Gender and Business Restructuring in Spanish Law: Women Workers Facing Collective Dismissals*

Género y reestructuraciones empresariales en Derecho español: las trabajadoras ante los despidos colectivos

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Abstract: This study discusses the impact of collective dismissals on women workers. To this end, the research is divided into two parts. First, an empirical approach is presented that seeks to reveal and weigh this impact. For this purpose, the statistical data available is used, as well as the prototypical features of collective dismissals (the selection criteria for redundancies and the most common accompanying social measures implemented in practice). Furthermore, the discussion is presented in qualitative terms, taking into account the effect of family-work reconciliation obligations—still mostly assumed by women—when personally managing the company's proposal for internal flexibility measures (changes in working conditions) as an alternative to dismissal. Second, an examination is conducted, from a transversal perspective, of the collective dismissal procedure in Spain: the negotiating parties, the goals of consultations, and the external supervision exercised by the Labor Authority and the Labor and Social Security Inspectorate. In this way, certain aspects of domestic law that contribute to the generation of perverse effects based on sex are identified, making proposals for future legislative reform aimed at corrective action.

Keywords: Business restructuring; collective dismissal; gender impact; collective dismissal procedure.

Resumen: El estudio analiza el impacto de los despidos colectivos en las trabajadoras. A tal efecto, la investigación se divide en dos partes. La primera, de carácter empírico,

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persigue desvelar y ponderar dicho impacto. Se recurre, a tal efecto, al análisis de los datos estadísticos disponibles, así como de los elementos prototípicos de los despidos colectivos (los criterios de selección de las personas trabajadoras despedidas y las medidas de amortiguación en la práctica más recurrentes). Así mismo, el debate se plantea en términos cualitativos, habida cuenta el efecto de las obligaciones de conciliación —aun mayoritariamente asumidas por las mujeres— en la gestión personal de la propuesta empresarial de medidas de flexibilidad interna (modificaciones de las condiciones de trabajo) alternativas al despido. En la segunda parte del estudio se procede a un examen, desde una óptica transversal, del procedimiento español de despido colectivo: de los sujetos negociadores, del objeto de las consultas y del control externo desplegado por la Autoridad Laboral y la Inspección de Trabajo y Seguridad Social. Se identifican de este modo aquellos aspectos de la norma interna que contribuyen a la generación de efectos perversos por razón de sexo, efectuando propuestas de *lege ferenda* para su corrección.

Palabras clave: Reestructuración empresarial; despido colectivo; impacto de género; procedimiento de despido colectivo.

1. Introduction

Economic, technical, organizational, and production-related causes, originated in various contexts—due to the impact of globalization, new technologies, and the transition toward more sustainable production models—lead companies to a transformation process that will inevitably involve introducing changes in work methods and workforce. To this effect, the Spanish labor legal framework provides various adaptation and restructuring tools: modifying applicable working conditions—through a substantial change in working conditions or a temporary inapplicability of the relevant collective bargaining agreement—, changing employment location—through employee transfers or relocations—and, of course, adjusting workforce size, whether temporarily or permanently, in compliance with the relevant downsizing plan.

This study specifically examines collective dismissals, adopting, in addition, a particular perspective: a gender-based or transversal approach. It thus aims to assess the degree of resilience or, conversely, of vulnerability of women workers facing corporate decisions regarding collective redundancies. To this end, it explores the impact of this measure on women workers, taking into account available statistical data, the most affected business sectors, but also women's ability to choose less drastic adaptation solutions. With the aim of revealing potential sex-based indirect discrimination, despite the neutral language used in the law, this study further discusses certain typical features of collective redundancy negotiations, such as the commonly used selection criteria for including workers in a downsizing plan or the applicability of dismissal mitigation tools. Finally, the study examines, from a gender-based perspective, the key elements of the domestic

legal framework governing collective dismissals: the goals of negotiations, the negotiating parties, and the external supervision provided by the Labor Authority and the Labor and Social Security Inspectorate.

2. Women Workers Facing Collective Dismissals: Impact Assessment

2.1. Situational Diagnosis

Statistics for this matter do not show any potential adverse impact of collective dismissals on women workers. These statistics, which are mandatory,[1] certainly provide relevant data, including breakdowns by sex: for instance, the number of male and female workers included in a downsizing plan, whether temporary or otherwise, by business sector and various geographical areas—Autonomous Community or province.[2] Nevertheless, these statistics fail to show in what way or to what extent a specific restructuring measure—a particular collective dismissal—affects men and women workers within the company or work units. As these are "macro" data, they do not highlight any adverse impacts based on sex bias. Furthermore, such data can lead to misleading conclusions, as more men than women have undergone collective dismissals in absolute terms: in 2023, out of the 36,505 workers dismissed in Spain as a result of collective dismissals, 23,127 were men whereas 13,378 were women. Thus, men accounted for 63.3% of the total.[3] These figures must obviously be analyzed in context, and consequently the conclusions should also be interpreted with caution. These figures may largely be associated with sectors in which downsizing plans are typically implemented: often, male-dominated sectors such as industry or construction, or activities within the service sector—known to be more heterogeneous—where men outnumber women. It should also be noted that women are predominantly present in microenterprises—or micro-sized work units—where, as the

[1] Under Additional Provision No. 1 of Royal Decree 1483/2012, dated October 29, which approves the Regulations on the Procedures for Collective Dismissals and Suspension of Contracts and Reduction in Working Hours: "Labor authorities having jurisdiction over downsizing procedures shall submit to the Sub-Directorate General for Statistics falling within the Ministry of Employment and Social Security individual statistical data, in electronic format, for each collective dismissal, contract suspension or reduction in working hours in relation to each procedure filed with them, providing the details to be established in the application and development rules of this royal decree." This obligation has been further developed by Order ESS/2541/2012 issued by the Ministry of Employment and Social Security, dated November 27, under which provisions are established for determining the manner and content of statistical information in order to comply with the provisions contained in Royal Decree 1483/2012.

[2] Statistics related to downsizing procedures within Spain can be consulted at https://www.mites.gob.es/es/estadisticas/condiciones_trabajo_relac_laborales/REG/welcome.htm

[3] The figures and percentages are even more striking in the case of temporary downsizing plans procedures involving suspension of employment contracts: in Spain, out of the 135,718 workers involved in temporary downsizing procedures (suspension of employment contracts) in 2023, 105,688 were male workers, accounting for 77.8% of the total.

minimum legal threshold is not reached,[4] collective dismissals are not verified, even in cases of total cessation of business activity.

Identifying a perverse effect based on female sex—causing a disproportionately greater impact on women workers—requires a case-by-case analysis of collective dismissals, and each one should be subjected to a kind of gender impact assessment. Only in this way can a gender bias be identified in collective dismissals, which, as will be discussed below, are often imposed with a top-down approach, being the result of the selection criteria used for choosing the workers to be made redundant, whether or not approved by their representatives.

Finally, it should be noted that the impact of collective dismissal is not limited to terminations. Upon termination of employment, the support offered to men and women workers through accompanying social measures and, where applicable, redeployment plans must be assessed and evaluated from a gender-based perspective. This task, once again, requires an analysis, from a transversal perspective, of each specific downsizing plan, particularly with the focus placed on the personal and professional profiles of the individuals concerned, of the criteria—often age—that determine the application of aid devices, as well as the nature of these devices.

2.2. The Debate in "Qualitative" Terms

Beyond figures, other elements should be considered in the impact assessment. Consequently, in the context of business restructurings that combine internal flexibility measures and, alternatively—for those who do not opt for these—external flexibility measures, it is necessary to weigh to what extent women workers, considering their personal and family restraints, reject changes in their working conditions or, instead, show a greater willingness to accept some of them. Attention to family obligations—whether related to childcare or caregiving—, due to social and cultural reasons that are even more noticeable in the case of women workers, determines, in fact, whether or not they will resort to alternatives to the collective dismissal proposed by their employer.

[4] In Spanish law, indeed, the classification of a collective dismissal depends on the verification of legal causes—economic, technical, organizational, or production-related—and its quantitative impact on the workforce concerned. Hence, the law—Article 51 of Royal Legislative Decree 2/2015, dated October 23, which approves the revised text of the Workers' Statute [WS]—states that a collective dismissal consists of "the termination of employment contracts due to economic, technical, organizational, or production-related causes when, within a ninety-day period, the termination affects at least: (a) Ten workers, in companies with fewer than one hundred employees; (b) Ten percent of the workforce in those companies with a number of employees ranging from one hundred to three hundred; (c) Thirty workers in companies employing more than three hundred employees." Additionally, "A collective dismissal shall also be understood as the termination of employment contracts affecting the entire company workforce, provided that the number of affected employees is more than five, where the dismissal occurs as a result of the complete cessation of business activity due to the aforementioned causes."

A reorganization of working time—as a consequence of a substantial change in working conditions—or relocation—after the transfer offered by the company—undoubtedly pose more difficulties for those workers—often women—who are more committed to caregiving tasks, resulting in a lack of adaptability leading to employment termination through collective dismissal. Gender bias, in this case, is horizontal, originated by the self-selection made by the worker herself—conditioned, of course, by the aforementioned caregiver role.

Conversely, the same caregiving tasks can become an incentive to accept a reduction, even a permanent one, in working hours—again under the umbrella of a substantial change in working conditions. Thus, a reduction in working hours implemented in the context of business restructuring will be perceived, by those who view caregiving as a priority, as an alternative for balancing family and work life. Additionally, the perception—certainly well-founded—of greater difficulties in redeployment also leads to more conservative stances among women workers. Faced with the abovementioned options—a reduction in working hours (and salary) or dismissal—, the female worker generally tends to be more inclined to accept the former, choosing to work part-time, whereas the male worker, instead, is more willing to opt for termination and reorientation of his professional career.

Therefore, in the context of business restructurings that combine proposals for adapting working conditions and employment termination, women are less willing than men to leave the company—often accepting significant reductions in their employment status—, but if they decide to leave, it will be for family reasons.[5]

2.3. "Suspect" Prototype Products

2.3.1. Selection Criteria

Establishing the "criteria taken into account for the designation of workers affected by collective dismissal"[6] constitutes, as is known—under the provisions set forth in Directive 98/59/EC[7]—, the minimum requirement to be included in the employer's notifice aimed

[5] To corroborate this hypothesis in a study on gender bias in self-selection in the context of business restructurings, *see* Lambert et al. (2023), p. 603.

[6] For a detailed discussion of these criteria, *see* Tormos Pérez (2022).

[7] Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies. Under Article 2.3(b) of the Directive, the employer must supply information about the following matters: "(i) the reasons for the projected redundancies; (ii) the number and categories of workers to be made redundant; (iii) the number and categories of workers normally employed; (iv) the period over which the projected redundancies are to be effected; (v) *the criteria proposed for the selection of the workers to be made redundant* in so far as national legislation and/or practice confers the power therefor upon the employer; (vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice."

at commencing the consultation period (Article 51.2.e) of the Workers' Statute)[8] and the core subject matter of these consultations. The purposes of business restructuring, as well as the specific economic, technical, organizational, or production-related reasons, logically must prevail when establishing such criteria, since such a restructuring process will affect workers to be made redundant. Nonetheless, after this initial selection is made, often based on strictly material considerations, recourse to other objective and non-discriminatory criteria is necessary, in a complementary way, in order to select those employees—among several persons within the same professional category—that will be included in the downsizing plan.

The selection of women workers affected by collective dismissals has drawn the attention of the courts, particularly when they concern pregnant workers. The CJEU judgment rendered on February 22, 2018 ("Porras Guisado," C-103/16) contrasted individual dismissals in the context of a collective business restructuring—for which the Supreme Court of Spain did not require specific reasons for selection (STS 219/2016)—with Article 10 of Directive 92/85[9]—which states that dismissal of pregnant workers requires the existence of ""exceptional reasons not related to their condition," as well as the employer providing "justified arguments" for dismissal in writing. On this issue, regardless of other relevant rulings,[10] the Court of Justice of the European Union clearly states that it is necessary to "specify the objective criteria that have been followed for selecting the workers." This has triggered new jurisprudence from Supreme Court of Spain—such as the ruling dated July 20, 2018 (STS 802/2018), which holds that the reasons for selecting a pregnant worker for the downsizing plan must be documented, under penalty of nullity of the dismissal. It has also led to an ensuing legislative amendment—under Royal Decree-Law 6/2019, dated March 1—to Article 53.4 of the Workers' Statute (WS), which introduced a more precise wording: "[For termination] to be deemed admissible, it must be sufficiently demonstrated that the objective reason supporting the dismissal specifically requires the termination of employment of the person concerned." However, this does not imply that a specific or singular protection stems from the European rule: Directive 92/85, as made clear by the CJEU, "must be interpreted as not precluding national legislation which, in the context

[8] This has led to interpreting that the omission of the aforementioned criteria was a serious procedural defect, resulting in a breach of the duty of good faith—Judgment rendered by the National Court of Spain 112/2012, dated October 15. The courts have further explained that merely listing the workers affected or making a reference to what was subsequently agreed upon in consultations is insufficient—Judgment rendered by the National Court of Spain 148/2013, dated July 22.

[9] Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.

[10] Among these rulings, the following should be highlighted: according to the CJEU, a national law (such as the Spanish one) that "does not prohibit, in principle, the preventive dismissal of a pregnant worker, who has recently given birth, or is breastfeeding, and that only establishes, as a form of redress, the nullity of that dismissal when it is illegal" is contrary to European law. Regarding this and other rulings by the CJEU on the matter, *see* Ballester Pastor (2019), p. 189 *et seq*.

of a collective redundancy, makes no provision for priority for pregnant workers and workers who have recently given birth or who are breastfeeding to be afforded, prior to that dismissal, in relation to being either retained or redeployed."

In this legal scenario, both before the aforementioned amendment and afterwards, it is common practice to resort, often following an agreement, to criteria for selecting workers affected by the dismissal causing a disproportionate impact on men and women. Such is the case, in a paradigmatic way, with seniority based on the least length of continuous service. In fact, the subsequent reentry of these individuals into the labor market in general and, in particular, into traditionally male-dominated sectors should be considered. Even today, regarding male-dominated sectors in particular, selecting workers with the least length of service for the downsizing plan may result in a dismissal predominantly affecting women or almost exclusively women. The reverse seniority criterion, traditionally considered objective and non-discriminatory, must then be called into question. A particularly striking—and illustrative—case has been addressed by the courts: it was the case of a collective dismissal carried out in an airline company, where the dismissals were decided, upon an agreement with social partners, following the reverse seniority criterion, i.e., starting with members with the least length of continuous service up to the oldest seniority.[11] The incorporation of women into the category of pilots only starting in 2016 and, as a result, the predominantly male composition of that category—out of the 361 individuals involved, only 20 were women—inevitably brought about a collective dismissal affecting 95% of the women pilots—more specifically, 19 out of those 20. Therefore, under such circumstances, relying on the seniority criterion—only tempered by the will criterion—was deemed indirectly discriminatory on the basis of sex and the dismissal under review was declared null and void.[12]

The least length of continuous service, along with other criteria that may also be gender-biased, must therefore undergo a transversal analysis, specifically considering the gender mix of the group selected as result of the criterion adopted. In addition to the least length of continuous service discussed above, particular attention needs to be paid to other criteria such as the temporary status of the employment relationship—given that women face higher rates of temporary contracts,[13] but also because discrimination against temporary

[11] Judgment rendered by Labor Court No. 8 in and for Barcelona, dated January 19, 2023 (Resolution 16/2023). Based on the findings of facts—Item #8—"when the company filed for collective dismissal, it had a seniority list based on years of service (MSL or "Master Seniority List"). The top positions, covering pilots, were occupied by men (...). The company aimed to retain 68 pilots and terminate the contracts of the others." Among those 68 pilots, there was only one woman—who held the 40th position. The claimant was ranked in the 261st position.

[12] In general, regarding the application of a gender perspective in judicial rulings, *see* Poyatos Matas (2022).

[13] And this is despite the reduced number of temporary contracts and the gender gap related thereto observed over recent years: Spanish statistics can be consulted at https://www.ine.es

workers is broadly prohibited[14]—or productivity and performance—as this criterion must take into account the impact of circumstances that affect only women—such as pregnancy and motherhood—or mainly women—such as, for cultural and social reasons, resorting to work-life balance tools for raising children or taking care of dependents (Velasco Portero, 2018, p. 197 *et seq.*).[15]

For the proposed transversal analysis, the situational diagnosis that must precede the preparation of any equality plan proves useful—for those companies where it is mandatory,[16] as well as for those that voluntarily opt for it. This will provide information about the business context, regarding gender matters, in which the collective dismissal takes place.[17] Nonetheless, for the transversal evaluation of the projected company's plan and the identification of potential adverse effects, including discrimination based on sex—particularly indirect discrimination—, both the proposal and the subsequent counterproposal should be submitted with information broken down by sex. Therefore, the employer must indicate not only the number and professional classification of the affected workers—as already required in the Workers' Statute—but also, considering the selection criteria applied, their sex. For this purpose, it would seem advisable, as authorized under the European Directive governing this matter[18] and as discussed below, to amend Article 51.2 of the Workers' Statute and Article 3 of Royal Decree (RD) 1483/2012.

[14] Under Clause 4 of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

[15] Similarly, and although this exceeds the scope of the present study, potential adverse impacts based on the age of workers must also be considered (Sáez Lara, 2015, p. 124).

[16] Three circumstances determine, according to Spanish law, the obligation to implement the plan: the size of the company's workforce—currently, this must reach fifty or more workers (Article 45.2 of the OLEEWM, as amended by Royal Decree-Law 6/2019)—, the explicit provision for its application in the relevant collective agreement, and its imposition by the labor authority in lieu of penalties decided in the context of a sanctioning procedure. As set forth in Article 46.1 OLEEWM: "Equality plans in companies are an organized set of measures, adopted after conducting a situational diagnosis, aimed at achieving equal treatment and opportunities for women and men, and eliminating discrimination based on sex."

[17] Article 46.2 of OLEEWM refers to the contents of the diagnosis as follows: "Equality plans shall contain an organized set of assessable measures aimed at removing any obstacles preventing or hindering effective gender equality. A prior negotiated diagnosis shall be prepared, where applicable, in the presence of the workers' legal representatives, which will include at least the following items: (a) Selection and hiring process, (b) Professional classification, (c) Training, (d) Professional promotion, (e) Working conditions, including a salary audit involving women and men, (f) Joint responsibility in exercising personal, family, and work-life rights, (g) Underrepresentation of women, (h) Wages and salaries, (i) Prevention of sexual harassment and harassment based on sex."

[18] Thus, as set forth in Article 2.3 of Directive 98/59/EC, the employer, "in any event," must provide the expressly specified information—Article 2.3(b)—but also "all relevant information" so that the workers' representatives may formulate collaborative proposals—Article. 2.3(a).

2.3.2. Accompanying Social Measures

The impact of collective dismissal on workers—particularly women in this study—must be assessed not only in terms of terminations but also by weighing the aid provided through accompanying social measures and, where applicable, redeployment.[19]

To this end, it should be noted that accompanying social measures to avoid or reduce dismissals, as expressly stated in Article 8 of Royal Decree 1483/2012, include internal flexibility policies[20]: redeployment within the organization, functional mobility, geographical mobility, and substantial changes in working conditions, whose unequal impact on men and women workers has been highlighted above. Since women workers assume caregiving responsibilities to a greater extent than men workers, their ability to adapt to changes implemented in their job—particularly regarding location and schedule of service provision—is lower, which will result in employment termination. That is, in the absence of shared responsibility between men and women, recourse to the aforementioned mitigation measures—as an alternative to dismissals—is unequal.

In contrast, certain patterns can also be observed when designing accompanying social measures, which again may lead to lower resilience among women workers. Indeed account should be taken of the special treatment given to older women workers, whose transition to another job[21] or even retirement is an issue which requires particular consideration and protection—given the significant difficulties in recovering active status as workers, but also the goal of workforce rejuvenation commonly pursued by companies.[22] Nonetheless, again, such special treatment given to older workers may also be gender-biased—in addition, of course, to other implications from the perspective of the non-discrimination principle on the basis of age. In those sectors where women have joined in later, they are likely to be, on average, younger than men, or probably there will be at least fewer "older" women compared to "older" men.

For all these reasons, accompanying social measures—where applicable, agreed upon during consultation stages—should undergo a transversal analysis. For this purpose, it would be necessary to consider, in addition to the sex-based mix of the groups at which they are targeted—often age cohorts—, the professional characteristics of the affected workers as well as the economic and social context in which the collective dismissal occurs. In this way, potential adverse impacts in terms of gender could be revealed and avoided.

[19] On this topic, *see* Cabeza Pereiro (2024), p. 89 *et seq*.

[20] On this topic, *see* Fernández Domínguez (2022), p. 757 et seq.

[21] In this regard, Article 44.3 of Employment Law 3/2023, dated February 28, states as follows: "When implementing an external redeployment plan, particular efforts should be made to facilitate labor market reentry by workers, both men and women, whose contracts have been terminated due to collective dismissal after the age of fifty-two, avoiding any form of age discrimination." The explicit statutory reference to both men and women has been interpreted as a means of harmonizing the rights to non-discrimination based on age and also on sex (Fernández Prol, 2023, p. 100).

[22] To a lesser extent, pejorative treatment based on older age has been identified: for instance, where lower severance compensation amounts are fixed for older workers (Judgment rendered by the Supreme Court of Spain 62/2023).

3. The Negotiation of Collective Dismissals: A Transversal Analysis and Reform Proposals

The gender impact outlined above can be attributed to multiple factors: external determinants—considering the labor market gender mix, the sexual division of labor, or the asymmetric distribution of caregiving duties—as well as internal determinants—due to the legal configuration of the collective dismissal procedure itself. Therefore, this must be analyzed from a transversal perspective.

3.1. The Goal of Negotiations

Before a collective dismissal, as in other business restructuring or internal flexibility decisions,[23] there is a consultation stage with workers' representatives, whose objectives are roughly listed by the lawmaker. Thus—similarly, indeed, to the provisions found in international rules[24] and European regulations on the matter[25]— Article 51.2 of the Workers' Statute provides as follows: "The consultation with the workers' legal representatives must address, at a minimum, the possibility of avoiding or reducing collective dismissals and mitigating their consequences by recourse to accompanying social measures, such as redeployment or professional training or retraining actions to improve employability." While safeguarding collective labor autonomy, the lawmaker just outlines a minimum content: the negotiation of alternatives aimed, firstly, at avoiding employment terminations

[23] This is the case for downsizing procedures (Articles 47 and 47 bis of the Workers' Statute), of substantial changes in collective working conditions (Article 41) as well as collective transfers (Article 40 of the Workers' Statute).

[24] This is the case of ILO Termination of Employment Convention No. 158 (1982) (ratified by Spain on April 26, 1985), whose Article 13 states: "When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall: (b) give (...) the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment"—as well as, in the same vein, paragraph 20 of Recommendation No. 166. Similarly, the Revised European Social Charter, adopted in Strasbourg on May 3, 1996 (in force in Spain since July 1, 2021), establishes (Article 29, titled "Right to Information and Consultation in Collective Redundancy Procedures"): "With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned."

[25] Article 2.2 of Directive 98/59/EC states: "These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, *inter alia*, at aid for redeploying or retraining workers made redundant." In this regard, you can refer to Cruz Villalón (1997), p. 57 *et seq*.

or reducing their number, and secondly—if dismissals are unavoidable[26]—at mitigating their impact. These mitigation measures, in turn, make up the so-called "accompanying social measures," which include, but are not limited to, "redeployment" and "professional training or retraining actions to improve employability." Similarly, under Article 51.10 of the Workers' Statute, regarding redundancies affecting more than fifty workers, companies are compelled to provide affected employees with "an external redeployment plan" developed by entities authorized to provide redeployment services. This plan "must include measures for professional training and guidance, personalized attention for the affected workers, and active job searching support." Thus, in addition to its brevity, it is important to highlight, for the purposes of this study, the omission of any reference or specification in terms of gender in the wording of the statutory rule, which is also a common feature in the regulatory framework as a whole. Indeed, while Royal Decree 1483/2012 provides a more precise definition of accompanying social measures and redeployment plans in Articles 8 and 9, the language used is also neutral.[27]

The sex of workers affected by the dismissal, as well as that of women normally employed over the past year, is not considered, according to the statutory—and regulatory—wording, a relevant detail. It does not appear, in fact, among the items that must be communicated to the workers' representatives by employers under Article 51.2 of the Workers' Statute.[28] This occurs despite the fact that it is an essential detail in order to identify any potential perverse effects or indirect discrimination, particularly inherent in the selection criteria used in downsizing plans.

Likewise, there is no reference to gender regarding the identification of groups to be afforded priority for retention purposes. In fact, as provided for in Article 51.5 of the Workers' Statute, only ""the workers' legal representatives" are afforded this legal preference, which may, through collective agreements or agreements made during the consultation period, be further applied to "other groups, such as workers in charge of

[26] For emphasis on the European conception of collective dismissal as a "last resort," *see* Sáez Lara (2015), p. 27.

[27] For a detailed discussion on these devices, *see* Terradillos Ormaetxea (2013), p. 61 *et seq.*

[28] The requirement for including the following data in the written communication for the commencement of the consultation period (Article 51.2 of the Workers' Statute) is as follows: "(a) Specification of the reasons for the collective dismissal (...). (b) Number and professional classification of the workers affected by the dismissal. (c) Number and professional classification of the workers normally employed over the past year. (d) Estimated period of time for carrying out the dismissals. (e) Criteria considered for the designation of the workers affected by the dismissals. (f) A copy of the communication addressed to the workers or their representatives by the company management regarding its intention to commence the collective dismissal procedure. (g) Workers' representatives that will be part of the negotiating committee or, where applicable, a statement indicating that it was impossible to create this committee within the statutory time limits." With this documentation, the following must be attached: "a detailed report on the reasons for the collective dismissal and other aspects mentioned in the preceding paragraph, as well as accounting and tax documentation together with technical reports." Similarly, Royal Decree 1483/2012 (Article 3) also omits any reference to the gender mix of workforce and the workers affected by the dismissal.

dependents, those over a certain age, or individuals with disabilities."[29] This once again clashes with the gender implications in the rule. While such priority is fully justified—for the sake of safeguarding freedom of association—, there is no escaping the fact that legal and union representatives are likely to be predominantly male—given the current election and appointment systems, which, as will be discussed below, disregard the principles of parity democracy.[30] It is even likely, considering the delayed integration of women into the labor market, except for traditionally female-dominated sectors, that workers "over a certain age" will be predominantly men as well. Clearly, the preference given to "workers in charge of dependents" also calls for reflection from a gender-based perspective: the wording might need to be updated—removing any pejorative connotation that may stem from the statutory rule—and, above all, should be adjusted—by identifying the specific individuals whose care responsibilities will lead to their exclusion from restructuring measures (Fernández Prol, 2023, p. 93).

Therefore, the domestic lawmaker fails to explicitly establish any device when regulating collective dismissals aimed at ensuring that the terminations themselves, together with the accompanying social measures and, where applicable, redeployment, will affect and protect, women and men respectively, equally, or proportionally, or are oriented to objectively justify a special impact on either women or men. The gender mix of workforce and that of the workers included in the dismissal proposal is not a required item that must be included in the mandatory communication and, consequently, this aspect will unlikely receive proper attention during the consultation period.

Certainly, the rights to equal treatment and opportunities for men and women, as well as the right to non-discrimination based on gender, are recognized at the highest levels of law—Article 14 of the Spanish Constitution, Article 5 of the Organic Law for the Effective Equality of Women and Men (OLEEWM),[31] Article 9 of Law 15/2022,[32] and Articles 4 and 17 of the Workers' Statute (WS)—covering collective dismissals,[33] where dismissals in violation of the rights listed above receive appropriate protection. Nonetheless, it would

[29] Article 13 of the Royal Decree reaffirms these provisions, further specifying (paragraph 3) that "in the final resolution approving collective dismissals (...), the company must justify the impact on workers with priority for retention purposes in the company." This rule aims to reinforce the preference for this category of individuals, requiring the company to provide special justification upon breach of obligation.

[30] For a more detailed discussion on this topic, *see* Cabeza Pereiro and Fernández Prol (2023), p. 123 *et seq*.

[31] Article 5 of Organic Law 3/2007, dated March 22, for the Effective Equality of Women and Men [OLEEWM]—entitled "Equal treatment and opportunities as regards access to employment, professional training, and promotion, and working conditions"—provides as follows: "The principle of equal treatment and opportunities for women and men, applicable in both private and public employment spheres, shall be guaranteed, as provided in the applicable regulations, as regards access to employment, including self-employment, professional training, career advancement, and working conditions, including remuneration and termination."

[32] Law 15/2022, dated July 12, Comprehensive Law for Equal Treatment and Non-Discrimination. To learn more on this piece of legislation, *see* Sempere Navarro et al. (2023).

[33] In this way, "the company's decision-making freedom to select the workers affected by the collective dismissal is another example of its power of direction and organization but is subject to respect for fundamental rights" (Sáez Lara, 2015, p. 172).

be advisable to advance such protection to the very process of dismissals negotiations, providing the negotiating parties with tools for gender diagnosis—such as the data discussed above. Additionally, these negotiating parties, as well as the participating administrative authorities—the Labor Authority and the Labor and Social Security Inspectorate—should be explicitly entrusted with duties focused on eradication of gender discrimination in collective dismissals, i.e., during the process for the selection of the workers to be made redundant or not as per the downsizing plan, but also when designing the accompanying social measures and, where applicable, the relevant redeployment plan. Mitigating instruments must also provide workers, both men and women, with similar protection. This, of course, requires consideration not only of sex but also of other factors, such as age, professional training or profile of the individuals concerned, and the socio-economic context in which the collective dismissal takes place.

Today, despite the intense gender-based review process of the Spanish labor legal framework—initially driven by the Organic Law for the Effective Equality of Women and Men (OLEEWM) and more recently by Royal Decree-Law 6/2019 and Law 15/2022, to name but a few—, collective dismissal, though it has recently undergone a number of reforms,[34] appears to remain outside such review.[35]

3.2. The Negotiating Parties

The products of negotiation—terminations agreed upon by the parties, accompanying social measures, and, where applicable, redeployment—are not unrelated to the negotiating parties. Those outcomes are largely shaped by the negotiating parties, whether men or women, whose interests and sensitivities do not always match. Regardless of the outcome, restructuring processes must also constitute spaces for the participation of women workers, in this case, as representatives.

In Spain, the consultation with workers' representatives must be conducted within a single negotiating committee—in each case, limited to the work units affected by the

[34] Royal Decree 1483/2012, which approves the Regulations for the procedures for collective dismissal and for suspension of employment contracts and reduction in working hours, has been amended by Final Provision 3 of Royal Decree 608/2023, dated July 11, which implements the *Recovery, Stabilization, and Diversification (RSD)* Mechanism for Employment Flexibility and Stabilization. Among the most notable new features of this reform is the mandatory notification prior to the closure of one or more work units when this implies the permanent cessation of business activity and the dismissal of fifty or more workers, now outlined in the new Additional Provision 6 of Royal Decree 1483/2012.

[35] Similarly, the internal flexibility tools subject to a similar consultation process—temporary downsizing plans (Articles 47 and 47 bis of the Workers' Statute), substantial changes in collective working conditions (Article 41 of the Workers' Statute), and collective transfers (Article 40 of the Workers' Statute)—only include some references to work-life reconciliation issues (as established in Additional Provision 25 of the Workers' Statute, regarding "Training actions in temporary downsizing plans regulated in Articles 47 and 47 bis," and in Article 40.3 of the Workers' Statute).

procedure—composed of a maximum of thirteen members acting on behalf each work unit (Article 51.2 of the Workers' Statute). The social committee, as with other negotiation purposes of other internal flexibility measures,[36] will be composed, briefly speaking, as follows (Article 41.4 of the Workers' Statute, referenced by the aforementioned Article 51.2): preferably, labor union sections will take part—when so agreed upon, provided that they hold the majority representation in works councils or among the employee delegates of the work units concerned. Secondarily, participation will be allowed for the workers' legal representatives—members of the works council or employee delegates of the affected work units or, where applicable, of the cross-units committee. Finally, in the absence of such legal representation, workers may choose to assign their representation to a specially created committee for the purpose of negotiating the agreement—a committee of a maximum of three members, comprising either "democratically elected" workers of the company itself or workers appointed by labor union organizations.[37] Naturally the parties negotiating the dismissal are the usual representative persons—labor union and legal representatives—or, in the absence of the latter—which is a more contentious legislative option—ad hoc committees, whether union-based or not.

This means, first and foremost, extrapolating the peculiarities of the internal representation system to the collective dismissal negotiation process, together with its gender bias. As revealed by available data—albeit limited, which in itself is reproachable and indicative of the scant attention given to the topic—, there is still a remarkable degree of male predominance when it comes to legal and union representation. This can be attributed to multiple causes.[38] Firstly, the assumption by female workers, to a greater extent than male workers—sometimes even on their own—of childcare, care for dependents, or household chores. Such an imbalance in the distribution of family responsibilities obviously diminishes women's capacity—whether material or temporal—to perform other duties, in this case, representative roles in the workplace. The impact of cultural determinants should also be highlighted, which result from the traditional confinement of women to the private sphere, whose dedication to the public sphere has been exceptional until recently. Focusing on the labor framework, it is essential to consider the feminization phenomenon—significant, indeed—of specific contractual modalities—fixed-term contracts, part-time contracts, or intermittent contracts—or service provision—such as remote work—where the exercise

[36] Again, temporary downsizing plans, transfers, and substantial changes in collective working conditions.

[37] In particular, by the strongest unions in terms of membership rates and representation powers in the sector to which the company belongs and that are authorized to be part of the negotiating committee under the applicable collective agreement.

[38] A detailed analysis of these causes can be found in Cabeza Pereiro and Fernández Prol (2023), p. 125 *et seq*.

of collective labor rights becomes more complex: often beyond the legal configuration,[39] due to the separation of the worker from the company's operations and the applicable working conditions—given the short duration of the employment relationship or the hours worked, or due to the physical distance that separates the worker providing services from their home, or another freely chosen location, from their work unit. Finally, the unequal presence of men and women in legal and union representation bodies of workers can also be directly attributed to current regulations governing the election and appointment systems applicable to legal and union representatives, laid down in strictly neutral terms with no devices to promote women presence in these roles.

Account should be taken of the structure for election and appointment of legal and union representatives: for the election of legal representatives to be binding, the work unit, as previously noted, must have at least 11 workers[40]; the appointment of the union representative, in turn, is established for "companies or, where applicable, work units with more than 250 workers."[41] Thus, in both cases, the election or appointment of representatives is contingent upon meeting minimum workforce levels, which are often harder to meet in feminized sectors. The structure for electing legal representatives and, particularly, for appointing union representatives is indeed based on a male-oriented service model—a factory model—, which produces an adverse impact on women workers. The presence of women, instead, is greater in spheres where, due to their very nature, there are lots of micro-work units—such as retail or banking—or where these spheres are the result of the frequently-used outsourcing strategies—for example, cleaning services. In female-dominated fields, therefore, work units often do not even meet the requirement of six employees for the optional election of an employee delegate, or the necessary structure

[39] Obviously, according to the law, temporary, part-time, and remote workers hold the same collective labor rights, particularly equal rights to passive suffrage. Thus, Article 69 of the Workers' Statute establishes as follows: "1. Employee delegates and members of the works council shall be elected *by all workers* through personal, direct, free, and secret ballot (...). 2. All workers within the company or work unit who are over sixteen years old and have provided services for the company for at least one month shall be eligible to vote, while those eligible for election shall be workers who are at least eighteen years old and have provided services for the company for at least six months (...)." And Article 19 of Law 10/2021, dated July 9, governing remote work states: "Remote workers shall be entitled to exercise their collective labor rights with the same extent and scope as the other workers at the unit to which they belong."

[40] Indeed, Article 62.1 of the Workers' Statute (WS) sets forth as follows: "Representation of workers in companies or work units with fewer than fifty but more than ten workers shall be the responsibility of the employee delegates. There may also be an employee delegate in companies or work units having six to ten workers, if the employees so decide by majority of votes."

[41] Article 10 of Organic Law 11/1985, dated August 2, on Freedom of Association [OLFA], has been interpreted by the Supreme Court of Spain to favor the appointment of labor union delegates: indeed, following this interpretation, the specified workforce threshold can be demonstrated either at work unit level or at company level, depending on the framework in which the union organization deems it pertinent to develop its activity. Judgment rendered by the Supreme Court of Spain 3933/2014—this caused a jurisprudential twist on this matter. The adopted doctrine was reaffirmed in Judgments rendered by the Supreme Court of Spain 3619/2016 and 313/2016.

is not verified—a work unit—, but rather the service provision in a mere place of work.[42] In the case of collective dismissal, this leads, in the absence of representatives, to the aid of the aforementioned ad hoc committees, whose actual negotiating capacity, when composed of workers, is highly dubitable.

However, not only is the structure for electing and appointing legal and union representatives outdated—the model of overcrowded work units is now an exception, in general and even in male-dominated sectors—[43], the election and appointment procedures also exhibit evident deficiencies, particularly from a gender-based perspective. In fact, no tools have been established to counteract the effects of gender-related determinants (sociological, cultural, or labor market) as noted above, or to ensure a minimum or balanced presence of men and women in legal and union representation positions. This contrasts with the provisions established for other electoral processes: for these, Organic Law 3/2007 already stated that "a balanced participation of women and men in electoral candidate lists and in decision-making is a general action criterion for public authorities (...)," adding Article 44 bis into the Organic Law on the General Electoral System (LO 5/1985) [OLGES], which states as follows: "Candidate lists (...) must have a balanced representation of women and men, so that in the overall list, candidates of each sex account for at least forty percent."[44] Recently, a Draft Bill has aimed to strengthen the aforementioned principle of gender quota of electoral lists,[45] considering an amendment to the abovementioned Article 44 bis of the Organic Law on the General Electoral System (OLGES), so that candidates are listed alternately, thereby forming "zipper lists."

It proves imperative to extend the principles of parity democracy to the sphere of workers' participation. It is necessary to amend the rules governing the creation of candidate lists for the election of single representatives, as well as the subsequent procedure for the allocation of positions—Articles 70 and 71 of the Workers' Statute (WS)—, ensuring a minimum presence of workers of both sexes among the candidates, as well as among employee delegates and members of the works council. In addition, the procedure for the designation of union representatives must also be changed for the same purpose—Article

[42] Legal scholars suggest the need to reconfigure the electoral structure (Fernández Docampo, 2017, p. 195; Romero Ródenas, 2006, p. 87 *et seq.)*.

[43] Legal scholars have reported the underrepresentation of workers—and, in our opinion, especially of women—as a result of the aforementioned obsolescence (Baylos Grau, 2015, p. 26; Rojo, 2016, p. 1069).

[44] The requirement specifically refers to the following candidate list systems: "that are presented for the elections of deputies to the Congress, municipal officers, and members of the island councils and the councils of the Canary Islands in the terms provided for in this Law, deputies to the European Parliament, and members of the Legislative Assemblies in the Autonomous Communities.

[45] Draft Organic Law on parity representation and gender balance, which gives rise to Directive (EU) 2022/2381 of the European Parliament and of the Council, dated November 23, 2022, regarding a better gender balance among the directors of listed companies and related measures.

10.2 Organic Law of Freedom of Association (OLFA).[46] Both amendments are necessary prerequisites for a balanced mix or, at the very least, for a minimum presence of both men and women during consultations prior to collective dismissals and other internal flexibility measures. However, this is not enough, because, as noted above, representation in labor matters may be assigned to union sections—which is, in fact, the preferred option—or to a representative committee—if the measure affects multiple work units and in the absence of a cross-unit committee—or to an ad hoc committee. It is therefore necessary to evaluate the opportunity to establish, in the rule governing the identification of social partners—Article 41.4 of the Workers' Statute— gender-based provisions aimed at ensuring a parity composition within the labor processes or, at the very least, a minimal representation of both sexes, possibly taking into account the workforce mix being affected by the restructuring process (Fernández Prol, 2023, pp. 103-104).

3.3. External Control: The Role of the Labor Authority and the Labor and Social Security Inspectorate

After the 2012 labor reform, the duties assigned to the Labor Authority in the context of collective dismissals were significantly reduced.[47] More than a decade later, the model persists, despite some remarkable adjustments: thus, as established in Additional Provision 6 of Royal Decree 1483/2012—after the amendment introduced by Final Provision 3 of Royal Decree 608/2023, dated July 11, which establishes the Recovery, Stabilization, and Diversification (RSD) Mechanism for Employment Flexibility and Stabilization—there is an obligation to submit a notification prior to closure of one or more work units when this entails the permanent cessation of business activity and the dismissal of fifty or more workers.[48]

In any case, today, during the consultation period, the Labor Authority has the following basic duties: "to ensure the effectiveness [of the consultation period], being able to give, where necessary, warnings and recommendations to the parties that will not, in any case, halt or suspend the procedure"; "to conduct (...), at the joint request of the parties, the mediation proceedings deemed appropriate to seek solutions to the problems arising out of the collective dismissal"; "for the same purpose (...), to carry out aid functions at

[46] A specific proposal—for future legislation—regarding both procedures can be found in Cabeza Pereiro and Fernández Prol (2023, p. 137 *et seq.*).

[47] Under Law 3/2012, dated July 6, on urgent measures for labor market reform, the requirement for prior authorization was indeed eliminated. To learn more on the model resulting from such reform, *see* Goñi Sein (2012), p. 39.

[48] This notification must be submitted to the labor authority having proper jurisdiction over territory and to the Ministry of Labor and Social Economy, through the General Directorate of Labor, at least six months in advance or, when duly justified, as far in advance as is feasible. Additionally, companies must submit a copy of the notification to the strongest trade unions in terms of membership rates and representation powers in the sector to which the company belongs, both at state level and in the autonomous community where the work unit or units intended for closure are located.

the request of either party or on its own initiative."[49] To this end, the Labor Authority shall receive the following documentation: a copy of the written communication regarding the commencement of the consultation period sent to the workers' representatives—containing, among other details, the "number and professional classification of the workers affected by the dismissal," and the "criteria taken into account for their designation"—as well as the "memorandum containing the reasons for the projected dismissal," "accounting and tax documentation," and relevant "technical reports." Once the consultation period has ended, the employer must notify the labor authority of the outcome, submitting an entire copy of the agreement reached or, failing this, the final decision favoring the collective dismissal. Apart from this, the Labor Authority assumes liaison tasks with other supervision bodies—specifically, the Labor and Social Security Inspectorate, whose mandatory report must be obtained, and the entity responsible for managing unemployment benefits, whose oversight is also required[50]—as well as with the interested parties—to whom access to the administrative file must be guaranteed, particularly by sending them the aforementioned report issued by the Inspectorate. After reviewing all the foregoing documentation, "the agreements adopted during the consultation period may be impugned by the labor authority when it is satisfied that they were made through fraud, deceit, coercion, or abuse of rights as a basis for a potential nullity decree, or when the entity responsible for managing unemployment benefits has informed that the employer's termination decision may be aimed at granting undue benefits to the affected workers as the actual cause for the legal unemployment status is not verified."

From a gender perspective, then, the Labor Authority does not have any specific assigned function, which is in fact obstructed—if not hindered—by the information submitted to it, which lacks a transversal perspective. For the purposes of analyzing the selection criteria, it should be emphasized that a breakdown by sex of the workers affected by the dismissal proves appropriate, as well as for the purposes of assessing the impact on workers normally employed.

Similarly, in shaping the "accompanying social measures, such as redeployment or professional training or retraining actions to improve employability," which amount to the minimum content of the consultation period and a determinant of the final impact of collective dismissals, these measures should also be assessed by the Labor Authority in a gender-based impact report. When deemed appropriate, this should include, as set

[49] Regarding this issue, *see* Mercader Uguina (2016), p. 376 *et seq.*

[50] Proceeding added, under Article 10.4 of Royal Decree 1483/2012, through Final Provision 3 of Royal Decree 608/2023, dated July 11, which implements the *Recovery, Stabilization, and Diversification (RSD)* Mechanism for Flexibility and Employment Stabilization.

forth in the Article 10.2 of Royal Decree 1483/2012,[51] warnings and recommendations, specifically aimed in this case at avoiding indirect discrimination based on sex. To this end, the proposals, as noted above, should be presented with information broken down by sex, and it would also be advisable, from a procedural perspective, that they include, by law, the content of the initial communication[52]—as well as the external redeployment plan under Article 3.2 RD 1483/2012.

It would even be advisable to reflect on the relevance of including in the list of causes for the impugnation by the Labor Authority—fraud, deceit, coercion, or abuse of rights, as well as the unlawful granting of benefits[53]—the verification of discriminatory treatment based on sex and other prohibited grounds.

Certainly, the proposals made are of a substantial nature. Thus, even when they come down to the issue of gender, they imply a model transformation, a reformulation of the duties assigned to the Labor Authority in the context of collective dismissals, which, in addition to guiding the process,[54] should also oversee it.

Regarding the control provided by the Labor and Social Security Inspectorate, it is important to highlight an implementing rule that does place the focus on gender. As stated in Article 11.5 of RD 1483/2012, the report from the Labor and Social Security Inspectorate "will specifically verify that the criteria used for the designation of workers to be made redundant are not discriminatory as regards the reasons outlined in Article 17.1 of the Workers' Statute, without prejudice to the obligation to comply with the priority rules for retention purposes in the company." Given its significance, the mandate—essentially aimed at verifying non-discrimination—should, in our opinion, be added to the legal rule and applied to other aspects of collective dismissals. From the applicable regulations governing the matter—Article 51.2 of the Workers' Statute and Article 11 of RD 1483/2012—, it follows

[51] In fact, the verbatim wording of the provision should be recalled: "The labor authority may carry out aid actions during the consultation period, at the request of either party or on its own initiative. In particular, it may provide the parties with proposals and recommendations regarding the accompanying social measures and, where applicable, regarding the content and implementation of the external redeployment plan, taking into account the financial situation of the company."

[52] It should be noted that, although such measures are not included among the aspects required for the mandatory communication under Article 51.2 of the Workers' Statute, some authors do believe that they should also be included in this communication (Navarro Nieto, 2021, p. 272).

[53] Article 51.6 of the Workers' Statute and Article 148(b) of Law 36/2011, dated October 10, which governs labor jurisdiction, state as follows: "The process may be initiated *sua sponte* as a result of: (b) Decisions of the competent labor authority, when it identifies fraud, deceit, coercion, or abuse of rights when making agreements regarding employment suspension, reduction in working hours, or terminations as referred to in Article 47 and paragraph 6 of Article 51 of the Revised Workers' Statute. In such cases, the file will be forwarded to the judicial authority for a potential declaration of nullity. The labor authority will act in a similar manner if the entity managing unemployment benefits reports that the company's decision to terminate employment may be intended to fraudulently grant benefits to the affected workers as no actual cause for the legal unemployment status is verified." This is without prejudice to the provisions of Article 148(c) of the Implementing Law governing Labor Jurisdiction (ILLJ).

[54] The involvement of the Labor Authority was deemed to constitute a "soft law" technique (De la Puebla Pinilla, 2021, p. 212).

that the scope of the report is often limited to formal or procedural matters: thus, in addition to the verification of the causes listed by the company in the initial communication, the report must "check the details of the communication and the course of the consultation period" and "certify that the documentation submitted [by the company] complies with the requirements on the basis of the specific cause alleged for dismissal"—Article 51.2 of the Workers' Statute. Moreover, under Article 11.7 of RD 1483/2012, the Labor and Social Security Inspectorate is compelled to issue a report, in general terms, "on the content of the accompanying social measures that may have been adopted" and to "verify that the companies obliged to do so have submitted the external redeployment plan." And it should be emphasized, finally, that such a report must be submitted at the end of the consultation period—"within the non-extendable period of fifteen days upon receipt of the notification to the Labor Authority informing the end of the consultation period" (Article 51.2 of the Workers' Statute). So during the course of consultations and thus the negotiation of the agreements, the role of the Labor and Social Security Inspectorate is very limited, just focused on optional "assistance and support" that it may provide in mediation and assistance actions carried out by the Labor Authority—Article 10.3 RD 1483/2012. Therefore, as far as collective dismissal agreements are concerned, the influential capacity of the Labor and Social Security Inspectorate is undoubtedly limited, just making sure that it applies a substantively neutral approach in terms of gender.

4. Some Conclusions

The Spanish rules governing collective dismissals lack a transversal perspective. Therefore, while the principles of equality between women and men and non-discrimination based on gender are taken into account, in practice adverse impacts on women workers are revealed. The criteria used for selecting workers to be made redundant—often based on the least length of continuous service—as well as mitigation tools models—particularly providing special protection to older individuals when being transferred to another job or upon retirement—sometimes produce unequal effects on men and women. These sex groups have not entered the labor market at the same time, with women's access being more recent, particularly in some sectors that are still heavily male-dominated. Moreover, there is an imbalance in the assumption of family and caregiving responsibilities: since women bear these responsibilities to a greater extent than men, they have less capacity for adaptation, often rejecting alternative options to termination—such as changes in their working conditions, particularly regarding hours and location. It should also be noted that women still play a minimal role in negotiating their collective dismissals. With legal and union representatives still being predominantly male, women participate to a lesser extent in the consultation stages prior to termination.

Social and cultural determinants—factors unrelated to regulations—undoubtedly produce the adverse effects discussed above. Nonetheless, the silence and neutrality of the law also contribute to the generation and perpetuation of those effects. It then proves urgent to embark on a gender-based review of all laws governing collective dismissals, providing, first and foremost, its actors with the necessary tools to be able to detect potential discrimination based on sex. This includes the breakdown by sex of the workers affected by the dismissal as well as those covered by protective actions such as accompanying social measures or, when appropriate, redeployment. Secondly, participation of women workers must be promoted—representatives in the negotiation of dismissals—by applying the principle of parity democracy in the processes for electing and appointing legal and union representatives, as well as in the rules for appointing the social partners involved in the consultation stages prior to business restructuring. Finally, the Labor Authority and the Labor and Social Security Inspectorate should assume a more proactive role when managing collective dismissals in general and, specifically, in preventing adverse impacts based on sex. The Law must expressly entrust them with the responsibility of verifying that the projected collective dismissal is not discriminatory based on sex—focusing on the selection criteria applied as well as the designed accompanying social measures and redeployment plan—while putting forward the relevant recommendations for corrective action.

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