January 2026

b-today

Law and Economics

Midnight clauses
Due Diligence
The Training Contract
Decarbonization
Pujol family

Bufete Barrilero
y Asociados

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

Midnight clauses after InKreal: advantage or risk?

In a time like the present, marked by globalization, the conclusion of international civil and commercial contracts is common. This trend has led to an increase in contractual litigation, making the rules on international jurisdiction essential, as they determine which national courts are competent to resolve disputes.

At the European level, these rules are regulated by Regulation (EU) 1215/2012 ("Brussels I bis Regulation"). One of its most significant advances is the recognition of express jurisdiction clauses, set out in Article 25, which allow the parties to agree on the jurisdiction of the courts of a Member State, regardless of their domicile, provided that the agreement is formally valid and there is an element of internationality in the legal relationship.

The judgment of the Court of Justice of the European Union in Case C-566/22 (Inkreal) has resolved a question that had not previously been addressed in this field:

- Whether, under Article 25, a jurisdiction clause in favor of the courts of another Member State is valid in a dispute between parties domiciled in the same State.

The case concerned two Slovak companies that had agreed to submit their disputes to the courts of the Czech Republic. In the absence of other international elements, the Czech Supreme Court referred the preliminary question to the CJEU.

The CJEU answered in the affirmative, considering that the mere choice of a foreign court may, by itself, constitute the element of internationality necessary to apply Article 25.1 of the Brussels I bis Regulation, basing its answer on:

-The purpose of the European judicial cooperation system,
-The principle of party autonomy,
-The guarantee of legal certainty,
-Mutual trust between the courts of the Member States, and
-Compatibility with the 2005 Hague Convention.

As a result of this interpretation, new strategic possibilities open up in the negotiation and drafting of international contracts, with especially relevant practical implications:

1.- Expansion of room for maneuver in negotiation
Since no connection is required between the chosen forum and the parties or the contract, the choice-of-forum clause becomes a bargaining chip in contractual negotiations. This greater flexibility expands the parties' room for maneuver, allowing them to use the forum as another element of trade-off, adapting it to strategic interests and priorities.

2.- Tactical use of forum to protect interests
The landscape opened by Inkreal allows parties to choose jurisdictions that are more predictable, efficient, aligned with their interests, or with more consolidated case law in the relevant field. This is especially valuable in sectors with high litigation rates or sophisticated contracts (such as M&A, distribution, or franchise agreements), where the choice of forum can directly affect the speed and outcome of proceedings.

3.- Costs of litigating abroad
However, this freedom of choice also requires careful assessment of the costs associated with litigating in the chosen forum. It is not enough for the court to be favorable or efficient; it must also be reasonable in economic and logistical terms. Otherwise, the clause may become a deterrent or even a source of contractual imbalance, especially for the party with less capacity to bear the costs of international litigation.

4.- Consolidación de litigios en una única jurisdicción.
Inkreal also opens the door to consolidating disputes in a single jurisdiction, which is useful in M&A transactions carried out between multinational groups operating through subsidiaries located in the same State. In these cases, the parties can agree that disputes arising from the different contracts will be resolved before the courts of the parent company's State, avoiding procedural fragmentation and gaining efficiency, coherence, and legal control.

5.- Assessing reputational or commercial impact
Finally, the choice of forum can also have reputational and commercial implications. Proposing foreign or perceived-as-complex courts may generate distrust in the counterparty or send signals about the company's approach to dispute resolution. This strategic dimension must be carefully assessed, as it may influence market perception or that of future partners. At the same time, this trend strengthens the role of international commercial courts, which are becoming consolidated as attractive forums for resolving transnational disputes, reinforcing their legitimacy and specialization.

In short, Inkreal redefines forum selection as a strategic tool in contractual negotiation. Its use requires rigorous legal, economic, and reputational analysis in order to maximize advantages without undermining contractual balance.

Daniel Prieto Aparici

Law graduate from Pompeu Fabra University.
Master's Degree in Legal Practice and Court Representation at UPF-Barcelona School of Management. He is a member of the Commercial and Litigation Department at Bufete Barrilero y Asociados.

d.prieto@barrilero.es

The Tax Authority May Require the Submission of Due Diligence Reports

Recently, the Central Economic-Administrative Court (TEAC) issued a decision in which it concluded that the Tax Administration is entitled to require the submission of due diligence reports within the framework of a limited audit procedure. In the specific case decided by the TEAC, the Tax Authority required the acquiring company to provide a due diligence report that was mentioned in the public deed through which it acquired all the shares of another company.

The TEAC justifies the validity of this request mainly because it considers that due diligence reports have "clear" tax relevance. This clarity is due to the fact that these reports contain a large amount of data of different kinds, among which there will undoubtedly be information with tax relevance.

Likewise, it is ruled out that the request must explicitly justify what the tax relevance of the reports is. The requested information "in itself shows the tax significance it entails," so it would not be necessary to explain the reasons for requesting it. However, it should be noted that in the disputed request it is stated that the submission of these reports is "necessary" for the Tax Administration. This is highly questionable, since the failure to submit these reports would not prevent the Administration from carrying out its work. Tax legislation does not define what a due diligence report is, nor what content it must include, leaving this more or less to the free discretion of whoever drafts it. Moreover, such reports often include subjective considerations regarding certain contingencies in order to influence the final purchase price, exaggerating or minimizing potential risks. It would be more appropriate, due to their objectivity and because they are less harmful to the taxpayer, to require—where appropriate—the submission of other documents (bank statements, invoices, etc.).

It is therefore completely disproportionate to request these due diligence reports, thus taking advantage of the work done by advisers and technicians, in the hope of detecting problematic tax situations. In addition, by not having to explicitly state the tax relevance of the requested reports, we may face requests with dubious reasoning, whose validity would nevertheless be endorsed by this TEAC decision.

On the other hand, the acquiring company argues that the reports contain sensitive and confidential information, and that many professionals are involved in their drafting, who have access to this information due to their duty of confidentiality and professional secrecy. It therefore claims that submitting these reports would be contrary to compliance with those duties. However, the TEAC states that the request was sent to one of the parties involved in the purchase, to whom professional secrecy would not apply. This argument would, where appropriate, correspond to the "professionals involved in preparing the document if they had been the ones required to provide it."

Nor does it analyze the duty to preserve the reports, nor the length of time for which they must be kept. The TEAC states that this is not relevant to assessing the validity of the request, but could be raised in a possible sanctioning procedure for failure to comply.

It should be borne in mind that this decision does not establish binding doctrine, since it is not a criterion repeatedly upheld by the TEAC. And, of course, it cannot be ruled out that, in the event of a contentious-administrative appeal, the courts will contradict this Tribunal. Some ways in which this decision could be challenged have already been outlined in this brief article. In any case, for the time being, the door is opened for tax authorities to request due diligence reports, so extreme care must be taken with what is stated in them.

Ignacio Ezpeleta

Double Degree in Business Administration and Law (University of Deusto). Master's Degree in Access to the Legal Profession (University of Deusto). He is a member of the Commercial and Litigation Department at Bufete Barrilero y Asociados.

i.ezpeleta@barrilero.es

The Training Contract After the Reform: Requirements, Limits, and Risks for Companies

The training contract has always been a delicate legal instrument. Its use has often raised doubts about the balance between its inherent training purpose and companies' organizational needs. With Royal Decree 1065/2025, which develops Article 11 of the Workers' Statute, the legislator addresses this issue by strengthening the regulatory framework of the training contract, defining more precisely the situations in which it may be used, and clarifying the consequences of a use that does not conform to its purpose.

The regulation, in force since December 17, 2025, pursues a very specific objective: that the training contract be used only when there is a real need for training and when the work performed in the company is genuinely related to the studies or training of the hired person. It is therefore not a flexible hiring option, but a figure with a clearly defined training purpose.

One of the central aspects of the reform is the requirement of a real and demonstrable training purpose. The Royal Decree makes it clear that it is not enough for the worker to be enrolled in vocational training, university studies, or courses of the National Employment System.

For the contract to be valid, there must be a genuine learning process, and the work carried out in the company must serve to apply in practice the knowledge acquired. For this reason, the training contract cannot be used to perform routine or generic tasks that do not provide learning, even if those tasks are useful for the company.

This requirement directly affects the content of the job position. The assigned duties must have a clear relationship with the training that justifies the contract. The aim is to avoid situations in which a person hired "in training" ends up performing functions that any worker could do without specific qualifications, thus emptying the training contract of its substance.

The Royal Decree maintains the two existing types of training contracts, although it defines their conditions more clearly. The alternating training contract is designed to combine work and study, with a minimum duration of three months and a maximum of two years. During this time, effective work is subject to clear limits: it may not exceed 65% of working time in the first year nor 85% in the second. In addition, as a general rule, overtime, night work, and shift work are not allowed, except in very specific cases linked to the activity itself.

For its part, the contract to obtain professional practice is aimed at those who have already completed their university or vocational studies and need to gain work experience related to their qualification. Its general duration is between six months and one year, although it may be extended up to two years in certain cases, such as for persons with disabilities or borderline intellectual capacity.

With regard to salary, the regulation strengthens the economic guarantees of people hired under training contracts. In the alternating training contract, the salary may not be less than 60% in the first year and 75% in the second year of the wage set in the collective agreement for the position, always respecting the statutory minimum wage in proportion to the time worked. In the contract to obtain professional practice, pay will be that provided for in the collective agreement or, failing that, that corresponding to the professional group, and it may not fall below the legal minimums. In both cases, full Social Security protection is also guaranteed, including unemployment benefits and FOGASA.

Another important new feature is the limitation on the number of training contracts that may exist at the same time in each workplace, depending on the size of the workforce. This measure aims to ensure that trainees receive proper supervision and to prevent companies from concentrating an excessive number of training contracts without real tutoring. In the same vein, the Royal Decree strengthens the role of the tutor, setting limits on the number of people they may supervise and assigning them clear monitoring and evaluation functions.

The individual training program also takes on special importance, as it is recognized as a genuine right of the worker. This program must be drawn up together with public employment services, universities, or accredited training centers, and must clearly explain what will be learned, what tasks will be carried out in the company, and how the training process will be evaluated. In practice, this requires companies to plan and document training in a real and not merely formal way.

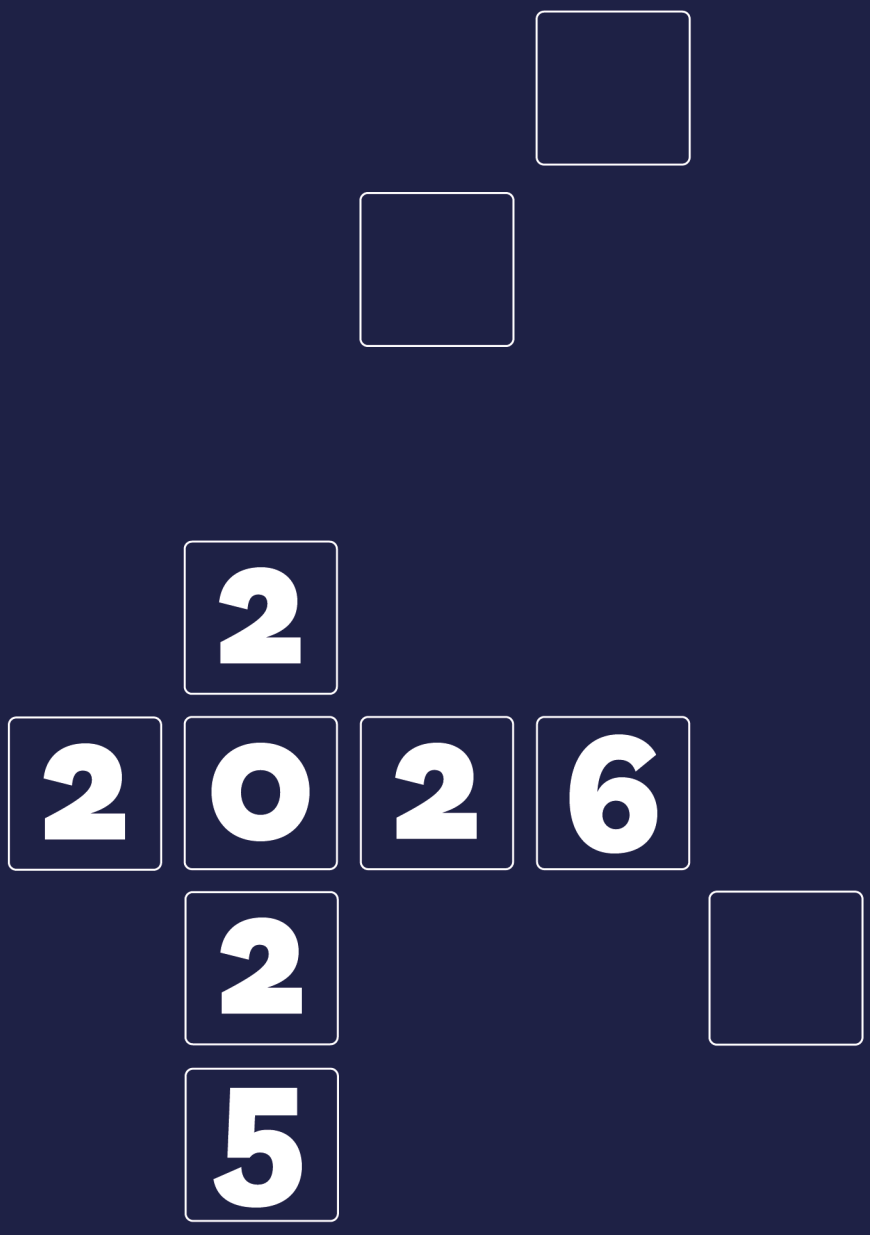
The regulation is especially clear about the consequences of non-compliance. If there is no real training purpose or the legal requirements are not respected, the contract will be considered to have been concluded in fraud of law and will automatically be transformed into an open-ended contract from the outset, without prejudice to the sanctions that the Labor Inspectorate may impose.

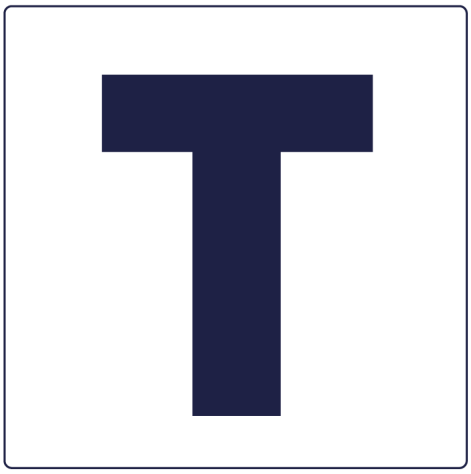
In short, Royal Decree 1065/2025 reinforces the idea that the training contract is an exceptional instrument, designed exclusively for training. Its correct use requires coherence between training, the tasks performed, and the internal organization of the company. From now on, using this modality without proper planning may entail significant labor and sanctioning risks.

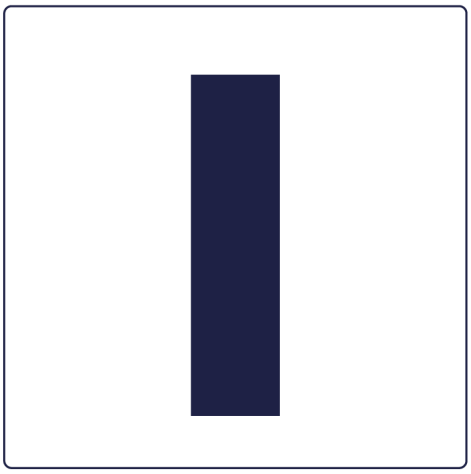
Martina Serna

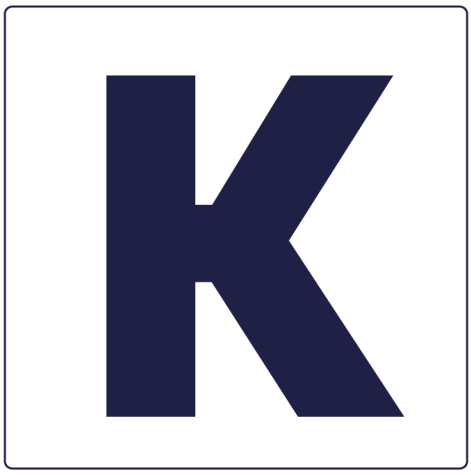
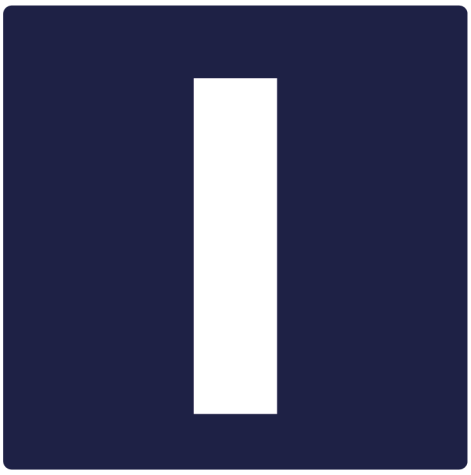
Law degree (CEU San Pablo University). Double Master's in Access to the Legal Profession and Court Representation and in Labour Legal Advisory in Business (Garrigues Study Center). She is a member of the Labour and Social Security Department at Bufete Barrilero y Asociados.

m.serna@barrilero.es


2
2026
2
5

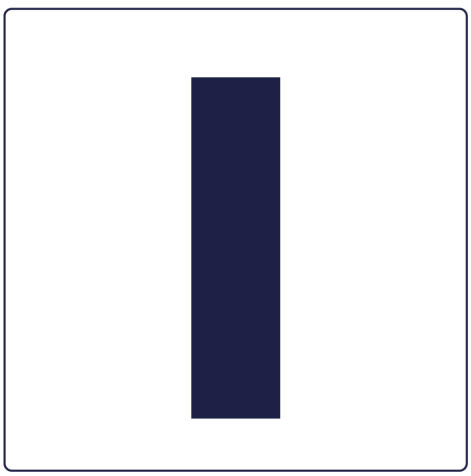

T

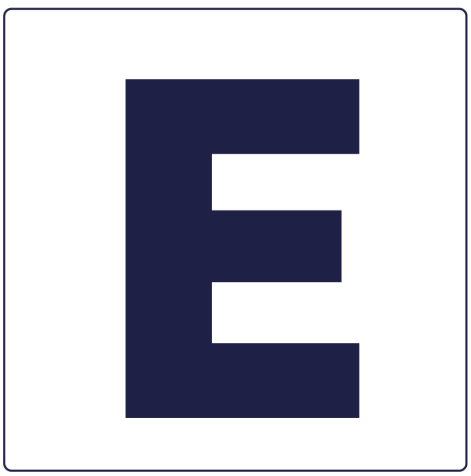
H

I

N

K

I

N

G

W

I

S

E

Decarbonization and condominium ownership: 2030 as the Deadline for Liquid Hydrocarbons

The gradual decarbonization of the building stock has become one of the fundamental pillars of public policy in the field of energy and the environment. In this context, communal heating systems that use liquid hydrocarbons, such as heating oil (gasóleo C), are now at the center of a process of regulatory transformation that directly affects homeowners' associations, especially in regions such as the Basque Country, where this type of system has historically been common in residential buildings.

Heating oil, traditionally used in central boilers because of its availability and high calorific capacity, nevertheless has a significant environmental impact, mainly due to its emissions of carbon dioxide and polluting particles. This situation has prompted a gradual shift in the legislator's approach, aimed at replacing these fuels with more efficient and environmentally friendly energy sources.

Within the Autonomous Community of the Basque Country, Law 4/2019 on Energy Sustainability constitutes the central pillar of this strategy, establishing clear objectives for reducing the consumption of fossil fuels and improving energy efficiency in buildings, both public and private.

Although the law does not immediately and generally require the removal of all existing installations powered by liquid hydrocarbons, it does introduce a series of limitations and obligations that, in practice, inevitably lead to their gradual replacement.

In particular, Article 42 of the aforementioned law establishes that, no later than 31 December 2030, energy systems that use liquid hydrocarbons as a power source must have been replaced by more environmentally friendly energies.

Likewise, the installation of new boilers powered by this type of fuel is conditional upon the absence of viable alternatives based on renewable energy, while existing installations are destined to disappear when they reach the end of their useful life, suffer structural breakdowns, undergo major building renovations, or when there is an intention to access public aid programs for energy rehabilitation.

In all these cases, continuing to use liquid hydrocarbons ceases to be a legally viable option, forcing homeowners' associations to choose alternative systems, such as high-efficiency natural gas boilers, biomass installations, aerothermal systems, or connection to district heating networks.

This new regulatory scenario has been accompanied by a significant evolution in the interpretation and application of condominium ownership law.

Traditionally, one of the main obstacles to replacing central boilers lay in the requirement of unanimity for adopting community resolutions, which allowed a minority of owners to block decisions of clear general interest. However, legislative changes have considerably relaxed this regime.

When a homeowners' association proposes replacing an oil-fired boiler with a more efficient system, while maintaining central heating as a common service, the action does not entail a structural alteration of the community regime, but rather the modernization of an existing installation, aimed at adapting it to current technical, regulatory, and environmental requirements. The common service is not eliminated; it is updated, which justifies a more flexible majority regime.

In this regard, Article 17.7 of the Horizontal Property Law allows these resolutions to be adopted without the need for unanimity. On first call, it is sufficient to have the favorable vote of the majority of all owners who, in turn, represent the majority of the participation quotas.

On second call, the requirement is reduced even further: a majority of those present is sufficient, provided they represent more than half of the quotas present. This regulation follows a clear logic: to prevent the renewal of installations necessary for the proper functioning of the building and compliance with current regulations from being paralyzed by disproportionate requirements.

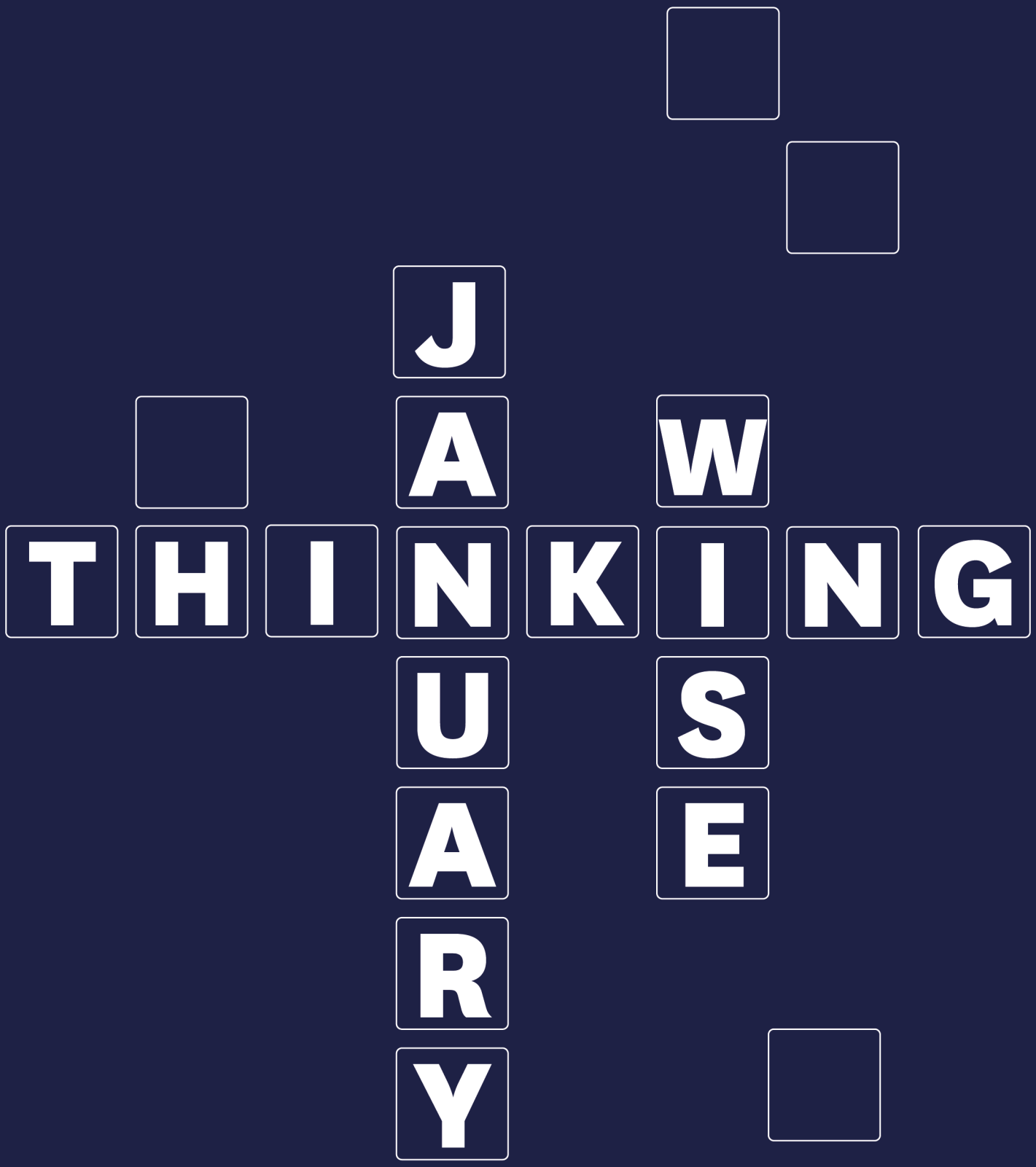
In short, everything indicates that in the coming years there will be a significant increase in the approval of special assessments in homeowners' associations in the Autonomous Community of the Basque Country, as a direct consequence of the legislator's objective that, before 31 December 2030, all energy systems based on liquid hydrocarbons, such as heating oil boilers, be replaced.

In addition, a substantial increase is expected in applications for public aid aimed at improving energy efficiency, which are set to play a key role in partially financing these actions.

Eneko Iceta Sanchez

Law graduate from the University of Burgos and holder of a Double Master's Degree in Access to the Legal Profession and Business Law from the University of Deusto.
Member of the Public Law Department at Bufete Barrilero y Asociados.

e.iceta@barrilero.es


J
A
W
THINKING
U
S
A
E
R
Y

The lack of specificity in the indictment as a cause of lack of defense: Legal analysis in relation to the trial of the Pujol family

Within the framework of the preliminary issues hearing in the trial against the Pujol family, the defense teams have argued that the indictments do not individualize, with the required precision, the facts attributed to each defendant or the allegedly criminal financial transactions, preventing them from knowing exactly the object of the accusation.
This argument places at the forefront a debate of special legal relevance: the requirement that the indictment be specific as an essential condition of the accusatory principle and of the right of defense.

A. Constitutional and legal basis of the requirement of specificity in the accusation

The **accusatory principle**, which forms part of the guarantees of criminal proceedings recognized in Article 24 of the Spanish Constitution (hereinafter "**CE**"), requires that any person subject to criminal proceedings **know precisely the facts attributed to them and be able to oppose them under conditions of full adversarial process** [1].

This requirement finds its immediate normative counterpart in Article 650 of the Spanish Criminal Procedure Act (hereinafter "**LECrim**"), which requires that the prosecutorial conclusions be "*precise and numbered*," and describe the punishable acts, the specific participation attributed to the accused, and the circumstances relevant to the legal classification of their conduct.

On this basis, the Constitutional Court has emphasized that infringement of this mandate inevitably entails a double constitutional violation: the right to know the accusation (Art. 24.2 CE), since otherwise the accusation would effectively not exist; and, inevitably, the right not to suffer defenselessness (Art. 24.1 CE.)[2]. Its case law confirms that without concrete facts there is no true accusation, because the defendant cannot refute what they do not know, including the legal classification proposed by the prosecution [3].

The formal accusation thus constitutes the starting point of the adversarial debate: it makes it possible to know the arguments of the other party, to present one's own before the judge, to indicate the factual and legal elements on which they are based, and to exercise full procedural activity [4].

B. Case-law parameters for assessing lack of defense due to vagueness of the accusation

Starting from the constitutional and legal framework described above, case law has progressively specified the parameters that allow determination of when the lack of specificity in an indictment violates the right of defense [5]:

(i) First, it must be verified whether the indictment reveals **functional inadequacy** derived from its objective ambiguity; that is, whether it lacks the minimum degree of individualization required for the accused to know **what they are accused of and why.**

The Second Chamber of the Supreme Court has clarified that, although a minute exposition of every detail is not required, the indictment must be complete (including the factual elements that constitute the alleged offense and the circumstances affecting the defendant's liability) and specific (allowing precise knowledge of the criminal conduct)[6].

(ii) It must also be verified whether that imprecision **has resulted in real and effective defenselessness**—namely, whether it has affected the defense's ability to understand the scope of the reproach, prepare its strategy, or propose evidence.

(iii) Finally, it must be analyzed whether the lack of specificity has a **structural impact** on the conduct of the trial and the final decision. When the accusation does not establish a clear factual framework, the court's own ability to define the object of evidence and properly assess the facts submitted for judgment is affected.

1 Article 6.3(a) and (b) of the European Convention on Human Rights similarly guarantee the right to be informed of the accusation and to have time and facilities to prepare a defense.
2 Constitutional Court Judgment 18/1989: establishes that lack of clarity in the accusation violates both the right to know the charges and the right not to suffer defenselessness.
3 Constitutional Court case law: without concrete facts, there is no real accusation because the defendant cannot challenge what is unknown.
4 The accusation structures the adversarial process: it defines what is debated and proven at trial.
5 Supreme Court Judgment 689/2020: systematizes criteria for determining when vagueness causes defenselessness.
6 Supreme Court case law: an indictment must be complete and specific, though not exhaustively detailed.

C. Procedural avenues to challenge insufficient specificity in the indictment

The appropriate procedural channel to challenge insufficient specificity in the indictment arises immediately after it is filed and before the opening of the oral trial, through the mechanisms provided in Spanish law to declare null procedural acts that violate essential procedural rules and cause defenselessness [7].

If the irregularity persists and a judgment is issued, the issue may be raised on **appeal** or **cassation**, alleging violation of the accusatory principle and the right of defense [8].

Once the decision becomes final and ordinary remedies have been exhausted, the extraordinary incident for annulment of proceedings may be brought in cases where the violation of the fundamental right could not have been raised earlier [9].

Ultimately, the **constitutional appeal** (recurso de amparo) before the Constitutional Court constitutes the subsidiary route to obtain protection under Article 24 CE when the violation derived from insufficient specificity in the indictment persists.

D. Consequences of upholding the claim: correction, rollback, or acquittal

The consequences of upholding the defect depend on the seriousness of the lack of specificity and on the possibility of repairing the harm suffered by the defense:

(i) C When the accusation is **correctable** and the harm is not irreversible, its correction should be ordered before the oral trial.

(ii) When the imprecision has affected the preparation or conduct of the trial, or the definition of the object of evidence, the **rollback of proceedings** to the appropriate procedural stage may be ordered.

(iii) Exceptionally, acquittal may be ordered where the **accusation** is structurally unusable and it is not possible to reconstruct a valid procedural object without breaching guarantees.

Thus, in the *Filesa case*, the Supreme Court declared the **indictment null** because it lacked concrete facts and was unsuitable for allowing the exercise of the right of defense[10]. In turn, in the *Banco de Valencia case*, the National High Court **acquitted** the defendants after finding that the accusation did not individualize the specific accounting entries alleged to be false, forcing the defense to reconstruct the accusation from a massive volume of documentation without a clearly delimited factual narrative [11].

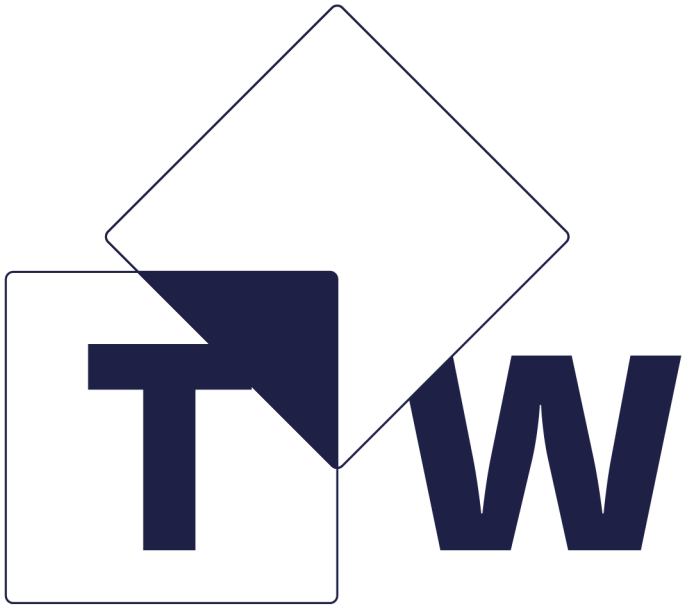
7 Arts. 238–240 of the Organic Law of the Judiciary: regulate nullity of procedural acts violating essential guarantees.
8 Arts. 851–852 LECrim: allow cassation for procedural defects and constitutional violations.
9 Art. 241 LOPJ: regulates the extraordinary incident for annulment of proceedings.
10 Filesa Case (1997): indictment annulled for lack of concrete factual description.
11 Banco de Valencia Case (2025): acquittal due to the prosecution's failure to specify the allegedly false accounting entries.

Marcos María Lozano

Double Degree in Law and Political Science and Public Administration (Autonomous University of Madrid). Double Master's in Access to the Legal Profession and Business Law (University of Navarra).

Specialization course in Urban Planning Law, Madrid Lawyers' Training Center (CEFAMA) (2024). He is a member of the Administrative Law Department at Bufete Barrilero y Asociados.

m.maria@barrilero.es



Bufete Barrilero
y Asociados

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