

Supreme Court reconsiders calculation of collective dismissal thresholds

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Introduction

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In a case analysed by a recent Supreme Court decision (711/2017) regarding thresholds, a trade union sought to declare the existence of a *de facto* collective dismissal between April 1 2016 and October 30 2016 on the grounds that the company had exceeded the maximum number of individual objective dismissals (as well as other comparable terminations) in this 180-day period.

On September 26 2017 the Supreme Court rejected the claim and upheld the Spanish High Court's judgment of December 19 2016, thereby ratifying the following points regarding collective challenges of terminations that, *de facto*, could exceed the thresholds.

Period of reference

Under Article 124 of the Law Regulating Labour Courts, employee representatives may file claims against *de facto* collective dismissals if they have occurred within 90 days. According to the Spanish High Court, this 90-day period can be retroactively calculated, starting from either the date on which the last dismissal occurred or the date on which the action to challenge this most recent dismissal would expire. Therefore, any fraudulent dismissal or termination which occurs within 21 working days following the dismissal may also be assessed.

However, employee representatives cannot file a claim due to a *de facto* collective dismissal which invokes the anti-fraud clause. Therefore, if a specific dismissal or termination exceeds the threshold when it is added to those employees who had left during the preceding and subsequent 90 calendar days, it may be assessed only through an individual process.

Terminations included in calculation

If temporary contract terminations remain unchallenged when they occur, their validity may not be challenged later in collective judicial proceedings in order to convert them into dismissals which can be added to the collective dismissal threshold calculation.

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