

## Employment Update

### Leaving your post to commit a criminal act

6th July 2020

Regarding the Judgment of the High Court of Justice of Extremadura of 11th February 2020

The analysis and study of the multiple sentences handed down by the Labour Court of the High Courts of Justice sometimes leads to punishable conduct that a legal operator can hardly expect to occur in the course of employment relations.

Sometimes we find ourselves with events on trial that seem to be taken from a film by the most representative director in the history of Spanish cinema, the illustrious Luis García Berlanga.

In this case, the Supreme Court Ruling of Extremadura of February 11th 2020 (Case Prosegur Soluciones Integrales de Seguridad de España S.L.; RS (Senate Ruling) 34/2020) confirmed the origin of the disciplinary dismissal established in the precedent Supreme Court Judgement No. 4 of Badajoz of August 6th 2019, as the behaviour of the worker (commitment of threats and injuries to his former partner and current partner) was framed as a breach of good faith in the contract.

The highlighted background events of interest are:

1.- The security guard, then a member of the Works Council, posted with another colleague to the Badajoz Courthouse who, on a certain date, telephoned his manager to inform him that he was requesting to be relieved of his duties because he was unwell, being that previously he had left his post in the company uniform only to return in half an hour, very rattled and in a rush, together with another person (lawyer) going to the security office where they stayed for a while, the guard running out in the company of his lawyer without the uniform, and leaving the telephone assigned to the security team on the desk of the civil guards.

2.- Minutes later at the family home, he began an argument with his ex-partner, after gaining access to the latter's home by knocking on the door and causing damage to the wall valued at 150€, and then punching her in the face, as well as taking away her mobile phone valued at 200€ and throwing it to the ground, leaving it useless, all with the purpose of interfering both her mood and her freedom and security, causing physical damage consisting of contusion in the left facial region, abrasions on the back of the right hand and digitized petechiae on the side of the neck, which required medical care from a doctor for its healing, taking 5 days.

3.- For these events, the Court of Violence against Women No. 1 of Badajoz, issued a ruling that convicted the worker as the perpetrator of a crime of injury in the family (domestic violence) provided for and punishable under the first paragraph of Article 153. 1 and 3 of the Criminal Code, to 40 days of community service, deprivation of the right to possess and carry weapons for 16 months, a ban on approaching the person, home, workplace and any other place frequented by his former partner, within 500 metres, as well as a ban on communicating with her by any means, both for two years and costs. It also condemned him to pay the amount of 500 euros, plus the legal interest of article 576 of the Code of Civil Procedure.



Given the clarity of these facts, the reader will wonder what legal reasoning the worker used to protest the unlawfulness of his dismissal.

In the first place, he referred to the infringement of the workers' representatives guarantees, because the mandatory compulsory dossier was incorrectly processed, as no period was opened for the taking of evidence.

The Supreme Court Ruling rejects this approach, invoking existing established jurisprudence, to emphasize that what is required and imposed by the nature and purpose of the dossier is that the affected party be aware of the facts attributed to him and be able to make the pertinent allegations against him, in addition to hearing the other members of the Committee or personnel delegates, as prescribed in Article 68.a) of the Workers' Statute. However, this requirement does not extend to the taking of evidence or the existence of a probationary period, as a separate and specific phase in the processing of the evidence, especially when the time at which the relevant probationary activity is to be carried out is in the corresponding judicial process, where extensive and detailed evidence may be taken.

Secondly, the worker alleged that the rules of the burden of proof had been violated by the trial judge. The High Court's response is forceful in affirming that the facts determining the dismissal that the company had to prove were ample, since even the worker himself recognized them.

Thirdly, it denounced that his behaviour could not justify the dismissal because according to the State wide Sectorial Collective Agreement for Security Companies, in order for the commission of a crime to constitute a very serious offense to which such a sanction can be applied, it must entail the withdrawal of the security guard's authorization (art. 74.11: "direct or indirect participation in the commission of a crime qualified as such in the criminal laws, which entails the withdrawal of the Security Guard's authorization"), a circumstance that had not occurred.

The Supreme Court's Ruling rejects this reasoning by pointing out that although the classification of Article 74.11 of the agreement is true, it is no less true that Article 74.4 considers "disloyalty, fraud and abuse of trust" a profoundly serious offense. 2.d) of the workers' statute as a cause for dismissal of the worker, as interpreted by the case law, the conduct of the worker can be included.

Finally, it was also argued that during the processing of the dossier the employee was not exempted from providing services which should lead to the impropriety of the dismissal. This allegation is unfounded, since in no case does the fact that the applicant continued to provide services from the time he committed the punishable acts until he was dismissed prevent the dismissal from being disciplinary, since even if the company could have suspended the applicant as a precautionary measure while his file was being processed, this is not required by any rule.

So that is it. The case analysed by the Extremadura Court of Justice is not new. It seems incredible but it is so.

In the not so far away Castilla-La Mancha, Supreme Court Ruling of December 19th 2019 (Securitas Case; RS 1063/2019), the disciplinary dismissal of two security guards was declared to be justified. While they were carrying out their surveillance work for certain companies that had contracted this service with their employer, they participated in the theft of material (four pieces grass measuring of eight square metres each and a ceramic figure in the shape of a donkey) from a company, which, although located in the same industrial estate, had no legal relationship whatsoever with either their security company or with the plaintiffs.



Leaving work to commit a criminal act is becoming a habit. Let us hope that this is not the case and that we do not have to see any more judicial demonstrations to judge these reprehensible conducts and, especially, if they do so with crimes of domestic violence.

Here is the full [Sentence](#) for more information.

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