



SUPPORTING BUSINESS

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INFO-LETAK br. 01/2017

Odluka Ustavnog suda o neustavnosti člana 179. stav 3. tačka 5) Zakona o radu

Ustavni sud Republike Srbije je doneo odluku da je odredba Zakona o radu (član 179. stav 3. tačka 5 – jedan od razloga za otkaz ugovora o radu) neustavna.

Ustavni sud Republike Srbije je dana 17. novembra 2016. godine doneo odluku („Odluka“) da je odredba člana 179. stav 3. tačka 5) Zakona o radu („Zakon“) neustavna. Ova odredba propisuje da poslodavac može otkazati ugovor o radu zaposlenom ukoliko njegovo ponašanje predstavlja radnju izvršenja krivičnog dela učinjenog na radu i u vezi sa radom, nezavisno od toga da li je protiv zaposlenog pokrenut krivični postupak za krivično delo.

Ustavni sud Republike Srbije je zasnovao svoju Odluku na okolnosti da ova odredba Zakona nije u skladu sa članom 34. Ustava Republike Srbije, a iz osnovnog razloga što, prilikom primene ove odredbe u postupku utvrđivanja postojanja odgovornosti zaposlenog za povredu radne discipline, poslodavac neminovno preuzima nadležnost suda utvrđujući da li je ili ne zaposleni učinio krivično delo na radu ili u vezi sa radom.

Ova Odluka će se primenjivati od dana njene objave u Službenom glasniku Republike Srbije, te u skladu sa Zakonom o Ustavnom sudu član 179. stav 3. tačka 5) Zakona će prestati da proizvodi pravno dejstvo po objavljivanju Odluke u Službenom glasniku Republike Srbije.

Kako Odluka utiče na poslodavce:

- Član 179. stav 3. tačka 5) Zakona se ne može više primenjivati, uključujući i na odnose koji su nastali pre dana objavljivanja Odluke, osim ako do tog dana nisu pravnosnažno rešeni;

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The Decision of Serbian Constitutional Court on unconstitutionality of the Article 179, paragraph 3, item 5 of the Labour Law

Serbian Constitutional Court ruled that provision of the Labour Law (the Article 179, paragraph 3, item 5 - one of the reasons for termination of employment) is unconstitutional.

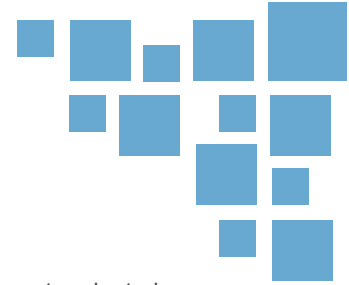
Serbian Constitutional Court on 17 November 2016 issued a decision (the “Decision“) that the provision of the Article 179, paragraph 3, item 5 of the Labour Law (the “Law“) is unconstitutional. This provision prescribes that the employer may terminate the employment contract if employee’s behaviour represents an act of committing of criminal offense executed at work or related to work, regardless of whether criminal prosecution for a criminal offense was instigated against the employee.

Serbian Constitutional Court based this ruling on the non-compliance of this provision of the Law with the Article 34 of the Serbian Constitution - for the main reason that in application of this provision, during the procedure for determining of employee’s responsibility for breach of work discipline, the employer inevitably takes competencies of the court by determining whether or not the employee has committed a criminal offence on work or related to work.

The Decision will become applicable from the day of its publishing in the Official Gazette of the Republic of Serbia, and in accordance with the Law on Constitutional Court the Article 179, paragraph 3, item 5 of the Law shall cease to be in force on the day when the Decision is published in the Official Gazette of the Republic of Serbia.

How the Decision affects employers:

- The Article 179, paragraph 3, item 5 of the Law cannot be any longer applied, including to relations that arose before the day of publication of the Decision, except if they were finally resolved by that date;



-- Ukoliko je zaposlenom otkazan ugovor o radu po više osnova, uključujući i po osnovu neustavnog člana 179. stav 3. tačka 5) Zakona, opravdanost i zakonitost otkaza ugovora o radu ceniće se samo u odnosu na ostale osnove za otkaz ugovora o radu;

- Svako kome je povređeno pravo rešenjem o prestanku radnog odnosa donetim na osnovu člana 179. stav 3. tačka 5) Zakona ima pravo da traži od poslodavca izmenu tog pojedinačnog akta, u skladu sa pravilima postupka u kome je pojedinačni akt donet. Ovaj predlog se može podneti u roku od šest meseci od dana objavljivanja Odluke u „Službenom glasniku RS“, pod uslovom da od dostavljanja pojedinačnog akta do podnošenja predloga ili inicijative za pokretanje postupka nije proteklo više od dve godine;

- Ako se utvrdi da se izmenom pojedinačnog akta ne mogu otkloniti posledice nastale usled primene odredbe Zakona za koju je odlukom Ustavnog suda utvrđeno da nije u saglasnosti sa Ustavom, Ustavni sud može odrediti da se ove posledice otklone povraćajem u pređašnje stanje, naknadom štete ili na drugi način;

- Poslodavac bi trebalo da izmeni pravilnik o radu / kolektivni ugovor kod poslodavca ukoliko ovi dokumenti sadrže odredbe suštinski identične odredbi Zakona koju je Ustavni sud proglasio neustavnom.

- If the employment contract was terminated on several grounds, including on the basis of unconstitutional Article 179, paragraph 3, item 5 of the Law, the justification and legality of termination of the employment contract shall be evaluated based on other grounds for termination of employment;

- Any person whose rights were breached by resolution on the termination of employment issued on the basis of the Article 179, paragraph 3, item 5 of the Law, has the right to request from the employer to amend that individual act in accordance with the rules of procedure in which the individual act was brought. This proposal may be submitted within six months from the date of publication of the Decision in the Official Gazette of the Republic of Serbia, provided that not more than two years have passed between the delivery of the individual act and the submission of the proposal or initiative for initiating a procedure;

- If it is determined that change of an individual act cannot rectify the consequences which arose from the implementation of the provision of the Law ruled by the Constitutional Court not to be in compliance with the Serbian Constitution, the Constitutional Court may order for the consequences to be rectified by restitution, indemnification or otherwise.

- The employer should amend the employment rulebook / collective labour agreement at the employer if these documents contain provisions substantially identical to the provision of the Law that the Constitutional Court announced as unconstitutional.

Za više informacija o ovome kontaktirati

For more information about this please contact:



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