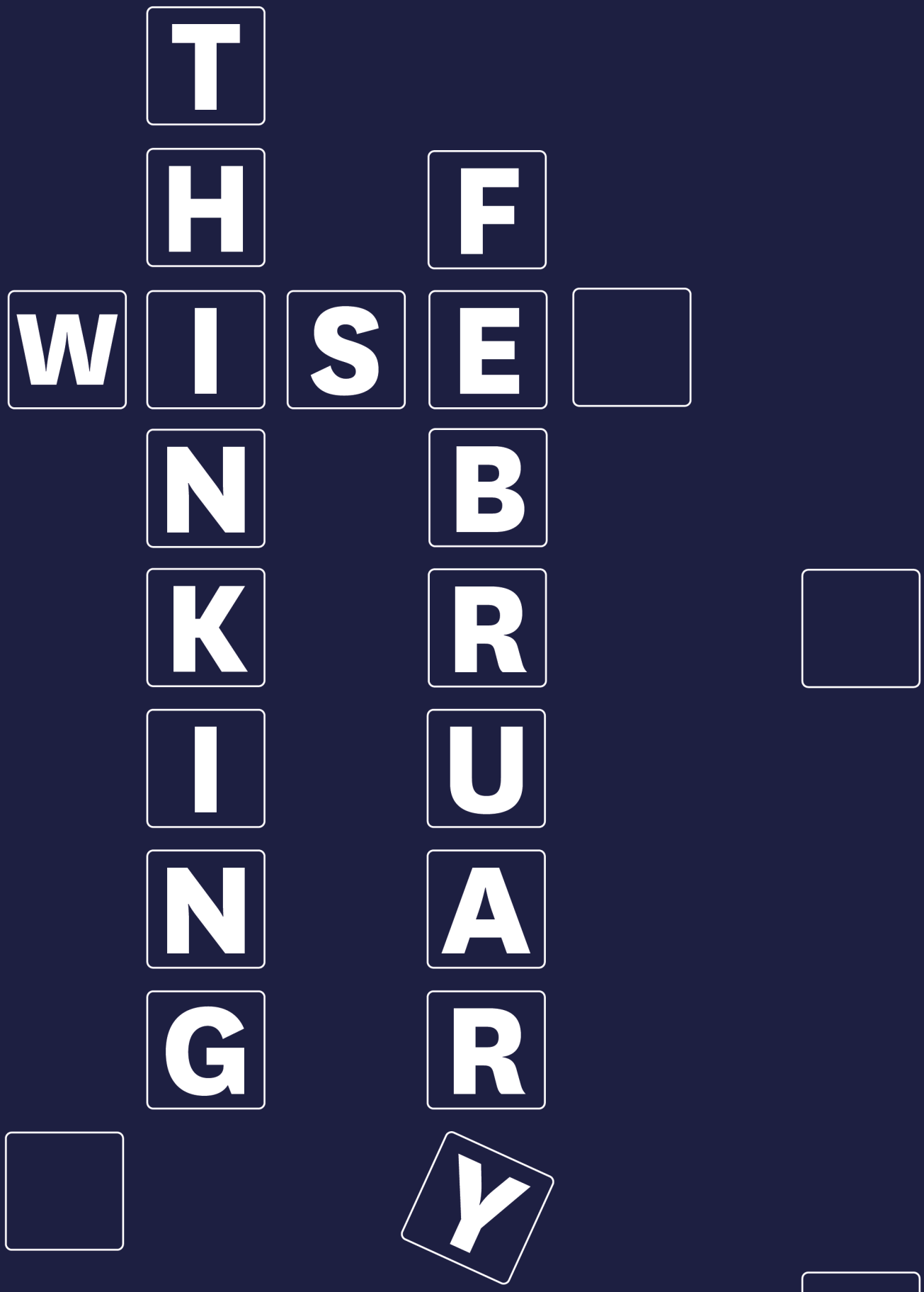
In conclusion, the Supreme Court dismisses the cassation appeal and establishes as case law that homeowners' associations, lacking legal personality, cannot hold administrative concessions over maritime-terrestrial public domain. However, they may participate in concession procedures acting as representatives of the co-owners, thereby precisely defining the boundaries between the horizontal property regime and the legal framework governing public domain.

It is important to be aware of the potential legal consequences of the doctrine established by the Third Chamber of the Supreme Court, as it clearly limits the ability of homeowners' associations to hold administrative concessions over maritime-terrestrial public domain due to their lack of legal personality. In particular, where a previous concession had been granted to a natural person and has expired and reverted to public domain, the association cannot replace that person nor apply as a single entity upon expiry. Any new concession must instead be granted directly to the individual owners, distributed in proportion to their participation quotas.

María Cardenal

Graduate in Law from the University of Cantabria, Master's in Access to the Legal Profession and Procura, and Master's in Continuing Education in Commercial and Consumer Law.
Member of the Public Law Division at Bufete Barrilero y Asociados.

m.cardenal@barrilero.es



Bufete Barrilero
y Asociados

The absolutory cause under article 268 of the criminal code and procedural standing in family businesses: current issues

Recent case law of the Spanish Supreme Court has once again addressed a recurring yet still unsettled issue: the interaction between the absolutory cause based on kinship under Article 268 of the Criminal Code and the restriction on procedural standing set out in Article 103 of the Criminal Procedure Act, particularly when criminal disputes arise within the context of family businesses.

From a statutory perspective, Article 268 of the Criminal Code establishes an absolutory cause applicable to certain property-related offences committed between close relatives, provided that no violence, intimidation, or abuse of superiority is involved. Its effect is not the disappearance of the offence itself, but rather the exclusion of criminal punishment, while civil liability is expressly preserved.

Article 103 of the Criminal Procedure Act, by contrast, operates on a different level: it limits the exercise of criminal proceedings between certain family members, configuring a restriction on procedural standing, provided that the offences do not involve crimes committed by one against the person of another or, in the case of spouses, the offence of bigamy.

Both provisions respond to different rationales and operate on distinct planes—procedural in one case, substantive in the other—without any automatic overlap between them. However, judicial practice shows that this distinction is not always applied with clarity, giving rise to interpretative friction. This tension is further intensified in the context of family-owned companies, where the question also arises as to whether either provision can apply despite the formal presence of a legal person with full legal capacity, separate existence, and autonomy.

The recent judgment of the Second Chamber of the Supreme Court (STS 890/2025, of 8 October) is paradigmatic in this respect. The case concerned a public limited company made up of siblings that brought a private prosecution against another sibling for offences of disloyal administration, misappropriation, and forgery. The Provincial Court ordered a dismissal with prejudice, holding that the company lacked active standing under Article 103.2 of the Criminal Procedure Act and that, following the withdrawal of the remaining accusations, the proceedings could not continue. It also added that the potential application of the absolutory cause under Article 268 of the Criminal Code could not be examined at the intermediate stage. This decision was upheld by the High Court of Justice and subsequently appealed to the Supreme Court.

The Supreme Court took the opportunity to review the various lines of case law concerning the application of Article 268 of the Criminal Code in the context of family businesses. As a general rule, it recalled that a commercial company is a subject endowed with its own legal personality, which hinders the automatic application of an exemption based on kinship ties between natural persons. Nevertheless, it reiterated that, in certain cases, courts have pierced the corporate veil to apply the absolutory cause through an extensive and defendant-favourable interpretation, where the company constitutes a purely family or patrimonial structure and there is a complete identification between the company's interests and those of the family shareholders.

However, in the specific case at hand, the Supreme Court rejected the application of Article 268 of the Criminal Code because not all the offences charged were strictly patrimonial in nature, as they included corporate offences such as document forgery or the imposition of harmful resolutions. It nevertheless avoided a definitive ruling on the applicability of Article 103 of the Criminal Procedure Act to family companies, resolving the appeal on narrower grounds.

The judgment includes a dissenting opinion by Justice Hernández García, which is particularly relevant from a doctrinal perspective. In his view, the Chamber should have focused exclusively on the issue of procedural standing, without conflating it with the absolutory cause under Article 268 of the Criminal Code. From this standpoint, where a company is made up exclusively of family members and its corporate and family realities are difficult to disentangle, the corporate veil should be pierced and the restriction on standing under Article 103.2 of the Criminal Procedure Act applied. He even accepts that, in such a context, the absolutory cause could also have been applied.

The issue of enforcing civil liability adds a further layer of procedural complexity. Supreme Court case law has maintained a heterogeneous doctrine, which Judgment STS 94/2023, of 14 February, synthesises with precision. As a general rule (although there is also disagreement on this point), when the absolutory cause under Article 268 of the Criminal Code is clearly established at the investigative or intermediate stage, a dismissal with prejudice is appropriate under Article 637.3 of the Criminal Procedure Act, without any ruling on civil liability, leaving the civil courts open.

Conversely, when the absolutory cause is assessed at judgment stage, after evidence has been taken and the facts and damage have been sufficiently established, it is accepted that the criminal court may declare civil liability together with the criminal acquittal. This solution is based on three fundamental ideas: first, that the absolutory cause does not eliminate the typicity, unlawfulness, or culpability of the act (it should be recalled that a crime is defined as a typically unlawful and culpable act subject to an appropriate criminal sanction); second, that Article 268 of the Criminal Code expressly maintains the civil liability of the exempted party; and third, that considerations of procedural economy favour resolving the civil issue within the criminal proceedings, provided that the action has not been waived or reserved.

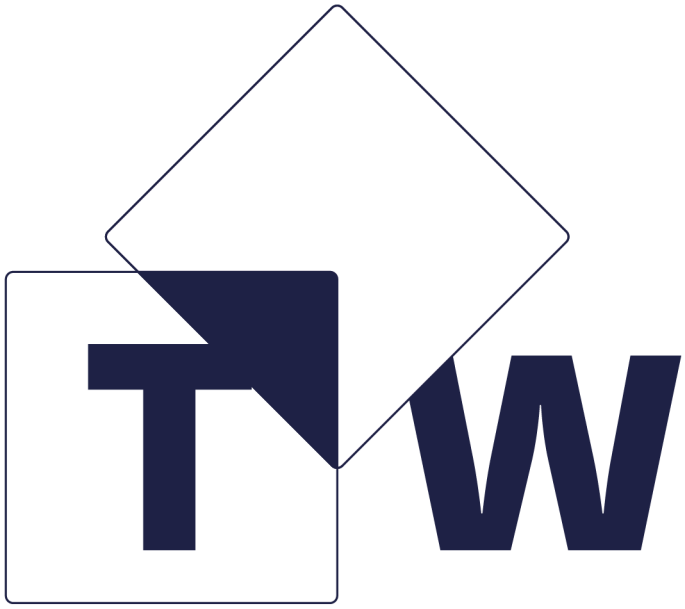
This, broadly speaking, is the current state of the matter: the coexistence of interpretative lines, the absence of a unified criterion, and a wide argumentative margin for legal practice. While this may be useful from a strategic perspective, it raises significant questions regarding systemic coherence and legal certainty, as guaranteed by Article 9.3 of the Spanish Constitution. If the legal system admits the criminal liability of legal persons, it does so on the premise that they are genuinely separate entities, endowed with their own will and existence. The extensive application of analogies in bonam partem in this area may generate significant comparative grievances and place family members who are victims of property offences at a clear disadvantage.

Furthermore, if the rationale of Article 268 of the Criminal Code is the protection of family harmony, it is ultimately worth asking whether this logic remains applicable when there is formal kinship but no genuine family relationship or family peace to preserve, because relations have irretrievably broken down.

Ignacio Jerez Bolz

E5 Double Degree in Law and Political Science, and Master's Degree in Access to the Legal Profession (UNIR)
Member of the Criminal Law Division at Bufete Barrilero y Asociados.

i.jerez@barrilero.es



Bufete Barrilero
y Asociados

Bilbao
Madrid
Barcelona
San Sebastián
Sevilla
Vigo
Vitoria
Valencia
Lisboa
International Desk