

USTAVNI SUD SRBIJE: Poslodavac je ovlašćen da kao otkazni razlog predvidi prisustvo alkohola u krvi zaposlenih u bilo kom promilu iznad 0.00

Dana 25. juna 2019. godine, Ustavni sud doneo je zaključak kojim je odbacio inicijativu za ocenu ustavnosti i zakonitosti odredbi pravilnika o radu poslodavca („Pravilnik“) kojima je predviđeno da poslodavac ne toleriše prisustvo alkohola u organizmu zaposlenih tokom rada.

Posebno, podnosilac inicijative smatrao je da su odredbe Pravilnika u suprotnosti sa odredbom člana 179. stav 3. tačka 4) Zakona o radu (u daljem tekstu: „Zakon“), navodeći da je poslodavac dužan da u svakom konkretnom slučaju utvrdi da li prisustvo alkohola utiče na obavljanje radnih dužnosti zaposlenog.

Navedenim članom Zakona propisano je da poslodavac može da otkaze ugovor o radu ukoliko zaposleni učini povredu radne obaveze dolaskom na rad pod dejstvom alkohola ili drugih opojnih sredstava, odnosno upotrebom alkohola ili drugih opojnih sredstava u toku radnog vremena, koje ima ili može da ima uticaj na obavljanje posla. Osnovna argumentacija predlagača je bila ta da Pravilnik poslodavca propisuje strože uslove u pogledu otkaza ugovora o radu od Zakona.

Međutim, Ustavni sud je utvrdio da iz ove odredbe Zakona proizlazi da zakonodavac nije propisao koja je to količina alkohola koja ima ili može da ima uticaj na obavljanje poslova od strane zaposlenog, odnosno koji nivo alkohola bi predstavljao nepoštovanje radne discipline. Kao rezultat toga, Ustavni sud je utvrdio da poslodavac ima pravo da reguliše takva pitanja svojim internim aktima.

Shodno navedenom, Ustavni sud je zaključio da poslodavac može svojim internim aktima predvideti da svako prisustvo alkohola u krvi iznad 0.00 promila može imati uticaj na obavljanje poslova. Takođe, poslodavac može propisati takve slučajeve kao povredu radne discipline zaposlenog, a shodno tome i kao razlog za otkaz ugovora o radu.

U pogledu ovog pitanja postoji neujednačena sudska praksa osnovnih sudova. Samim tim, u pojedinim sudskim odlukama se mogu naći stavovi

SERBIAN CONSTITUTIONAL COURT: Employer can prescribe any presence of alcohol in employee's blood above 0.00‰ as reason for termination of employment

On 25 June 2019, the Serbian Constitutional Court rendered a decision rejecting a complaint challenging the constitutionality and legality of the provisions of an employer's rulebook (the „Rulebook“), which stipulates that the employer does not tolerate any presence of alcohol in the employees' organism during work.

Specifically, the complainant argued that the provisions of the Rulebook are contrary to Article 179, Paragraph 3. Item 4) of the Labour Law (the „Law“), stating that an employer must, in every concrete case, establish whether the presence of alcohol affects the employee's work performance.

The cited provision of the Law prescribes that an employer can terminate the employment if the employee violates work duties by coming to work under the influence of alcohol or other illicit substance, as well as for use of alcohol or other illicit substances during work, which affects or may affect the employee's work performance. The complainant's main argument was that the Rulebook prescribes stricter conditions for termination of the employment than the Law.

However, the Constitutional Court found that this provision of the Law did not prescribe how much alcohol affects or may affect the employee's work performance, i.e. which level would represent a breach of the employee's work discipline. As a result, the Constitutional Court established that the employer is entitled to regulate such issues with its internal regulations.

Accordingly, the Constitutional Court concluded that an employer can regulate by its internal act that any presence of alcohol above 0.00‰ may have an impact on the employee's performance of work. The employer can also prescribe such cases as a violation of the employee's work discipline and, consequently, as a reason employment termination.

The practice of the basic courts' case-law regarding this issue is not uniform. Thus, in some decisions the court found that, before terminating an

da poslodavac mora u svakom slučaju da, pre otkaza ugovora o radu zaposlenom, utvrdi da li prisustvo alkohola u organizmu zaposlenog ima uticaja na obavljanje njegovog/njenog posla. U tom smislu bi ova odluka Ustavnog suda svakako trebalo da utiče na ujednačavanje sudske prakse.

employment, the employer must in every single case determine whether the presence of alcohol in organism of the employee has an impact of his/her performance of work duties. This decision of the Constitutional Court may lead to a less diverse court practice on this issue.

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