Analysis of the consideration of an accident 'in itinere'

When assessing the accident in itinere, the start of the trip and the return must be to the worker's home and the destination will be the workplace. It is considered domicile, not only the legal one, but also the usual one, that is, the usual point of departure to the workplace, including second homes or places where breaks or meals are usually taken. Although at first the domicile of family members and partners was included, the most recent rulings restrict the concept to exclude these cases as long as they do not constitute the worker's main residence, considering that then the causal link with work is broken. It is thus evident that the concept of domicile becomes decisive for the application of the protection offered by this figure. Even though I agree that this restrictive interpretation is carried out with respect to the return trip, from the workplace to home, since in this case it is evident that the determining factor is that he return home, so that the causal link with work and if you go to another place, relatives' house, friends, to the movies, etc., you are giving the trip a different purpose than going to your home, which, in my opinion, would break the causal link. However, in the opposite direction, on the way to work, the important thing is not so much where you start from, but the destination, that you go to work. As long as the trip to work is made, without significant delays or qualitative deviations, in my opinion it would be an accident in itinere, regardless of whether the night before I spent the night at the home of friends, family or partners.

The worker must have already left the private home for the protected journey to be considered to have begun. So the accident suffered in this is considered a non-work accident, but it has not yet arrived at the workplace, since the accident that occurred in it is considered an ordinary work accident. For these purposes, if it is a private or single-family home, it is necessary to have already left the boundaries of the property, that is, to have gone out onto the public road for the movement to be considered to have begun. Also if it is necessary to go out onto public roads through neighboring properties, owned by the worker. (STS of February 22, 2018). On the contrary, in the case of horizontally owned homes, the journey is considered to have begun once you have left the private door, without having to go out onto the public road, so that accidents suffered in the common elements of the property, stairs, elevator, etc., will be considered accidents in itinere. The worker must have already left the private home for the protected journey to be considered to have begun.

The trip must be motivated strictly by the trip to work or back home, without interruptions or delays for personal reasons unrelated to work, although jurisprudence has proven somewhat incongruent on this point. Thus, for example, while it has not been considered that those that occur during stops in bars and entertainment venues for more than an hour or traveling to another location to take a colleague or a third person home deserve the classification of accidents in itinere. , or those that occurred while traveling to carry out particular procedures. So, for example, visit the doctor, file your income tax return at the Tax Agency offices, or visit relatives in another location. However, in other pronouncements, it has considered as ininere accidents those that occur during the visit of sick relatives, during the trip to work, whether at the family member's home or in the hospital, brief stops of less than an hour, to have a drink in a bar, whether accompanied or alone, make purchases during the journey or brief stops to visit relatives whose home

is along the route. Consequently, we can conclude by stating that it should be considered as work accidents in itinere, those that occur due to brief interruptions or deviations from the route, as long as it is for justified reasons or for common social uses, which are not arbitrary, nor do they reveal a deliberate intention. of the worker to give the trip a purpose other than going to his home or workplace. Thus, for example, attending to physiological needs or feeling unwell, to avoid traffic jams on the usual route or to take shelter from a storm; talk to acquaintances along the way or get out of the vehicle due to a breakdown.

In reality, in my view, short and brief interruptions, as long as they occur during the usual round trip and for justified, reasonable reasons and in accordance with social uses and customs, would not break the causal link and we would continue to be protected by the umbrella of the accident in itinere: talk to acquaintances that you meet along the way, even stop to have a drink and continue talking, as long as it is for a short period of time, (although the sentences speak of 30 minutes, I would shorten that deadline, to meet the requirement of reasonableness, about 10, 15 minutes. More in line with customs, the typical thing, I have to go, but I have a beer or coffee quickly. Not when "I have to go" is repeated , but more drinks continue to be taken, usually alcoholic, and the time and risk lengthen); stopping to visit sick friends or relatives whose home is on the route, again, for a short period of time; stop to make a small purchase, newspaper, magazine, candy, put gas, buy some yogurt in the supermarket (STS, Sala de lo Social, April 17, 2018, rec. no. 1777/2016) (probably not stop to make weekly shopping for several hours) or personal management, dropping the children off at school that is on the same route as the trip, withdrawing money from an ATM, sending a letter registered at the post office. Brief encounters on the usual round trip would not break the causal link and we would continue to be protected by the umbrella of the accident in itinere.

All of these assumptions neither qualitatively lengthen the time of the trip nor increase its risk nor, as the doctrine says, reveal a deliberate intention on the part of the worker to give the trip a purpose other than going to his home or workplace. On the contrary, I would not say the same when the worker, to carry out any of these acts that we have discussed, deviates from the usual route and does so substantially. Thus, not if the detour is minimal, within a small city go down one street instead of another because the gas station where you are going to put fuel has the cheapest diesel that week, during the trip to work. Yes, however, if the detour is longer, for example, detouring to another location to pick up your parents to take them to the hospital, before going to work. Since in these cases it is unquestionable that travel time and risk increase qualitatively. The accident must occur within a time reasonably close to the hours of entry and exit from home without the trip being delayed for personal reasons, taking into account the concurrent circumstances in each case, such as the distance that the worker must travel, the state of the roads on which it must be circulated, the means of transport used and the density of traffic, works, etc. The worker must not make deviations or interruptions for personal reasons that excessively increase the route and therefore the risk. A simple delay within the temporal limits of usual usage and custom is not enough to distort the professional significance of the accident, but modifications in time or space must be introduced that give rise to an aggravation of the risk. Thus, unpunctuality does not break the causal link, that is, arriving late to the workplace, which may be subject to standard labor sanctions, but it does not prevent the classification of the accident as work-related.

The route must be the usual or customary one but not necessarily the shortest, and the worker may change the route to, for example, adapt to the state of the roads due to traffic density or works. The means of transportation must be rational or appropriate to make the journey according to the particular circumstances, including both public transportation and private vehicles or even walking. Thus, for example, it would not be considered rational or appropriate to walk when there is no pedestrian path and the worker would have to walk on the same path as vehicles. Yes, go by bicycle when there is a bike lane or a wide shoulder and also go on a skateboard when it is on the sidewalk of a town (STSJ of Catalonia of June 12, 2014). The private vehicle must be roadworthy and have passed the corresponding MOT. Otherwise, in these cases, in addition to not complying with the rationality requirement, it could be considered imprudence on the part of the worker. Furthermore, the use of private vehicles must have been authorized or, at least, not expressly prohibited by the employer when means of transportation have been made available to cover said trip, by the company or the expenses of the same and the worker have been covered. want to use other means. The worker can vary the means of transportation used as long as it is rational and appropriate.