SPECIAL REPORT

The judicialization of collective redundancies: added risk to corporate reputation

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1. INTRODUCTION

The need to address **processes of labor restructuring** by companies entails very high reputational risks. This is due not only to the need to adjust the structure of the company, which often transcends public opinion, but also to the potential dissemination of the delicate **financial situation of the company**: lack of profitability, debt, investment and finance management, asset value, organizational structure, duplicity in functions, lack of productivity, etc.

Since the 2012 labor reform, moreover, the number of cases that end up in the courts has increased, meaning not only that the processes take longer, but also that the risk of public exposure increases, due both to the increased length of time involved and to the uncertainty of the outcome of the ruling.

During the economic crisis that erupted in 2008, **the number of collective redundancies increased drastically, affecting large numbers of workers in the following years and creating an enormous social impact**. Given the high emotional impact on the worker involved in these processes, communication becomes especially important in their management.

In these situations, where companies often risk their own survival, it is essential to have **special sensitivity** towards the communication strategy that the company adopts throughout the process; giving priority to the people, who have to be made to understand **hard and difficult decisions that, while perfectly justified** from an economic, productive or organizational point of view, **are not always easy to understand** or accept.

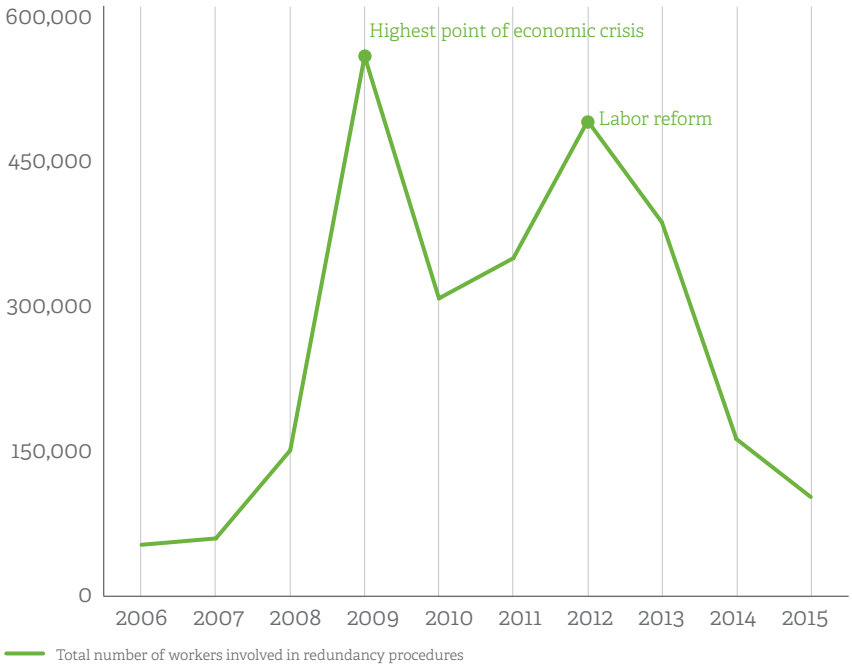
2. THE DATA: CHANGES IN REDUNDANCY PROCEDURES OVER THE LAST TEN YEARS

The data provided by the **Ministry of Employment and Social Security** during the **2006 to 2015** period show that redundancy procedures underwent a considerable increase after the onset of the crisis in 2008.

The review of these data shows that **the number of workers involved increased from 2006 to 2009, with a decrease in 2010 and a new increase in 2011 and 2012**, after which the figures began to decrease again, but without restoring the employment figures prior to the beginning of the crisis. As can be seen, the **2006** figures have not been repeated over the last ten years. That year, 3,481 companies carried out redundancy procedures involving a total of 51,952 workers. Since then, the number of workers involved increased by more than ten by **2009**, when 19,434 procedures were authorized, involving 549,282 workers.

Subsequently, in **2010**, this figure decreased by 45 percent, to 302,746 employees. In **2011**, there is a slight increase in both the number of authorized procedures and the number of workers involved. This trend continues to rise in **2012**, when the data indicate that 27,570 companies carried out 35,521 procedures involving more than 480,000 workers.

Figure 1. Workers involved in redundancy procedures (2006-2015)



According to these data, it is noteworthy that despite the fact that in 2009 there was a lower number of redundancy procedures, these involved a larger number of workers (almost 550,000 in total). However, in 2012 this figure decreased by 12 percent (483,313 employees) despite the fact that 1,734 more redundancy procedures took place. Therefore, it can be observed that **it was in 2012, the year in which the labor reform came into force, when companies carried out a greater number of procedures**.

As can be seen from the figures, **this trend has gradually decreased**. As of **2013**, we see that all variables decrease, leaving behind the most critical years of the economic crisis,

Figure 2. Number of procedures authorized

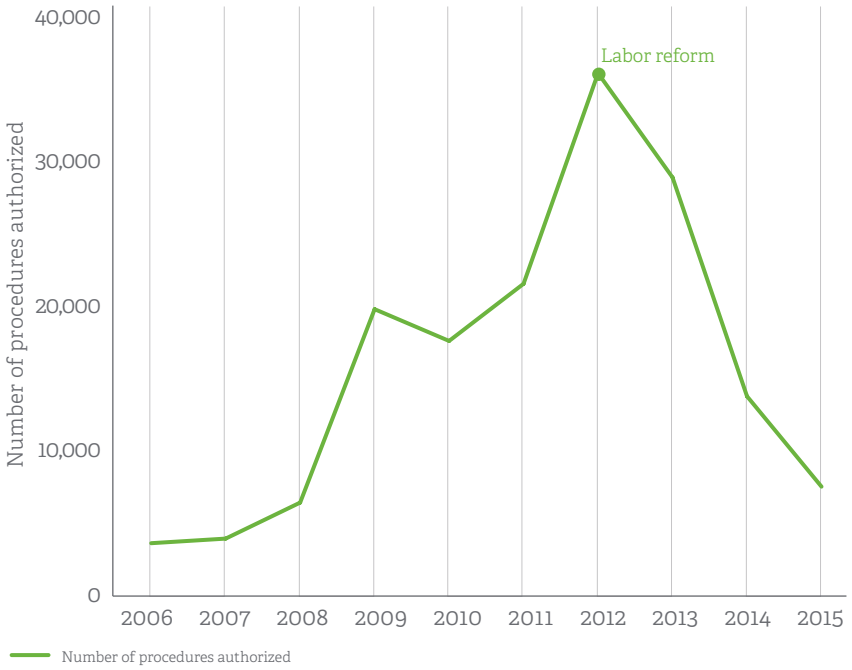
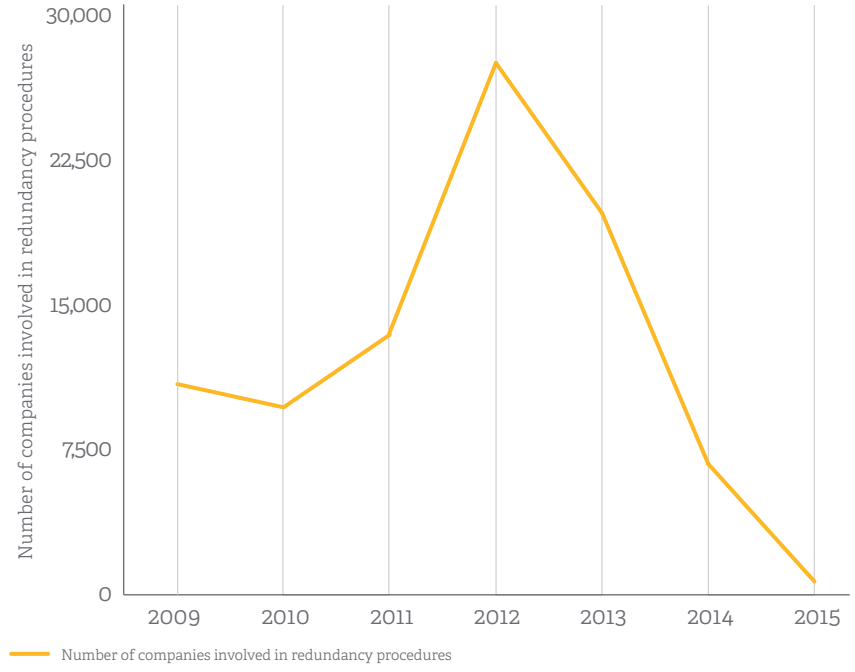


Figure 3. Number of companies involved in redundancy procedures



Note: there are no data available on the number of companies involved in 2006, 2007 and 2008

both in terms of the number of procedures and the number of companies involved and in the total number of workers affected.

Thus, in **2015**, the last year with all the data available, the total number of workers involved still doubled that of 2006 (100,552 vs. 51,952). However it has declined by more than 80 percent compared to the number of workers involved in 2012.

One relevant fact that emerges from the analysis of these graphs is that in the last years for which data are available, 108,000 companies carried out some redundancy procedure. In addition, from 2008 to 2015, **more than 2.4 million workers were involved in redundancy procedures**. Taking into account that the working population comprises approximately 22 million Spaniards, we can conclude that **more than 10 percent of workers have been involved** in redundancy procedures in recent years.

On the other hand, it has been a widespread tendency over **the past ten years for the redundancy procedures implemented** (which include collective redundancies, suspension of contract and reduction of working hours) **to have taken place with the agreement of the workers' representatives in almost 85 percent of cases**. The percentage of workers involved who did not reach an agreement in their procedures varies from 10 percent and 18 percent, the latter percentage not being exceeded in any of the years reviewed.

Figure 4. Collective redundancies with/without agreement (in number of workers involved – 2009-2015

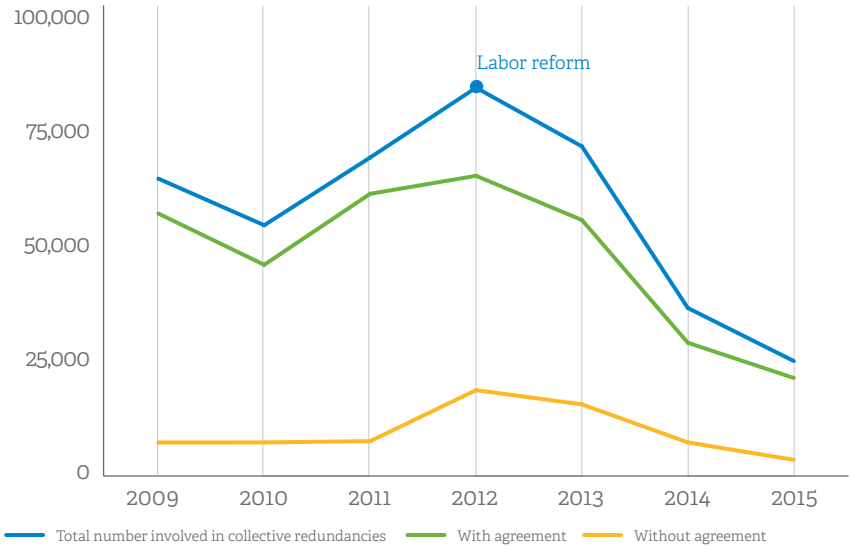
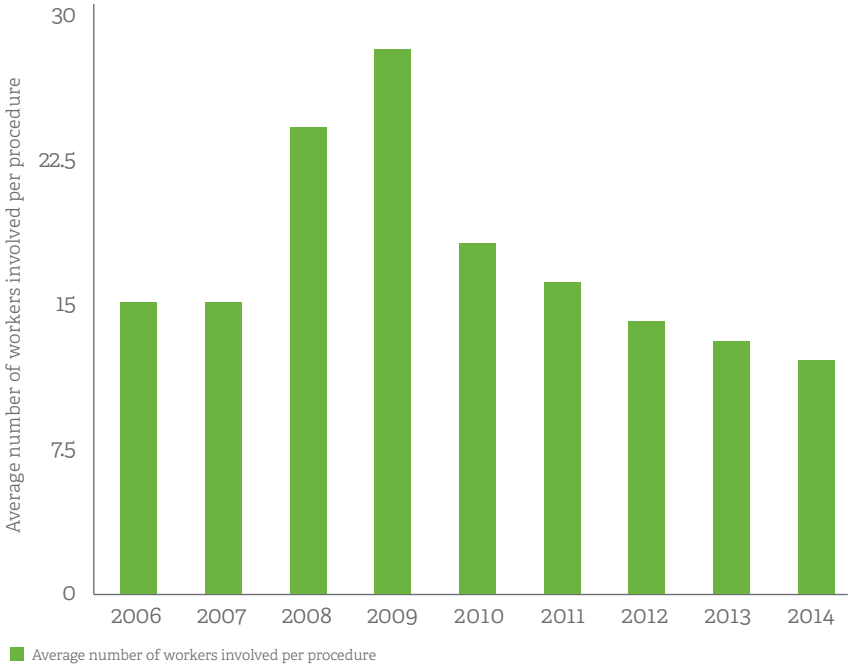


Figure 5. Average number of workers involved per procedure



However, in the specific case of collective redundancies, as of the entry into force of Royal Decree Law 3/2012, of 10 February, on urgent measures to reform the labor market, there is an increase in the number of workers who do not reach an agreement with the company before the decision to implement the collective redundancy. **With the disappearance of the Labor Authority as a decision-maker, the Labor Chambers began to fill with labor claims**. Until 2012, the workers involved in collective redundancies reached an agreement in almost 90 percent of cases, or, in other words, only 10 percent of workers were involved in collective redundancies without agreement. **During the three years following the labor reform, the number of cases that did not reach an agreement doubled**, so in 2012 and 2013, no agreement was reached in 22 of collective redundancies. In 2015 the trend can be seen to have decreased slightly, although compared with the 2006 figures, there are still almost 50 percent more workers involved in redundancy procedures that have not reached any agreement in their procedure. This lack of consensus between the workers and the company in collective redundancies, which leads to court proceedings, has **serious consequences on the procedure since it increases the time factor and creates greater insecurity** regarding the final situation of both the company and the workers.

YEAR	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Nº of companies involved in redundancy procedures	**N/A***	**N/A**	**N/A**	**14,009**	**13,029**	**16,094**	**27,570**	**21,228**	**10,637**	**5,675**
CASES RESOLVED IN LABOR COURT										
Individual disputes	**N/A**	**N/A**	**N/A**	**282,341**	**274,034**	**262,977**	**275,867**	**276,959**	**273,057**	**267,794**
Lay-offs (individual or group)	N/A	N/A	N/A	125,202	105,299	98,775	108,570	119,115	118,225	110,092
Claims arising from employment contract	N/A	N/A	N/A	157,139	168,735	164,202	167,297	157,844	154,832	157,702
Quantity	N/A	N/A	N/A	133,316	144,701	140,130	141,928	130,934	127,047	128,616
Other type	N/A	N/A	N/A	23,823	24,034	24,072	25,369	26,910	27,785	29,086
Collective disputes	**N/A**	**N/A**	**N/A**	**2,263**	**2,630**	**3,076**	**2,726**	**2,920**	**3,618**	**2,934**
Labor court cases resolved by judgment	N/A	N/A	N/A	192,785	194,778	180,593	179,805	168,590	168,338	168,992
In favor of the worker	N/A	N/A	N/A	118,228	118,564	103,954	101,456	95,413	94,076	91,060
Not in favor of the worker	N/A	N/A	N/A	56,017	57,172	57,908	58,675	54,347	55,769	59,598
Labor court cases resolved by conciliation	**N/A**	**N/A**	**N/A**	**48,991**	**49,102**	**50,830**	**65,904**	**76,649**	**79,205**	**80,530**
Total number of cases resolved	**N/A**	**N/A**	**N/A**	**348,106**	**342,361**	**333,201**	**352,992**	**354,272**	**356,427**	**364,356**
STATISTICS REGARDING REDUNDANCY PROCEDURES										
Total number of procedures authorized	**3,481**	**3,794**	**6,249**	**19,434**	**17,269**	**21,168**	**35,521**	**28,415**	**13,497**	**7,336**
Procedures with agreement	**3,065**	**3,163**	**5,583**	**17,532**	**15,636**	**19,372**	**32,601**	**26,607**	**12,605**	**6,768**
Termination of contracts/collective redundancies	2,140	2,190	2,733	3,693	3,151	3,906	N/A	N/A	N/A	N/A
Suspension of contract	886	945	2,602	11,849	9,515	9,456	N/A	N/A	N/A	N/A
Reduced working hours	39	28	248	1,990	2,970	6,010	N/A	N/A	N/A	N/A
Procedures without agreement	**416**	**631**	**666**	**1,902**	**1,633**	**1,796**	**2,920**	**1,808**	**892**	**568**
Termination of contracts/collective redundancies	136	129	181	292	330	400	N/A	N/A	N/A	N/A
Suspension of contract	278	499	458	1.469	1.096	978	N/A	N/A	N/A	N/A
Reduced working hours	2	3	27	141	207	418	N/A	N/A	N/A	N/A
Unauthorized	**133**	**96**	**276**	**523**	**501**	**560**	**N/A**	**N/A**	**N/A**	**N/A**
WORKERS INVOLVED IN REDUNDANCY PROCEDURES										
Total number of workers involved in redundancy procedures	**51,952**	**58,401**	**148,088**	**549,282**	**302,746**	**343,629**	**483,313**	**379,972**	**159,566**	**100,552**
With agreement	45,429	47,855	124,404	477,542	265,384	309,125	425,440	335,144	138,280	88,124
Termination of contracts/collective redundancies	24,940	24,383	37,949	56,118	45,161	60,336	64,175	54,735	28,498	20,972
Suspension of contract	20,346	23,271	84,022	403,397	184,023	194,980	273,506	212,550	79,823	54,010
Reduced working hours	143	201	2,433	18,027	36,200	53,809	87,759	67,859	29,959	13,142
Without agreement	6,523	10,546	23,684	71,740	37,362	34,504	57,873	44,828	21,286	12,398
Termination of contracts/collective redundancies	2,229	1,359	2,623	7,358	7,373	7,645	18,701	15,616	7,377	3,600
Suspension of contract	4,280	9,162	20,819	61,818	27,919	20,032	27,207	21,566	12,411	8,288
Reduced working hours	14	25	242	2,564	2,070	6,827	11,965	7,646	1,498	510
Total number of workers involved in collective redundancies	**27,169**	**25,742**	**40,572**	**63,476**	**52,534**	**67,981**	**82,876**	**70,351**	**35,875**	**24,572**
Total number of workers involved in suspension of contract	**24,626**	**32,433**	**104,841**	**465,215**	**211,942**	**215,012**	**300,713**	**234,116**	**92,234**	**62,298**
Total number of workers involved in reduced working hours	**157**	**226**	**2,675**	**20,591**	**38,270**	**60,636**	**99,724**	**75,505**	**31,457**	**13,652**
Average number of workers involved in authorized procedures	**15**	**15**	**24**	**28**	**18**	**16**	**14**	**13**	**12**	**14**

* N/D: Not available

* Source: Ministry of Employment and Social Security and General Council of the Judiciary.

"Labor reform marked a before and after in the rate of litigiousness of collective redundancies"

3. INCREASE IN JUDICIALIZATION AFTER ROYAL DECREE LAW 3/2012, OF FEBRUARY 10, ON URGENT MEASURES FOR THE REFORM OF THE LABOR MARKET.

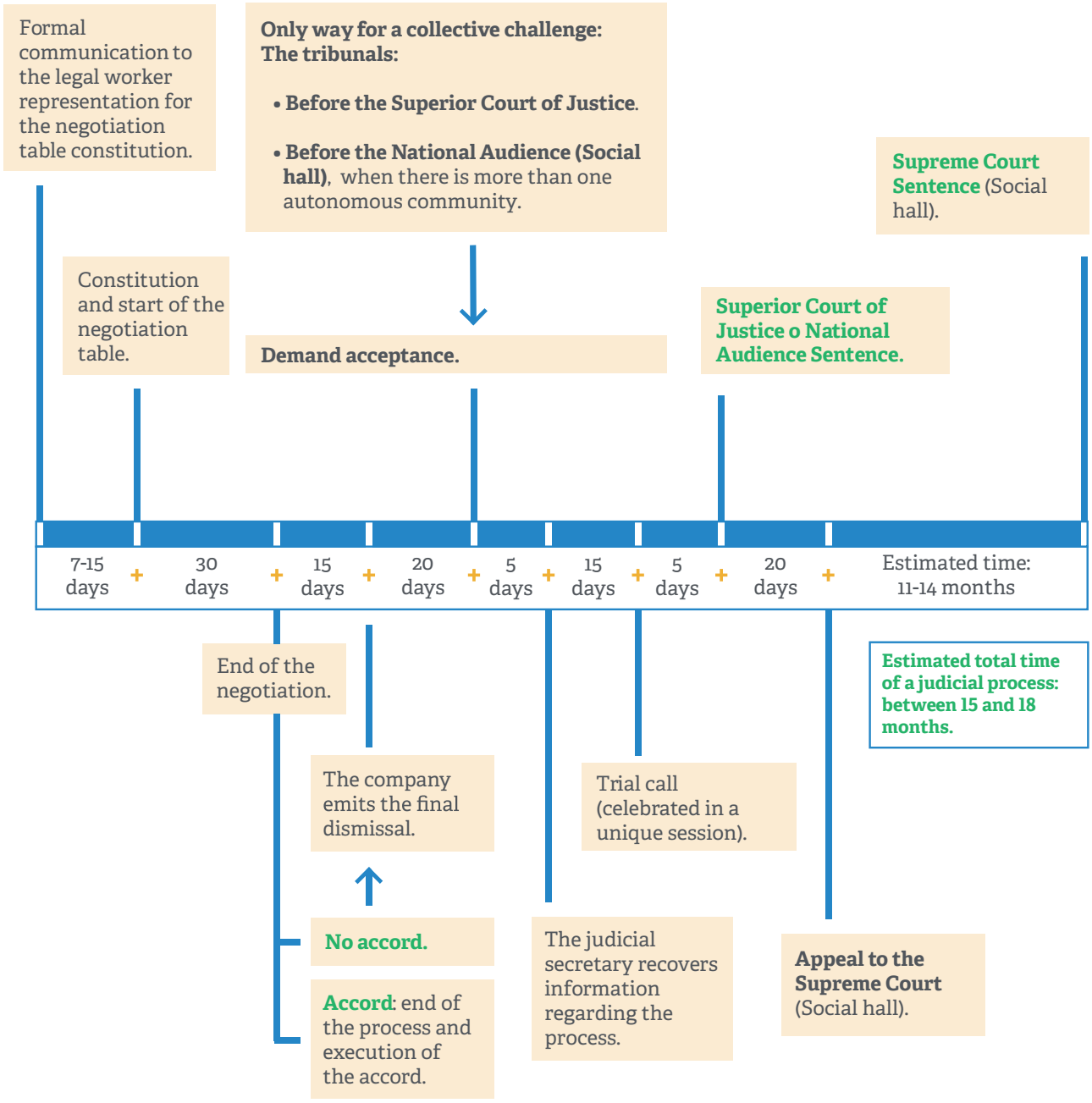
The labor reform of 2012 had a very significant impact on public opinion, especially with regard to collective redundancies. While one of the aims of the reform was to reduce the judicialization of procedures and to streamline redundancy procedures, **experience in applying the rule demonstrated that these disputes led to court proceedings even more frequently than in the past**.

From the review of the data, it can be concluded that **the labor reform marked a before and after in the rate of litigiousness of collective redundancies after concluding the negotiation process**. Before the reform, collective redundancies were carried out through a Redundancy Procedure that had to have the **administrative authorization of the Labor Authority** in order to be implemented. If the company and representatives did not reach an agreement, this Labor Authority took charge of supervising the conditions that arose from the negotiation and of issuing its authorization or otherwise. Many cases in which authorization was denied were due to errors or non-compliance with formal aspects. However, as mentioned, it was possible for an agreement not to be reached but for the Authority to give its authorization to implement the procedure, in which case it was unusual for the workers to decide to take their disagreement to court.

However, after the 2012 reform, the prior step of the Labor Authority issuing its administrative authorization was abolished. Thus, companies could implement the collective redundancy process even if no agreement had been reached, with courts being the only way for workers to challenge the process after the consultation period. This means that, regardless of whether there has been a decrease in the total number of redundancy procedures and collective redundancies, **the judicialization of these processes has undergone a significant increase. Undoubtedly, this creates additional risks for companies, not only at a legal and economic level, but also from the point of view of reputation**.

The rulings in these disputes usually take several months to be issued, even exceeding a calendar year in some cases, **drawing out a process that, under normal circumstances, should take just one or two months**.

Figure 6. Timeline*: collective dismissal process



* Deadlines can be modified depending on the court's workload.
* Sources: Law 36/2011, October 10th, regulator of the social jurisdiction and Royal Decree Law 3/2012, February 10th, of urgent measures for the labor market reform.

"Preparing a clear and concise argument, with no tricks of communication, but with the necessary honesty and transparency, and without avoiding any of the often awkward questions that may arise, is the best way to begin to recover the confidence"

4. MANAGEMENT OF COMMUNICATION DURING REDUNDANCY PROCEDURES: SOME KEYS TO MINIMIZING THE IMPACT ON REPUTATION

Judicialization entails extending the periods involved and the situation of instability. The problem is that the redundancy procedure moves into a different phase in which it must be taken into account that the publicity of the case is going to be greater and longer-lasting, given that the dispute is more evident; so the communication actions taken by company at this time will be particularly important. The new periods that this judicialization involves will have an **even more negative impact** on aspects such as productivity (which will be particularly affected if workers start strikes, mobilizations and calls for boycotts in protest against the decision), the motivation of employees, the internal climate and the relationship with customers, suppliers and institutions.

Taking into account the risks associated with such a process, the communication strategy should be aimed at mitigating its impact on the company, promoting communication and negotiation with workers, and avoiding transmission to other unaffected business units. The following are the **main keys to protecting the reputation of the company in redundancy procedures**:

EXPLAINING THE DECISION

It is crucial to prepare the announcement of the process properly. It is necessary **to provide a very good explanation of the reasons that have led the company to have to adopt one of the most difficult decisions** that any company has to face and that, however justified it may be, it will always be difficult to understand and accept for the workers involved, their families and the rest of the workers who remain in the company and whose future may also be perceived as threatened.

The fact that a company has all the legal and professional support to implement a redundancy procedure based on the well-known economic, organizational and/or productive reasons does not mean that it can afford not to make the **effort to explain** to all its workers, whatever their category or training, the reasons for this decision.

Preparing a **clear and concise argument, with no tricks of communication**, but with the necessary honesty and transparency, and **without avoiding any of the often awkward questions** that may arise, is **the best way to begin to recover the confidence** that has been compromised since the time when the process was announced.

"Transparency is a very important value for the company and therefore, it must maintain fluent communication with workers, media, suppliers, customers and other stakeholders"

ALIGNMENT WITH LEGAL STRATEGY

The move to the **judicialization** of the process is a challenge for the company's communication, since it is possible that this new phase will give greater publicity to the redundancy procedure, increasing the associated reputational risks.

At this point, coordination with the legal team is particularly necessary when establishing the communication framework that determines the announcement of the main milestones of the process. Thus, **the communication strategy must be contingent on the legal strategy from the consultation process and throughout the judicial process**, so that the **messages** to be conveyed to different audiences (translating technicalities into a simpler language), the main **actions** to be taken and the most appropriate reaction to possible **contingencies and scenarios** that may arise are established jointly. The corporate announcement established within the framework of the process has to put the measure adopted into **context** and explain the reasons for it, with suitable technical accuracy but allowing the message to be understood by audiences who are not necessarily familiar with legal terminology.

MAINTAINING THE INITIATIVE IN COMMUNICATION

Based on an **honest, clear and justified argument**, it is imperative to maintain the initiative in communication. In processes where there is a certain degree of exposure and reputational risk, it is also common for the media to be more interested and therefore the main means that the negotiating parties seek to take advantage of precisely as a negotiating element.

In this regard, transparency is a very important value for the company and therefore, it must maintain fluent communication with workers, media, suppliers, customers and other stakeholders. While the factual milestones, such as the announcement of the measure, the opening of the negotiation period or the implementation of the results, should be taken from the proactive point of view, the company should remain reactive for the more circumstantial milestones. **Establishing a means of communication demonstrates an open position with the workers, which in turn is generally interpreted as a good predisposition to reach an agreement**. The main data in these cases is the final number of workers who will be affected by the measure, which is one

"The information provided throughout the process, however trivial it may seem, should be checked previously, given the high risk of filtration and virality"

of the main consequences of the procedure. Remaining reactive at key moments in the process may lead to others taking the initiative and using their messages to monopolize the coverage and conversation generated on the subject.

REAL TIME MANAGEMENT

The current communication channels (in which social networks play a prominent role) have a capacity for immediate dissemination and are available to any interested party, so the information provided throughout the process, however trivial it may seem, should be checked previously, given the **high risk of filtration and virality**. The appearance of the slightest amount of information in this type of channel can create a line of conversation that encourages the users to participate, probably in detriment of the reputation of the company. To control this effect, it is advisable for the company to have a proactive position that shows its point of view and attempts to redirect or mitigate the conversation, naturally, without entering into a war in social networks.

In addition, each of us, through our telephone, are potential spokespeople, sources and media, so it is necessary to understand these processes from a much more open perspective than that with which they were approached just five years ago, accepting the fact that concepts such as "off the record" no longer exist and that confidentiality is much more compromised at all times.

ANTICIPATION OF SCENARIOS AND CONTINGENCIES

The common factor of good communication management is in meticulous preparation before the risk becomes a crisis. In these processes, it is **usual for contingencies of various kinds to arise** (strikes, demonstrations, sit-ins, blockades, etc.). Therefore, it is essential to prepare a plan that determines how to manage communication properly in each of these possible situations, anticipating the specific scenario, the most appropriate response by the company and the messages to be conveyed should the case arise. In this way, we can **control the risks and minimize their effects**.

Improvisation is unadvisable in the management of incidents, since it is usually also accompanied by the **lack of experience** of the management teams in this type of situation. Experience in these matters is precisely what helps to identify all the situations that can arise at times at which the creativity of unions, workers and third parties affected by the process emerges.

"Developing a communication strategy in coordination with the legal department is essential in order to establish the form and content of the messages to be communicated to different stakeholders of the company"

MULTI-STAKEHOLDER STRATEGY

It is important to bear in mind that collective redundancy, despite being the least common type of dismissal, has a greater impact, more risk of public exposure, and a high emotional component, which results in a **greater influence** on the perception that the main stakeholders of the company have about it.

For this reason, **the communication strategy must include all the stakeholders** that in any way form the reputation of the company and **not only the workers themselves**, notwithstanding that the latter are the main group to which the management team must communicate their decisions. Likewise, **it is a mistake to approach reputation management only through the media**, since there are other actors, such as public administrations, suppliers or customers to mention the most obvious, whose contribution to the reputation of the company should not be forgotten and with whom it is **desirable to maintain a more direct communication flow**. The aim of this strategy is to ensure that these stakeholders know the company's position firsthand and avoid the spread of false information that would lead to speculation about the future of the company, which would aggravate the situation.

5. CONCLUSION

To conclude, after reviewing the data analyzed, we can say that although the number of collective redundancies has stabilized in recent years, the judicialization of these cases in the absence of an agreement after the negotiation period has undergone a pronounced increase after the labor reform of 2012, which abolished the previously necessary authorization of the Labor Authority. This **judicialization draws out the process adopted by the company,** causing more uncertainty about the final result. In addition, depending on the course of the legal process, the measure can gain even more media impact, meaning an **added risk with a direct impact on the reputation of the company**. In this context, developing a communication strategy in coordination with the legal department is essential in order to establish the form and content of the messages to be communicated to different stakeholders of the company. In this way, **a plan can be prepared to anticipate scenarios and take the initiative at the key moments when it is required**, always with the aim of assisting in the negotiation process and minimizing the impact that a subsequent judicial process may have on the reputation of the company.

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