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Labour Law Department

THE SUPREME COURT DECIDES THAT DELIVERY RIDERS HAVE BEEN WRONGLY DESCRIBED AS SELF-EMPLOYED WORKERS

The *Plenary of the Fourth Chamber of the Supreme Court ("TS") of 23 September 2020* has ruled that the **relationship between a delivery rider and the company (in this case GLOVO) is one of employment** (they are neither self-employed, nor TRADE). This ruling confirms the *judgment of the High Court of Justice ("TSJ") of Asturias of 25 July 2019*, discussed in our **AJ October 2019** and represents a judgement contrasting with the approach taken by the appeal. However, the *High Court of Justice ("TSJ") of Madrid in judgment no. 715/2019 of 19 September*, discussed in our publication **AJ November 2019**, ruled in the opposite direction, stating that the relationship was commercial in nature. A decision that is now bound by this new Supreme Court ruling, which clarifies the legal nature of delivery riders.

In this regard, the TS finds that Glovo is not merely an intermediary procuring services between retailers and distributors. It recognises the existence of traits typical of employment, in particular examining those of dependence and service. Such are:

- The GPS geolocation of delivery riders while carrying out their activity.
- Glovo indicated to delivery personnel how that service should be provided, and monitored compliance with those indications.
- Glovo provided delivery riders with a credit card so they could buy products for the user.
- Glovo pays financial compensation for waiting time.
- The contract specifies justifiable reasons for termination of the contract by the company consisting of contractual breaches by delivery personnel justifying disciplinary dismissal
- Glovo was the only party that had the information necessary for managing the business system.
- Delivery personnel do not receive their fees directly from customers; rather the price for their service is received from Glovo, which subsequently pays their remuneration.
- It is not implied that the worker is answerable for good outcomes by assuming the risk and venture of the latter.
- The essential means of production in this activity are not delivery personnel's mobile phones and motorcycles but rather Glovo's digital platform.

In conclusion, Glovo is an undertaking that provides errand and courier services; it establishes the essential conditions for the provision of that service, while owning the essential assets for the performance of the activity. Based on this significant ruling, the TS understands that it is not necessary to design an intermediate or new relationship; rather by **making reference to traditional employment relationship traits it rules that delivery riders are fake freelancers** because they are paid as employees and provide their service embedded within the employer's work organisation on which they are dependent.