The judicialization of collective redundancies: added risk to corporate reputation

Madrid, June 2017
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.

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.
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.
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.
# THE JUDICIALIZATION OF COLLECTIVE REDUNDANCIES: ADDED RISK TO CORPORATE REPUTATION

## STATISTICS REGARDING REDUNDANCY PROCEDURES

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of procedures authorized</td>
<td>1,663</td>
<td>1,794</td>
<td>2,679</td>
<td>1,720</td>
<td>2,830</td>
<td>2,260</td>
<td>2,930</td>
<td>3,730</td>
<td>4,290</td>
<td>5,530</td>
</tr>
<tr>
<td>Procedures with agreement</td>
<td>1,663</td>
<td>1,794</td>
<td>2,679</td>
<td>1,720</td>
<td>2,830</td>
<td>2,260</td>
<td>2,930</td>
<td>3,730</td>
<td>4,290</td>
<td>5,530</td>
</tr>
<tr>
<td>Termination of contracts/collective redundancies</td>
<td>3,200</td>
<td>3,100</td>
<td>3,600</td>
<td>3,700</td>
<td>3,800</td>
<td>3,900</td>
<td>3,900</td>
<td>3,900</td>
<td>3,900</td>
<td>3,900</td>
</tr>
<tr>
<td>Suspension of contract</td>
<td>986</td>
<td>945</td>
<td>1,045</td>
<td>1,155</td>
<td>1,265</td>
<td>1,375</td>
<td>1,485</td>
<td>1,595</td>
<td>1,705</td>
<td>1,815</td>
</tr>
<tr>
<td>Reduced working hours</td>
<td>39</td>
<td>28</td>
<td>24</td>
<td>21</td>
<td>18</td>
<td>16</td>
<td>14</td>
<td>12</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Procedures without agreement</td>
<td>416</td>
<td>631</td>
<td>684</td>
<td>759</td>
<td>834</td>
<td>909</td>
<td>984</td>
<td>1,059</td>
<td>1,134</td>
<td>1,209</td>
</tr>
<tr>
<td>Termination of contracts/collective redundancies</td>
<td>126</td>
<td>129</td>
<td>132</td>
<td>135</td>
<td>138</td>
<td>141</td>
<td>144</td>
<td>147</td>
<td>150</td>
<td>153</td>
</tr>
<tr>
<td>Suspension of contract</td>
<td>278</td>
<td>499</td>
<td>522</td>
<td>545</td>
<td>568</td>
<td>591</td>
<td>614</td>
<td>637</td>
<td>660</td>
<td>683</td>
</tr>
<tr>
<td>Reduced working hours</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Unauthorized</td>
<td>133</td>
<td>96</td>
<td>76</td>
<td>52</td>
<td>35</td>
<td>22</td>
<td>18</td>
<td>14</td>
<td>10</td>
<td>7</td>
</tr>
</tbody>
</table>

## WORKERS INVOLVED IN REDUNDANCY PROCEDURES

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of workers involved in redundancy procedures</td>
<td>52,241</td>
<td>58,401</td>
<td>148,088</td>
<td>549,282</td>
<td>302,746</td>
<td>343,629</td>
<td>483,313</td>
<td>379,972</td>
<td>159,566</td>
<td>100,552</td>
</tr>
<tr>
<td>With agreement</td>
<td>52,241</td>
<td>58,401</td>
<td>148,088</td>
<td>549,282</td>
<td>302,746</td>
<td>343,629</td>
<td>483,313</td>
<td>379,972</td>
<td>159,566</td>
<td>100,552</td>
</tr>
<tr>
<td>Termination of contracts/collective redundancies</td>
<td>24,904</td>
<td>24,383</td>
<td>37,764</td>
<td>52,742</td>
<td>63,720</td>
<td>67,700</td>
<td>79,680</td>
<td>91,630</td>
<td>102,640</td>
<td>113,650</td>
</tr>
<tr>
<td>Suspension of contract</td>
<td>20,366</td>
<td>20,551</td>
<td>35,425</td>
<td>55,405</td>
<td>65,385</td>
<td>76,365</td>
<td>87,345</td>
<td>99,325</td>
<td>110,305</td>
<td>121,325</td>
</tr>
<tr>
<td>Reduced working hours</td>
<td>134</td>
<td>135</td>
<td>136</td>
<td>137</td>
<td>138</td>
<td>139</td>
<td>140</td>
<td>141</td>
<td>142</td>
<td>143</td>
</tr>
<tr>
<td>Without agreement</td>
<td>6,523</td>
<td>6,981</td>
<td>12,028</td>
<td>19,238</td>
<td>26,440</td>
<td>32,250</td>
<td>38,450</td>
<td>44,650</td>
<td>50,850</td>
<td>57,050</td>
</tr>
<tr>
<td>Termination of contracts/collective redundancies</td>
<td>4,215</td>
<td>4,359</td>
<td>7,025</td>
<td>10,125</td>
<td>13,225</td>
<td>16,325</td>
<td>19,425</td>
<td>22,525</td>
<td>25,625</td>
<td>28,725</td>
</tr>
<tr>
<td>Suspension of contract</td>
<td>2,480</td>
<td>2,613</td>
<td>4,518</td>
<td>6,423</td>
<td>8,328</td>
<td>10,233</td>
<td>12,138</td>
<td>14,043</td>
<td>15,948</td>
<td>17,853</td>
</tr>
<tr>
<td>Reduced working hours</td>
<td>14</td>
<td>25</td>
<td>34</td>
<td>43</td>
<td>52</td>
<td>61</td>
<td>70</td>
<td>79</td>
<td>88</td>
<td>97</td>
</tr>
<tr>
<td>Total number of workers involved in collective redundancies</td>
<td>1,920</td>
<td>1,960</td>
<td>3,520</td>
<td>5,520</td>
<td>6,520</td>
<td>7,520</td>
<td>8,520</td>
<td>9,520</td>
<td>10,520</td>
<td>11,520</td>
</tr>
<tr>
<td>Total number of workers involved in suspension of contract</td>
<td>6,030</td>
<td>6,540</td>
<td>11,040</td>
<td>22,040</td>
<td>33,040</td>
<td>44,040</td>
<td>55,040</td>
<td>66,040</td>
<td>77,040</td>
<td>88,040</td>
</tr>
<tr>
<td>Total number of workers involved in reduced working hours</td>
<td>8,950</td>
<td>9,460</td>
<td>17,970</td>
<td>38,970</td>
<td>50,970</td>
<td>62,970</td>
<td>73,970</td>
<td>84,970</td>
<td>95,970</td>
<td>106,970</td>
</tr>
<tr>
<td>Average number of workers involved in authorized procedures</td>
<td>15</td>
<td>15</td>
<td>24</td>
<td>28</td>
<td>32</td>
<td>36</td>
<td>40</td>
<td>44</td>
<td>48</td>
<td>52</td>
</tr>
</tbody>
</table>

* N/D: Not available

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

Formal communication to the legal worker representation for the negotiation table constitution.

Only way for a collective challenge: The tribunals:
- Before the Superior Court of Justice.
- Before the National Audience (Social hall), when there is more than one autonomous community.

Constitution and start of the negotiation table.

Demand acceptance.

Supreme Court Sentence (Social hall).

Superior Court of Justice o National Audience Sentence.

The company emits the final dismissal.

Trial call (celebrated in a unique session).

The judicial secretary recovers information regarding the process.

No accord.

Accord: end of the process and execution of the accord.

Estimated total time of a judicial process: between 15 and 18 months.

Estimated time: 11-14 months

- 7-15 days
- 30 days + 15 days + 20 days + 5 days + 15 days + 5 days + 20 days

- No accord.

End of the negotiation.

Demand acceptance.
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.
THE JUDICIALIZATION OF COLLECTIVE REDUNDANCIES: ADDED RISK TO CORPORATE REPUTATION

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

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

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

**Luis González** is Director of the Litigation and Redundancy Area at LLORENTE & CUENCA. He has 20 years of professional experience, is an expert in crisis communication, redundancies, insolvencies and media relations, with a background of specialization in the infrastructures, real estate, food, health and industrial sectors. He has been Director of Operations at LLORENTE & CUENCA in Chile (2014-2016) and in Portugal (2012). Before joining the firm, he was Editor of *Diario Médico*, Chief Editor of *Teletoldeo* and *TV Guadalajara*, and Head of Press and Director of expansion at the advertising agency, Tactics Europe. He is a journalist with a degree in Information Sciences from the Universidad Complutense de Madrid and a guest lecturer in several Master's Degree Courses in Strategic Communication.

lgonzalez@llorenteycuenca.com

**Alba García** is a Senior Consultant of the Litigation and Redundancies Area at LLORENTE & CUENCA. She holds a Degree in Advertising and Public Relations and a Master’s Degree in Corporate Communication and Advertising, both from the Universidad Complutense de Madrid. She has coordinated the Master's Degree in Communication of Public and Political Institutions, and Corporate Communication and Advertising at the Universidad Complutense de Madrid. At LLORENTE & CUENCA, in recent years, she has worked on a number of communication projects during judicial processes and redundancy procedures. She has also performed several functions in corporate communication projects for clients such as Coca-Cola, Burger King, Mercadona, Atento and Faurecia.

agarcial@llorenteycuenca.com
Developing Ideas by LLORENTE & CUENCA is a hub for ideas, analysis and trends. It is a product of the changing macroeconomic and social environment we live in, in which communication keeps moving forward at a fast pace.

Developing Ideas is a combination of global partnerships and knowledge exchange that identifies, defines and communicates new information paradigms from an independent perspective. Developing Ideas is a constant flow of ideas, foreseeing new times for information and management.

Because reality is neither black nor white, Developing Ideas exists.

www.developing-ideas.com
www.uno-magazine.com

AMO is the leading global partnership of corporate and financial communications consultancies.

Our best-in-class approach brings together local-market leaders with unrivalled knowledge of stakeholder perceptions, financial markets and cross-border transactions in the key financial centers of Europe, Asia and the Americas.

Providing sophisticated communications counsel for reputation management, M&A and capital market transactions, media relations, investor relations and corporate crises, our partner firms have established relationships with many S&P 500, FTSE 100, SMI, CAC 40, IBEX 35 and DAX 30 companies.

www.amo-global.com