



Newsletter

The date on which the claim is filed determines the applicable procedural regime and the availability of the Extraordinary Appeal in Cassation, in light of Law 2452 of 2025.

[Judgment STL9085-2026](#), Supreme Court of Justice, Labor Cassation Chamber, [Case No. 11001-02-05-000-2026-01229-00](#), Justice-Rapporteur Omar Ángel Mejía Amador, [May 20, 2026](#).

Amid the gradual implementation of the new Labor and Social Security Procedural Code, [Law 2452 of 2025](#), the Labor Cassation Chamber of the Supreme Court of Justice established a criterion of significant practical value for litigators and legal departments: the procedural regime applicable to a labor proceeding, including the availability of the appeal in cassation, [is determined by the date on which the claim was filed, and not by the date on which the events giving rise to the dispute occurred](#). This bulletin analyzes that transitional rule based on the specific case decided in [STL9085-2026](#).

1. A trade union immunity proceeding affected by the change in legislation

The case arose from a special proceeding for the lifting of trade union immunity brought by Promigas S.A. E.S.P. against a union officer, in connection with events that occurred in April 2025, namely the removal of a union voting ballot box during a vote count. The claim was filed and processed before the Fourth Labor Court of the Circuit of Barranquilla under the procedural rules in force prior to Law 2452 of 2025.

The second-instance judgment, which reversed the first-instance dismissal and authorized the lifting of the trade union immunity, was issued on April 24, 2026, that is, after the new Labor Procedural Code had already entered into force. Unlike the previous regime, the new Code does provide for the appeal in cassation in special proceedings such as those involving trade union immunity, under Article 239.

This timing raised the question that the Court had to resolve before admitting the constitutional protection action: if the challenged judgment was issued while the new Code was already in force, was the employee required to first exhaust the appeal in cassation, pursuant to the principle of subsidiarity, or was the tutela action directly admissible?

2. The Court's criterion: the date on which the proceeding commenced, not the date of the events or the judgment

The Chamber clarified that the decisive criterion is not the date of the events giving rise to the dispute, nor the date of the second-instance judgment, but rather the date on which the proceeding commenced, that is, the filing of the claim. The statutory basis is Article 330 of Law 2452 of 2025, which provides in absolute terms:

“All proceedings initiated prior to the entry into force of this Code shall continue to be processed under the prior procedural rules.”

The Court emphasized that this is a transitional rule drafted in broad and unconditional terms, whose temporal application criterion is the date on which the judicial proceeding was initiated. Since the trade union immunity proceeding was initiated before the new Code entered into force, regardless of the fact that the second-instance judgment was issued after its entry into force, the matter had to continue being processed under the prior procedural rules, under which the appeal in cassation was not available in this type of special proceeding.

3. Why does Article 239 not apply, even though the judgment was issued after the law entered into force

The most relevant point of the Court's analysis is how it harmonizes Article 330, concerning the transitional regime, with Article 239, concerning the availability of cassation “as from the entry into force of this law.” The Chamber rejected two interpretations that would have led to a different outcome:

- That the phrase “as from the entry into force of this law” in Article 239 constituted an exception to Article 330. The Court clarified that this phrase only defines the type of judgments that may be subject to cassation under the new regime, but does not establish that the new rules governing the appeal apply to every second-instance judgment issued after the Code entered into force, regardless of the date on which the proceeding commenced.

- That the reservation “without prejudice to the appeals already filed at that time” implied, by contrapositive reasoning, that [proceedings in which no appeal had yet been filed would be subject to the new rules](#). The Court rejected this interpretation based on an argument to the contrary, characterizing it as a reading that would distort a typical safeguard clause and create an exception not expressly provided for in the categorical mandate of [Article 330](#).

Accordingly, the Court concluded that there is no conflict [between Articles 330 and 239](#), but rather [a complementary relationship](#): [Article 330](#) defines the temporal universe of proceedings subject to the new Code, based on their commencement date, while [Article 239](#) governs the conditions for cassation only within that already defined universe. Citing [Decision CC C-654-2015](#), the Court further recalled that determining the entry into force of procedural laws [falls within Congress’s](#) broad authority, and that Congress may validly adopt deferred, staggered, or conditional implementation schemes, as occurred with the General Procedural Code, [Article 627](#).

4. Practical consequence in the specific case

In applying this rule, the Court concluded that the judgment of the Labor Chamber of Barranquilla, although issued on April 24, 2026, [was not subject to appeal in cassation](#), since it related to a special trade union immunity proceeding initiated before the new Code entered into force. This allowed the subsidiarity requirement to be deemed satisfied and enabled the substantive review of the tutela action, which [ultimately resulted in the granting of constitutional protection due to substantive and factual defects in the assessment of the just cause for dismissal invoked by the employer](#).

5. Conclusion

[STL9085-2026](#) provides a clear rule of interpretation with immediate application during the transition period toward the new Labor and Social Security Procedural Code: it is the date on which the proceeding commenced, that is, the filing of the claim, and not the date of the events or the date of the lower-court judgment, that determines the applicable procedural regime, including the availability of the appeal in cassation. For companies, [this rule is especially relevant when defining procedural strategy, assessing the viability of appeals, and estimating litigation risks](#).

Likewise, [it is recommended that this rule be incorporated into the classification and management of active proceedings](#), in order to properly identify available remedies and avoid the filing of inadmissible appeals or, conversely, the improper exhaustion of procedural stages before resorting to a constitutional protection action [acción de tutela].

For more information on this or other labor-related matters, please do not hesitate to contact us.

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