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Labour Law Department

**WORKERS AFFECTED BY A COLLECTIVE REDUNDANCY WITH
AN AGREEMENT, MAY INDIVIDUALLY CHALLENGE THE
REASONS FOR DISMISSAL**

Constitutional Court Judgment number 140/2021, of 12 July, corrects the dictum of Supreme Court Judgment number 699/2018, of 2 July, which excluded the possibility of reviewing the reasons justifying a collective redundancy (*Expediente de Regulación de Empleo* or *ERE*) through individual proceedings in cases where there is an agreement between the company and workers' representatives.

Several workers affected by a collective redundancy presented an appeal for legal protection because they considered that the right to effective judicial protection had been breached, since they were denied the possibility of reviewing the reasons for a collective redundancy leading to the termination of the employment relationship, due to the agreement reached during the procedure.

The Constitutional Court concluded that, when a collective redundancy has not been challenged by the workers' legal representatives through the collective procedure provided for in art. 124 of the Employment Regulation Act (*Ley Reguladora de la Jurisdicción Social*), legal regulations do not prevent the judicial body from elucidating, in individual proceedings, the reality of the reasons invoked to justify the collective measure. This would be the case even if an agreement had been reached with the workers' representatives.

The ruling of the Constitutional Court is based on several grounds:

- It analyses the right to **effective judicial protection**, offering a new interpretation of the right to access the employment jurisdiction when the collective redundancy derives from an agreement reached between the employer and the workers' representatives during a consultation period.
- Questioning the reasons for the dismissal in individual proceedings is not prevented. The fact that an agreement has been reached with the workers' representatives **does not entail the presumption that there are reasons for the dismissal**.
- **The lack of express regulation** regarding the possibility of challenging the concurrence of reasons motivating the collective redundancy **should not be understood as a circumstance impeding this eventuality**.

This ruling will undoubtedly affect the effectiveness of the agreements reached within Collective Redundancy and, therefore, the legal certainty of such agreements. For practical purposes, companies will be obliged to strengthen their justification of the reasons for collective redundancies.