4th STUDY COMMISSION – PUBLIC LAW AND CIVIL LAW

Barcelona, October 4-8 2015

Topic: «The motivation of an employee’s dismissal»

[1] Laws and Regulations.

**FBiH Labor Law, General Collective Agreement for the FBiH territory**

[2] Is there an obligation for the employer to give reasons for the dismissal? Yes, the employer must specify the reasons for the dismissal.

[3] If so, is there an obligation on the employer to specify the reasons for dismissal, so that the employee knows exactly why he lost his employment, or is it sufficient, for the employer, to give a general motive pattern like «incompetence»?

*Yes, the employer’s obligation is to specify reasons individually and in details for the dismissal.*

[4] If the employer doesn’t give the real reasons for the dismissal to the employee, can he still invoke them in court?

*Yes, he can.*

[5] What is the nature of judicial review on the ground of a dismissal:

Is it a marginal control, ie that the court can not substitute its opinion for that of the employer regarding the advisability of dismissal or is it an unlimited jurisdiction, which means that the judge may substitute its assessment for that of the employer and give the decision that should have been made?

*The judge may, by his assessment that is based on the proof which is presented during the proceedings, to take a different decision.*

[6] What are the consequences on the employer for not giving reasons or for giving inadequate reasons?

*If employer didn’t give reason or he gave inadequate reason, the consequence can be: The court can set aside the decision on dismissal to the employee if the party during the proceedings proves that dismissal was illegal.*
The nullity of the dismissal? poništenje otkaza

- An obligation to continue the contractual relationship (reinstatement)? Obaveza da nastavi ugovorni odnos
- Sanctions?
- Civil sanctions provided by the law?
- Financial sanctions (damages) for a wrongful dismissal?

If the decision on dismissal of the employment contract is canceled, the situation will be set up the in way how this was before dismissal. The employee returns to work on appropriate workplace or workplace where he worked until his dismissal.

- Financial sanction that the employee has got a right to ask for payment and other benefits simultaneously which he would get if he has worked, that are assigned by the law.