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IS THERE ROOM FOR REINSTATEMENT IN CASES OF DISMISSAL FOR FAILURE TO ACHIEVE WORK RESULTS OR FOR THE LACK OF KNOWLEDGE AND SKILLS REQUIRED TO PERFORM THE JOB?[**]

ABSTRACT: In practice, it is necessary to distinguish between dismissal for failure to achieve work results and dismissal for the lack of knowledge and skills required to perform a particular job, since these are two separate grounds for dismissal, while legal gaps and the lack of case law make it more difficult to effectively exercise the right to protection against unjustified dismissal. In that regard, the author begins with the premise that legal certainty and the objective determination of work norms contribute to preventing abuse of the right to dismiss; that introducing a statutory obligation to establish criteria and authority for assessing employees' knowledge and skills contributes to greater legal certainty in the field of protection against unjustified dismissal; and that a more complex dismissal procedure may play a significant role in preventing labor disputes. The article also concludes that the current statutory solutions are rightly subject to significant criticism, because they cannot be identical for all grounds for dismissal, and that reinstatement, as

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a legal consequence of unlawful dismissal, has no practical significance in the case of this ground for dismissal.

Keywords: dismissal, failure to achieve work results, lack of knowledge and skills, reinstatement

INTRODUCTORY CONSIDERATIONS

In order for an employer to dismiss an employee, there must be a justified ground, which must be stated in the dismissal decision. In foreign legal systems, justified grounds for dismissal are most often exhaustively listed in the applicable legislation and concern the employee's conduct and skills, or the employer's operational needs.[1] Under our positive law, justified grounds for dismissal may be personal or professionally conditioned. Personal grounds for dismissal relate to the employee's conduct, while professionally conditioned grounds relate to the employee's skills and the employer's needs.

The legislature provides that an employee may be dismissed if there is a justified ground relating to their capacity for work, namely, if they fail to achieve work results or lack the necessary knowledge and skills to perform the tasks assigned to them.[2] The first question that arises is whether this constitutes one ground for dismissal or two.

In the theory of labor law, there are conflicting views. According to one view, failure to achieve work results is the consequence of insufficient work, which is caused by a lack of effort. This refers to an employee who has the necessary knowledge and skills, and thus knows how to perform work tasks, but the expected results are absent because of negligence, because they do not make an effort, that is, they do not apply themselves. Put simply, the absence of results is caused by laziness.[3] Šunderić and Kovačević take the same position, stating that lack of knowledge and skills should not be confused with

[1] *International Labor Association (1995). Protection against unjustified dismissal. International labour conference, Report III 82nd session, Geneva: International Labour Office, 33–34*. In some countries, a justified ground is required only for dismissal without notice, as, for example, in Qatar, Turkey, and Thailand. Less specific grounds for dismissal are most often defined as "justified" or "real and serious" reasons for dismissal and are provided for, for example, under Tunisian legislation (which is not the best solution, since in the event of a dispute it must be determined in each individual case what constitutes a justified, or real and serious, ground for dismissal).

[2] Labor Law, *Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018, Art. 179, para. 1, point 1.

[3] Ivošević, Z. (2012). Otkaz ugovora o radu od strane poslodavca. *Zaštita prava u oblasti rada.* Belgrade, 179.

failure to achieve work results, although it is precisely the lack of knowledge and skills that may lead to, or cause, the absence of results. Failure to achieve work results is linked to failure to accomplish a goal, and it is necessary to reliably and objectively determine that the employee is not performing their tasks in the required volume and to the required standard due to insufficient effort and lack of commitment,[4] and not due to lack of knowledge or skills.

Another view holds that failure to achieve work results should be the consequence of the employee's lack of the necessary knowledge and skills to perform the tasks assigned to them. In that sense, failure to achieve work results and the lack of necessary knowledge and skills would constitute one and the same ground for dismissal; according to Lubarda, failure to achieve work results is a ground for dismissal caused by the lack of necessary knowledge and skills.[5]

The legislative solution leads to the conclusion that this is nevertheless not a single ground for dismissal. It is true that both grounds for dismissal are grouped under the same point of Article 179 of the Labor Law, but the Law provides

> "...that an employee may be dismissed if there is a justified ground for doing so [...] namely, if the employee fails to achieve work results or lacks the necessary knowledge and skills to perform the tasks assigned to them."

Therefore, for the dismissal to be justified, either one ground or the other is required, because the statutory provision itself separates them. In accordance with positive law, it is neither necessary for both grounds to be cumulatively satisfied, nor is the absence of results a consequence of the lack of knowledge and skills; rather, these are two independent and mutually autonomous grounds for dismissal, which may produce the same consequence – poor business performance on the part of the employer. It is important to emphasize that these are two distinct grounds for dismissal because the author is of the opinion that they should also produce different consequences. In the case of failure to achieve work results, the employee is capable but unwilling, whereas in the other case, the employee is willing but incapable. It therefore appears justified to treat these two cases differently. Accordingly, the following section addresses the (un)suitability of reinstatement in cases of dismissal on this ground.

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[4] Šunderić, B., Kovačević, LJ. (2017). *Radno pravo.* Belgrade: Official Gazette, 371.

[5] Lubarda, B. A. (2012). *Radno pravo: Rasprava o dostojanstvu na radu i socijalnom dijalogu.* Belgrade: Faculty of Law, Center for Publishing and Information, 734–736. If, however, the absence of results were the consequence of negligent and untimely work, then, according to this author, this would be a breach of a work duty (the duty of conscientious and timely performance of work), and it would be necessary to conduct disciplinary proceedings (dismissal would then be a disciplinary sanction), which would not be necessary in the first case (when results are absent because of lack of knowledge and skills).

FAILURE TO ACHIEVE WORK RESULTS

An employment contract may be defined as a contract for the personal performance of work, as it is concluded with regard to the employee's personal characteristics, especially their qualifications.[6] As a rule, if the employee has the required knowledge, that is, has the appropriate skills, then they will achieve the required work results. However, the question arises as to what happens if the employee nevertheless fails to achieve them. In that case, it is first necessary to identify the reason for the absence of work results. The absence of work results (as a ground for dismissal) in the case of an employee who has the appropriate knowledge and skills cannot be the consequence of objective circumstances beyond the employee's control.[7]

A work result is the product of invested knowledge, skills, and effort. Our legislature does not contain provisions on work results as such, but the part of the Labor Law on salaries refers to work performance.[8] Work results are assessed primarily through direct review of the work and its product, as well as through control of the quality and quantity of the work performed. Since achieved work results depend on the employee's professional and work-related skills, once objective circumstances are excluded, an appropriate assessment of the results and a decision on their absence can be made.[9]

The absence of results is the failure to achieve work results that are ordinarily achieved, within realistically expected projections corresponding to the working conditions in a particular work environment.[10] Here, too, there is an immediate problem, namely the legislature's lack of precision. What, in each specific case, does the statutory phrase "failure to achieve work results" mean?

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[6] Wedderburn, L. (1986). *The worker and the law.* London, 148. It is nevertheless important to note that, in the case of the employment contract, this is an obligation of means (the employee undertakes to place their working capacities at the employer's disposal), as opposed to a contract for services, which entails an obligation of result. This fact must also be taken into account in the context of dismissal. In a contract for services, what matters is the final work product, that is, the contractor's end result; by contrast, the employment contract includes an obligation of means, which is why dismissal cannot be an automatic consequence of the failure to achieve work results.

[7] Živković, B. (2013). Rešenje o prestanku radnog odnosa i otkaz ugovora o radu. *Bulletin of the Supreme Court of Cassation,* 3, 341. Thus, for example, a sales representative cannot be expected to achieve the planned sales of a certain product if, during the relevant period, that product does not correspond to market supply and demand.

[8] Labor Law, *Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018, Art. 106.

[9] Crnić, Z., Momčilović, Z. (1983). *Prestanak radnog odnosa – zaštita prava radnika.* Zagreb, 57. Not only can the employee not be held liable for certain objective reasons, but the legislature expressly prohibits the employee from being held liable on that basis.

[10] Živković, B. (2013). *Op. cit.*, 340.

It is important to note here that the legislature does not define which work results, or what kind of work results, are relevant so that failing to achieve them would constitute a justified ground for dismissal.

It may therefore be concluded that there is no defined standard of work results, such as expected, average, or similar, as the legislature does in the provisions concerning minimum wage,[11] where it refers to standard performance. It would even be possible to go a step further by requiring each employer to specify, by a general act, the applicable performance standard for each individual job.

In addition, the task assigned to the employee must be objectively feasible, capable of being completed within a certain period of time, with appropriate work equipment and under specific working conditions, all of which must be examined in each individual case. Work results must be objective; the required standard may not be set excessively high, nor can the employee be required to achieve the impossible.[12] It is therefore necessary that the employee failed to accomplish an objectively feasible task through inaction or insufficient action, which is also the position taken in our case law.[13]

The expected result may itself be based on the employer's subjective expectations. The complexity of the issue also entails the need to establish a comprehensive system for addressing the aforementioned gaps. The idea advanced by Judge Živković is particularly interesting, namely that norms and

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[11] Labor Law, *Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018, Art. 111.

[12] Živković, B. (2013). Rešenje o prestanku radnog odnosa i otkaz ugovora o radu. *Bulletin of the Supreme Court of Cassation,* 3, 340. This is illustrated, for example, by the case of the plaintiff, who worked in the Insurance Sales Department. The annual targets of each branch office were determined on the basis of the location of the branch and the purchasing power of the population; plans were then drafted and sent to branch managers for suggestions and corrections, after which the final plan was adopted at headquarters. In the case at hand, the plaintiff drew the director's attention to the fact that the plan's targets had been set too ambitiously. During the year, the plaintiff was subsequently given notice before dismissal because the plan had not been achieved in any month, that is, results were absent, and he was given a period within which he could make up the losses and avoid dismissal. However, even during that period the plaintiff was unable to achieve the plan, particularly because the prices were high in comparison with those of competitors. The court annulled the dismissal decision as unlawful, concluding that the task imposed on the employee must be objectively feasible, that is, capable of being performed within the specific period of time.

[13] Marković, V. (2015). Pravne posledice nezakonitog otkaza ugovora o radu. *Law and Economy*, 53(4–6), 61. The plaintiff was dismissed for breach of a work duty – failure to meet turnover plans and a 50% price discrepancy in relation to the adopted plan during three months in the course of the year. However, according to the findings of the expert witness, an excessively high sales plan had been set that could not be achieved. The lower courts upheld the claim and annulled the dismissal decision.

standards could be established both for a particular sector of activity and for the specific environment in which the employee works. The norms and standards prescribed for a particular sector of activity would serve as a corrective for the employer, that is, as supplementary criteria that would, in practice, control whether the norms and standards in the environment in which the employee works are appropriate.[14]

A single instance of inadequate work performance is not sufficient for dismissal, and, according to the prevailing view in legal theory, a more prolonged failure to achieve work results is required (naturally, for subjective reasons).[15] This proposition can also be supported by the general rules of contract law. Unilateral dismissal is not justified in the case of an insignificant failure to perform a contractual obligation (that is, an insignificant failure to achieve work results over a short period).[16] Moreover, the latter is also supported by the express statutory rule that, before dismissal on this ground, the employee must be warned in writing of all relevant circumstances; that prior to dismissal, the employee must be given instructions on how to improve their work; and that the employee must be given an appropriate period of time to improve performance.[17] Monitoring work results is likewise tied to a certain period of time. In light of our legislative framework, which refers to work performance in connection with wage calculation, it may be concluded that one realistic unit of time within which work results should be measured is one month.[18]

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[14] Brajić, O. (2003). Odredbe zakona o održivom zaposlenju i otkazu. *Radno pravo u uslovima tranzicije.* Kragujevac, 20–27. See the Judgment of the Appellate Court in Novi Sad, GŽ 1 2034/12, of September 10, 2012. In order for the employer to be allowed to dismiss the employee on this ground, case law has taken the position that the employer must first establish norms and standards regarding volume and quality, as well as other criteria laid down in a collective agreement or employee handbook, based on which work performance would be measured, and that the employee must also be given an additional period for improving work and work results in accordance with the employer's act. Under the former General Collective Agreement, employers, in determining the volume and quality of work, used not only work norms and standards, but also what had been laid down in the work program, whereby the work program represented a kind of planned result. General Collective Agreement, *Official Gazette of the RS*, No. 50/2008, Art. 23.

[15] Šunderić, B., Kovačević, LJ. (2017). *Radno pravo.* Belgrade: Official Gazette, 371.

[16] Lubarda, B. A. (2012). *Radno pravo: Rasprava o dostojanstvu na radu i socijalnom dijalogu.* Belgrade: Faculty of Law, Center for Publishing and Information, 734.

[17] Labor Law, *Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018, Art. 180.

[18] Judgment of the District Court in Valjevo, cited in: Marković, V. (2018). *Prestanak radnog odnosa u opštem režimu radnih odnosa sa obrascima i aktuelnom sudskom praksom.* Belgrade: Poslovni biro, 60. In this context, it should be noted that failure to achieve work results is not a justified ground for dismissal if the employee is reproached for not

LACK OF NECESSARY KNOWLEDGE AND SKILLS TO PERFORM THE JOB HELD BY THE EMPLOYEE

In practice, there are also situations in which an employee achieves the required, expected work results, yet does not demonstrate the skills (that is, does not possess the knowledge) to perform certain tasks within the range of work duties encompassed by the job they hold. For example, during the period under observation, the employee's work consisted of simple tasks that were constantly repeated. Since these were routine tasks, the employee, given the volume of performance, succeeded in achieving the expected norm. However, during the same period, the employee did not perform certain other tasks falling within the job description that were more complex and required the readiness to use particular knowledge and skills that the employee did not have. In such a situation, it could not be said that the employee lacked standard performance; however, during that same period, the employee did not have the necessary knowledge and/or skills to perform the job they held,[19] so this hypothetical example clearly shows why it is necessary to support the view that these are two independent grounds for dismissal.

At this point, the question may be raised how, despite such a high unemployment rate and the requirement of a vacancy announcement/public competition, a person who lacks the requisite knowledge and/or skills comes to establish an employment relationship. Are vacancy announcements/public competitions carried out merely formally, thereby defeating the purpose of this institution, or are recruitment procedures not conducted properly? In some professions, it is clear that a job candidate may "shine" on knowledge tests, yet later be unable to apply that knowledge in practice at the workplace.[20]

It is not uncommon for job seekers, whether accidentally or intentionally, to overestimate themselves or to provide inaccurate information about their capacities, abilities, and skills when they enter into an employment relationship. Case law raises the question of which inaccurate statements could be treated as "material" for the establishment of the employment relationship and, conversely, which of them could constitute the grounds for dismissal.[21]

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achieving the expected results in a relatively short period after starting a new job, while a certain amount of time was necessary for training to perform the relevant work tasks.

[19] Živković, B. (2008). Otkaz ugovora o radu zbog nezadovoljavajućeg vršenja posla. *Radno i socijalno pravo,* 12(1), 346.

[20] Jovanović, M. (2016). Ključni radnopravni aspekti javnog konkursa za zasnivanje radnog odnosa. *Law and Economy.* Belgrade, 54(10–12), 76–78.

[21] This falls within the category of grounds for dismissal based on breach of work discipline, rather than the dismissal ground of lack of knowledge and skills. The Supreme Court of Serbia took the position that dismissal on the ground of providing false

Therefore, by monitoring the work of the company, the employer also monitors the work of the employees. If the employer notices certain deviations in performance, they have the right to carry out an extraordinary review of the employee's skills or knowledge. In some professions, reviewing knowledge and skills is a regular procedure, most often on an annual basis.[22] However, it is evident that such reviews of knowledge and skills do in fact take place. Depending on the particular job, this review can be carried out directly by the employer, or they can establish a commission to review the employee's knowledge and skills.[23]

DETERMINING THE ABSENCE OF WORK RESULTS OR THE LACK OF THE NECESSARY KNOWLEDGE AND SKILLS TO PERFORM THE JOB HELD BY THE EMPLOYEE

If a commission is established to verify employees' knowledge and skills, it should be ensured that the members conducting the professional assessment have at least the same level and type of professional qualifications as the employee whose knowledge and skills are being verified. It would also be advisable for the commission to have an odd number of members, because of voting in the decision-making process.[24] The purpose of such a commission would be to establish the facts and decide whether they constitute grounds for dismissal. The commission could issue an opinion or conclusion, which the employer would use as the explanation for the ground for dismissal.

A possible solution, therefore, would be for the determination of a lack of knowledge and skills to fall within the jurisdiction of an *ad hoc* commission formed for each individual case, since in every specific case, the members of the commission would necessarily differ, primarily because of the required type and level of professional qualifications. Such a commission should carry

information at the time of entering into employment is not subject to limitation periods because it constitutes a "continuous and prolonged violation." Judgment of the Supreme Court of Serbia Rev2 16/07, dated 17. 1. 2007. Cited in: Marković, V. (2018). *Prestanak radnog odnosa u opštem režimu radnih odnosa sa obrascima i aktuelnom sudskom praksom.* Belgrade: Poslovni biro, 60.

[22] This is provided, for example, in the Rulebook on the Procedure and Criteria for Evaluating the Work of Judicial Police Officers of the Republika Srpska, who, as part of regular annual evaluation, undergo a written knowledge test, an assessment of physical fitness, and an assessment of firearms-handling skills. Art. 14, para. 1, points đ–ž.

[23] Jovanović, P. (2015). *Radno pravo.* Novi Sad: Faculty of Law, Publishing Center, 335–336.

[24] *Ibid.*

out the assessment in question on the basis of a clearly and unambiguously established factual situation.[25]

With regard to the ground for dismissal relating to failure to achieve work results, it would be desirable to specify by a collective agreement or by a unilateral general act of the employer the manner in which the commission assessing work results is selected, the professional qualifications or suitability of commission members to supervise and evaluate employees' work, certain operating parameters for the commission, employee participation in performance monitoring, and the measures, criteria, and grades according to which work results are monitored and employees are evaluated. Here, a distinction should be made depending on whether all of the latter is regulated by a collective agreement or by a unilateral general act of the employer. The legislature should specify that, where these matters are regulated by the employer's employee handbook (rather than by a collective agreement), such an act must be particularly detailed and precise. The problem of the objectivity of the assessment of work results stems primarily from the fact that domestic law does not impose an obligation of periodic evaluation of work results, nor of prescribed recording and archiving of evaluation documentation. The latter issue should be regulated by collective agreements. [26]

Regardless of whose authority it is to determine achieved results or to verify knowledge and skills, it is clear that this is done according to preestablished criteria. These established criteria are accompanied by precisely developed scoring scales. The final result is obtained by comparing the employee's achieved results with the established scales. In this sense, the outcome can be that the employee lacks the necessary knowledge and skills, or that work results are absent. Here, a distinction should be made in relation to the ground for dismissal consisting of failure to achieve work results, which is not caused by an objective circumstance, because such a circumstance must be excluded for this ground for dismissal to be applied.[27] However, when

[25] Crnić, Z., Momčilović, Z. (1983). *Prestanak radnog odnosa – zaštita prava radnika.* Zagreb, 57.

[26] The legislature's omission was partially mitigated by the conclusion of the General Collective Agreement of 2008, which provided that the immediate supervisor of an employee who, over a period of three months, failed to achieve work results or failed to demonstrate the necessary knowledge and skills, should initiate a procedure for determining work results or knowledge and skills. Upon receipt of the request, the director would appoint a three-member commission, whose members had to have at least the same level of professional qualifications in the relevant field as the employee. The employer could dismiss the employee only after a negative assessment by this commission. General Collective Agreement, *Official Gazette of the RS*, No. 50/2008, 104/2008, and 08/2009, Art. 48.

[27] Marković, V. (2018). *Prestanak radnog odnosa u opštem režimu radnih odnosa sa obrascima i aktuelnom sudskom praksom.* Belgrade: Poslovni biro, 61. When it comes to failure to achieve work results, account must be taken in particular of working conditions,

assessing knowledge, the author is of the opinion that there are no objective circumstances capable of influencing knowledge to such an extent, because an employee either does or does not have knowledge.

The situation is somewhat different with skills, which stand midway between knowledge, which is not drastically affected by objective circumstances, and work results, where objective factors must be excluded. Skill is the capacity to apply knowledge and abilities in the performance of work. In order to assess skill, the person must possess knowledge, but must also achieve results; work ability is therefore a symbiosis of two elements – knowledge and achieved results. For that reason, when assessing skills, it is possible for certain objective circumstances to affect the final outcome. Thus, for example, German law requires, when assessing work skills, that the employee lacks work skills (that is, at present) and that it is almost certain that they will not possess them in the future either.[28]

It is also important to point out that there are professions[29] in which the test or assessment of skill is linked to physical fitness, where significant deviations in test results may occur due to certain objective circumstances.[30] Unlike physical abilities, knowledge is not subject to external objective factors to the same extent. Depending on the objective circumstances, it may be subject to a greater or lesser extent, but not to such an extent that those circumstances could affect knowledge as a ground for dismissal; accordingly, there are no positions in the literature suggesting that, when assessing knowledge, any objective influence on it must be excluded.

In practice, the question may arise as to what criteria should be used to determine that an employee does not have the skills to perform the assigned

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difficulties in procuring raw materials, and similar factors, as well as circumstances on the employee's side, such as illness, disability, and the like.

[28] Eger, T. (2004). Opportunistic termination of employment contracts and legal protection against dismissal in Germany and the USA. *International Review of Law and Economics*, 23(4), 389. It should be noted here that this must not be equated with loss of work capacity. Loss of work capacity occurs when an employee, due to permanent changes in health caused by a workplace injury, occupational disease, injury outside work, or illness that cannot be remedied by treatment or medical rehabilitation, loses the capacity to perform the work performed before the onset of disability, as well as other work corresponding to the employee's qualifications or work capacity acquired through work. It should also be noted that this concerns general incapacity for work, that is, incapacity to perform any work whatsoever, and not incapacity to perform a job for which a particular person possesses qualifications, skills, abilities, and other capacities.

[29] For example, the police, military, divers, pilots – all professions in which physical fitness is taken into account in the course of assessment.

[30] Fatigue or any type of illness, or, for example, a person who undergoes assessment after completing a night shift on the day of testing, cannot, in the ordinary course of events, achieve the same result as a rested person, and the like.

job. Such criteria can be established in a variety of ways. As a *modus operandi,* the criteria used in cases of redundancy, which are generally provided for in special collective agreements, could be used.[31]

NOTICE AND INSTRUCTIONS FOR IMPROVING WORK PERFORMANCE WITHIN AN APPROPRIATE PERIOD

By requiring notice of failure to achieve work results, the legislator has afforded the employee a second chance and provided a form of both procedural and substantive protection. Accordingly, an employee cannot be dismissed before they have been informed of the shortcomings and before an additional period has been granted for those shortcomings to be remedied. However, the employer must also specify in this act what is expected of the employee and explain how these expectations can be met; that is, the employer must precisely identify the shortcomings in the employee's work and the manner in which they could be corrected. This supports the position that an employee cannot be dismissed upon the first failure to achieve the expected results, while at the same time compensating for the lack of precision in the statutory provisions on work results that can lead to dismissal.[32]

The question nevertheless arises whether it is purposeful to give a second chance to a person who lacks the required knowledge and skills, especially considering the institution of public advertising of vacant positions. However,

[31] For example, the criteria for identifying employees who have been become redundant, as provided in the Special Collective Agreement for Employees in Primary and Secondary Schools and Student Dormitories, *Official Gazette of the RS*, No. 21/15, 92/20. The scored criteria include work performed within the employment relationship, education, competitions, and pedagogical contribution to work as professional criteria, as well as certain social factors, such as property status, health status based on findings of the competent health institution or the competent pension and disability insurance fund, and the number of preschool children or children in regular education up to 26 years of age. Where several employees have the same number of points, preference is given to the employee who has achieved a higher number of points on the basis of work performed within the employment relationship, education, competitions, pedagogical contribution to work, property status, health status, and number of children, in that order.

[32] Betten, L. (1993) *Internal labour law*, Deventer – Boston, 225–227. And not only in the case of dismissal (since dismissal is a measure of last resort), but even before the imposition of any other measure, the employer must first give written notice regarding shortcomings in the employee's work, together with instructions and an appropriate period for improvement. Only if, after the expiry of that period and the application of the employer's instructions, the employee does not improve performance, may the employer proceed to impose measures.

if an analogous solution were to be accepted, and case law does accept it, that an employee who lacks the necessary knowledge and skills should likewise be given a second chance, then it would be logical for that second chance to be provided through written instructions as an integral part of the prior notice. Therefore, where the ground for dismissal is caused by lack of knowledge or skills, it could be expected that the employer would warn the employee in writing of the existence of grounds for dismissal, then issue instructions for remedying the shortcomings, that is, give instructions on how work performance may be improved, in which segment the employee should receive additional training, or which skills should be further developed, and leave an appropriate period for achieving the expected level of performance.

The legislature could also have specified, or at least established a minimum duration for, the period for improving results, or defined that period as "reasonable."[33] In this regard, it should be noted that before the 2014 amendments to the Labor Law entered into force, and following the standards of the International Labor Organization (ILO), the Supreme Court of Cassation took the position in its decisions that an employee should not be dismissed due to unsatisfactory work results unless the employer had given the employee a written notice with appropriate instructions and left a reasonable period for improvement, and the employee continued to perform duties in an unsatisfactory manner even after the expiry of that period. Of course, even in that case, it is necessary for the employer to determine the absence of work results in an objective and reliable manner.[34]

[33] It should be noted that even then a gap would remain, because in each individual case it would still have to be determined what constitutes a reasonable period. Thus, the very duration of a "reasonable period" is not and cannot be determined by law, since it cannot be expected that the reasonable period within which an employee may improve work performance is the same across all sectors of activity. It might perhaps be expected that a collective agreement would define, in somewhat more general terms, an appropriate period instead of relying on the standard of a "reasonable period." For now, it is left to the court to assess whether, in each individual case, a reasonable period has been granted. The Supreme Court of Cassation upheld the assessment of the lower courts that the conditions for dismissal due to absence of work results had not been met where the plaintiff had not been given an appropriate period to improve performance. In that case, after one month of working, the plaintiff received notice of the existence of grounds for dismissal because the employer had determined that the employee's performance, quality of work, and attitude toward work tasks were below the required level and resulted in continuous failure to achieve work results and compromised efficiency and the required results within the overall control process, and the employee was given a period of 10 working days to improve work. Popović, M. (2020). *Prestanak radnog odnosa.* Belgrade: Zavod za udžbenike, 21–22, 49.

[34] An interesting solution was contained in the Law on Associated Labor, under which the employee had to be offered work corresponding to their abilities. Thus, if the worker failed to achieve work results for a more prolonged period (more precisely, if the worker more permanently failed to achieve the results usually achieved), it was first

Instructions for improving work performance are an integral part of the prior notice.[35] In order for dismissal due to failure to achieve work results to be lawful, it is necessary that the employer first properly instruct the employee regarding the work and grant a period for improving both work and work results, and that the employee continues to perform the work in an unsatisfactory manner even after the expiry of the period allowed for improvement.[36]

However, it is possible that the employer gives no instructions. This would be permissible only in situations involving routine, simple tasks in which operations are repeated uniformly. Since the purpose of instructions is training, in the case of such simple tasks, instructions could justifiably be regarded as redundant.[37]

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necessary to offer the employee work corresponding to their skills, and only if they refused could a dismissal decision then be adopted. Crnić, Z., Momčilović, Z. (1983). *Prestanak radnog odnosa – zaštita prava radnika.* Zagreb*, 57.*

[35] Judgment of the Supreme Court of Cassation Rev2 533/11, of October 6, 2011. The employer may dismiss the employee if, even after instructions have been given and a period has been left for the improvement of work results, the employee continues to perform work in an unsatisfactory manner. From the reasoning: "According to the established facts, the plaintiff was employed for an indefinite term when the defendant dismissed the plaintiff on the ground of failure to achieve work results, that is, lack of the necessary knowledge and skills to perform the job they held, with only a formulaic explanation and without specifying the concrete reasons and facts on the basis of which the ground for dismissal had been established. The notice of the existence of grounds for dismissal stated that the plaintiff had failed to demonstrate work results in the tasks which he had been assigned, that on the basis of monitoring of the employee's performance by immediate supervisors it had been established that the plaintiff was unable to perform the assigned tasks and did not show the expected interest in work for the purpose of efficient performance, and he was given a period of five days to comment on the allegations in the notice. The court found that the dismissal decision was unlawful because no special commission had been formed by the defendant to assess the employees' special knowledge and skills. Further, for dismissal on this ground to be lawful, it is necessary to establish that work results are absent due to the employee's insufficient work and lack of effort, or due to the absence of the required knowledge, skills, or training on the part of the employee, which was lacking in the present case; moreover, the impugned decision gave only a formulaic explanation of the reason for dismissal, without specifying concrete reasons and facts; the purpose of the notice had not been achieved because it was served on the same day as the dismissal decision; and the notice was delivered to the trade union only after the dismissal decision had already been adopted."

[36] Also of interest is the position of the Supreme Court of Serbia that dismissal for failure to achieve work results is lawful in a case in which the employer, when recording a shortage, allowed the employee time to correct the mistake and improve results, and even after that, in a repeated inspection, again established a shortage. Čolić, B. (2006). Otkaz ugovora o radu i mogući oblici zaštite prava zaposlenih. *Radno i socijalno pravo*, 1–6, 294.

[37] Živković, B. (2008). Otkaz ugovora o radu zbog nezadovoljavajućeg vršenja posla. *Radno i socijalno pravo,* 12(1), 351.

THE CONSEQUENCES OF FAILING TO ACHIEVE WORK RESULTS OR OF THE LACK OF NECESSARY KNOWLEDGE AND SKILLS TO PERFORM THE JOB

The legislator has provided only the possibility of dismissal due to failure to achieve work results (and, by analogy, also due to the lack of necessary knowledge and skills), which implies that the employer can decide, at their discretion, whether an employee will, in fact, be dismissed once the conditions have been met. Unlike failure to achieve work results, where the legislature has prescribed a specific procedure for the lawfulness of dismissal, this is not the case where the employee lacks the necessary knowledge and skills, and the resulting legal gaps are therefore filled by case law. A distinction must first be made depending on whether what is lacking is knowledge or skill in the sense of the ability to perform certain activities that are not especially demanding (routine production tasks, craft work, and the like), or the ability to apply acquired knowledge in practice. In the latter case, giving the employee a "second" chance through a notice would not conflict with the institution of a public vacancy announcement, since the employee would, in effect, be "shown" how to apply the knowledge already acquired. Conversely, the author believes that, in the spirit of equal employment opportunities and the public competition as a "contest of knowledge and skills," no additional period should be left in the former case. It must further be determined whether the person possesses knowledge and skills that cannot be specifically applied, or does not possess them at all, because in the former case it is justified to give a second chance through a notice accompanied by an additional period, whereas in the latter case it is not.[38]

In any case, since the employment relationship represents an intersection between the freedom of entrepreneurship and the right to work, rights of ownership and management are the reason why the employer is regarded as more than merely a contracting party, i.e., as the natural legislator in the company.[39] The owner of the means of labor quite logically has the right to dispose of those means and run the business in accordance with economic interests, to hire workers who will work efficiently, and to "rid itself" of those who constitute a burden,[40] but always in compliance with mandatory legal rules. It is evident that the employer has the right to dismiss the employee and, as a rule,

[38] Labor Law, *Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018, Art. 180.

[39] Kovačević, LJ. (2013). *Pravna subordinacija u radnom odnosu i njene granice.* Belgrade: Faculty of Law, Center for Publishing and Information, 135.

[40] Vučković, V. (1998). Prestanak radnog odnosa. *Radno i socijalno pravo*, 7–9/98. 174.

exercises that right in accordance with economic and production-related interests. This means that, when dismissing an employee, the employer should not abuse the right to dismissal; that is, the dismissal decision should be made rationally (legally and legitimately), and not merely because the employer has the power to do so.[41] If the employer determines that the employee is not achieving work results or lacks the necessary knowledge and skills, they may dismiss the employee,[42] and under our positive law, this is indeed an absolute right of the employer.

Once grounds for dismissal occur, it is necessary for the employer first to ascertain them and then to adopt the appropriate act dismissing the employee. This is a constitutive act by which the status of employee is taken away, directly on the basis of the act itself by which it has been assessed or determined that grounds for dismissal have occurred. Under our positive legislation, written form is mandatory,[43] and the decision to dismiss the employee is materialized by issuing a formal decision,[44] which is the result of a procedure in which justified grounds for dismissal have previously been established.

Often, when establishing the statutory grounds for dismissal, errors occur in the dismissal procedure itself. When procedural rules are violated, it is precisely the violation of procedural law that renders the dismissal unlaw-

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[41] Miljković, M. (2002). Nezakonit i neopravdani prestanak radnog odnosa. *Law and Economy*, 39(1–4), 61.

[42] Mihajlović, P. (2004). Prestanak radnog odnosa po sili zakona i otkazom ugovora o radu od strane poslodavca. *Pravni život*, 3–4, 174. Labor Law, *Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018, Art. 181. If the employee is a trade union member, prior to the 2014 amendments the employer had to request the opinion of the trade union, but that opinion in no way bound or restricted the employer. Under the amendments, the employee may, if desired, append the opinion of the trade union to their statement, and the employer will "consider" it.

[43] Comparative law also generally requires written form for dismissal (Belgium, Bulgaria, Cyprus, the Czech Republic, France, Greece, Hungary, Lithuania, Romania, Slovakia). Heerma van Voss, G., Waas, B., & ter Haar, B. (2011). *Dismissal - particularly for business reasons - and Employment Protection*. (Thematic report - European Labour Law Network; No. 2011). European Labour Law Network, 20. It is interesting that in Germany dismissal may be given in electronic form, by email, or in Estonia where it need only be reproducible in written form. In Luxembourg, oral dismissal produces legal effect, but creates a situation of "formal defect." An employee dismissed orally on justified grounds, although the dismissal produces legal effect, is entitled to damages in the amount of one month's salary.

[44] Nielsen, R. (2006). *Termination of Employment: Legal Situation in the Member States of the European Union. European Commission,* 128. Comparative law, however, also contains different solutions. Thus, Belgium and Sweden have no legislative provisions on the form of dismissal, while mandatory written form exists in the United Kingdom only in the case of dismissal for economic reasons.

ful.[45] This further means that dismissal may be based on grounds provided by law, yet such dismissal will still be unlawful. Thus, the issue is not a substantive but a formal error.

The consequence of unlawful dismissal is the restoration of the previous state, because if the act on the basis of which the employee is dismissed is null and void, then the dismissal itself is also null and void, or, in other words, the employment relationship has not in fact ceased.[46] Reinstatement is therefore the primary consequence of a finding that the dismissal was unlawful. In that regard, some authors take the view that a finding of unlawful dismissal, that is, a finding that the dismissal decision is null and void, automatically leads to reinstatement, and that the court is entitled, *ex officio*, to order reinstatement without this being regarded as going beyond the claim.[47] However, it is clear that in practice, an employee may not want to return to work for the employer, most often because relations between them have been impaired. For

[45] Unlawfulness itself may have various causes resulting from violations of procedural rules (limitation, failure to serve the notice, right of defense, reasoning, instruction on legal remedies, service of the dismissal decision) or from violations of substantive law (termination of employment without legal basis, without justified grounds). Although violations of procedural provisions are less serious than unjustified dismissal, it should not be overlooked that employers who violate legal obligations are thereby privileged and that such conduct violates the principles of legal certainty, defense, and legal remedy. Kovačević, Lj. (2016). *Valjani razlozi za otkaz ugovora o radu.* Belgrade: Faculty of Law, Center for Publishing and Information, 184–185. Under our positive law, when examining dismissal in the formal sense, the court will annul the decision as unlawful if the employer did not warn the employee of the existence of grounds for dismissal in the legally prescribed form (Judgment of the Supreme Court of Cassation Rev2 1196/16, of June 29, 2016), if the dismissal decision was not served personally on the employee (Judgment of the Supreme Court of Cassation Rev2 841/16, of December 21, 2016), if the dismissal decision was adopted on the same day as the notice, without allowing the statutory period for the employee to comment on the grounds imputed to them (Judgment of the Supreme Court of Cassation Rev2 1196/16, of June 29, 2016), if the grounds for dismissal stated in the notice are not the same as those contained in the dismissal decision (Judgment of the Supreme Court of Cassation Rev2 1146/16, of September 8, 2016), if the decision was adopted after the expiry of preclusive time limits (Judgment of the Supreme Court of Cassation Rev2 660/17, of December 7, 2017), or if the dismissal decision does not identify the breach of the work duty in terms of the manner, time, and place of commission (Judgment of the Supreme Court of Cassation Rev2 2008/15, of December 9, 2015).

[46] Miljković, M. (2002). Nezakonit i neopravdani prestanak radnog odnosa. *Law and Economy*, 39(1–4), 65.

[47] Kovačević, LJ. (2016). *Valjani razlozi za otkaz ugovora o radu.* Belgrade: Faculty of Law, Center for Publishing and Information, 183. Such a solution has been accepted in Germany. The drawback of this concept lies in a kind of coercion where neither the employer nor the employee wants reinstatement (but, say, damages), so it appears more acceptable to follow our solution under which the court is bound by the claim and awards reinstatement only when the employee seeks it.

that reason, the current provisions of the Labor Law introduce an alternative solution into the legal order – compensatory damages.[48] The employee also has the right not to return to work, in which case they may request that the court order the employer to pay damages in an amount of up to 18 salaries, assessed according to the period the employee spent in employment with the employer, the employee's age, and the number of dependent family members. In this regard, the court has no right to review the reasons guiding the employee in making such a request, nor the justification or expediency of such a solution, but is obliged to uphold the claim.[49] In addition to the claim for reinstatement or, alternatively, compensatory damages, a consequence of the nullity of an unlawful dismissal decision is compensation for damage in the amount of lost wages and other earnings, as well as the corresponding pension and disability insurance contributions to the Republic Pension and Disability Insurance Fund, together with the recognition of the length of service that the employee would have accrued had they continued working, but did not accrue due to the unlawful dismissal.[50]

When it comes to damages, the court is obliged, even in an employment dispute, to adhere to the Law on Obligations,[51] i.e., to reduce damages by the amount the employee earned if the employee entered into another employment relationship, applying the rules on the burden of proof. In practice, this would mean that the employee should produce evidence on the basis of which the court would establish that no other employment relationship had been entered

[48] More specifically, the institution of compensatory damages was introduced by the Law on Amendments and Supplements to the Labor Law, *Official Gazette of the RS*, No. 61/05, Art. 10.

[49] Labor Law, *Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018, Art. 191. Exceptions to the rule that the employee has the right to reinstatement are prescribed in the following cases: (1) if the employer files a request that the employee not be returned to work and proves the existence of circumstances reasonably indicating that continuation of the employment relationship is impossible, in which case the employer is obliged to pay damages of up to 36 salaries, determined according to the same criteria as where the employee does not request reinstatement (Art. 191, para. 6 of the Labor Law); and (2) where the dismissal is unlawful only formally, in the sense of non-compliance with the dismissal procedure, but the grounds for dismissal are lawful and justified, the employee has no right to reinstatement, but only the right to damages in an amount of up to six salaries. Labor Law, *Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018, Art. 191, para. 7.

[50] Živanović, B. (2013). Sporovi povodom prestanka radnog odnosa pred sudom opšte nadležnosti. *Zaštita prava u oblasti rada, (*ed. Zoran Ivošević). Belgrade, 134.

[51] Law on Obligations, *Official Gazette of the SFRY,* No. 29/78, 39/85, 45/89. – Decision of the Constitutional Court of the SFRY and 57/89; *Official Gazette of the FRY,* No. 31/93; *Official Gazette of the Republic of Serbia and Montenegro,* No. 1/2003. – Constitutional Charter and *Official Gazette of the RS,* No. 18/2020.

into, while the defendant, the former employer, would have to prove that a new employment relationship had in fact been established.[52]

Reinstatement, however, is an irreplaceable institution, particularly having regard to the fact that compensatory damages, which more closely resemble a penalty imposed on the employer, do not solve the problem of unemployment. Reinstatement has an important role, especially for persons who find it more difficult to obtain employment, which is of particular significance during periods of economic and financial crisis.[53] It is therefore important that there be an effective mechanism for the enforcement of a reinstatement order, including compulsory enforcement, not only formally but also substantively, through the employee's actual reintegration into the work process.[54]

THE EXPEDIENCY OF REINSTATEMENT IN CASES OF DISMISSAL FOR FAILURE TO ACHIEVE WORK RESULTS OR FOR THE LACK OF KNOWLEDGE AND SKILLS REQUIRED TO PERFORM THE JOB

The question arises whether reinstatement is expedient in certain cases, particularly in relation to a professionally conditioned ground for dismissal concerning the employee. Reinstatement implies a return to the previous position, and if that position has been abolished in the meantime, then to a position corresponding to the employee's qualifications, knowledge, and skills.

If the dismissal is justified but unlawful, and reinstatement is nevertheless allowed, the employee will be dismissed again, but this time in compliance with the applicable procedural rules. Courts should therefore carefully assess, in each individual case, whether the dismissal is justified, whether

[52] Živanović, B. (2013). Sporovi povodom prestanka radnog odnosa pred sudom opšte nadležnosti. *Zaštita prava u oblasti rada, (*ed. Zoran Ivošević). Belgrade, 134.

[53] Kovačević, LJ. (2016). *Valjani razlozi za otkaz ugovora o radu.* Belgrade: Faculty of Law, Center for Publishing and Information, 178.

[54] Otherwise, according to the position of the Supreme Court of Cassation, it turns into workplace harassment, in the so-called "empty-desk mobbing." This position was taken in the case of an employee who had been reinstated by court decision. She then concluded an annex to the employment contract for transfer to the post of carpenter in the department for manual and machine wood processing. However, the employer required her to remove nails from pallets, which she refused to do because that task was not in line with her job position, after which she was again dismissed for failure to comply with the employer's orders. The court held that the employer had violated the employee's dignity by requiring her to perform orders of a lower level of complexity. Kovačević, LJ. (2016). *Valjani razlozi za otkaz ugovora o radu.* Belgrade: Faculty of Law, Center for Publishing and Information, 179.

the employee's conduct is such as to make the continuation of the employment relationship impossible, and what purpose is achieved by reinstatement. In practice, the latter approach is highly expedient. The clearest example from practice is that of a preschool teacher who was dismissed unlawfully for physically punishing children. Although the procedural rules governing dismissal had not been observed, her claim for reinstatement was denied because the dismissal was substantively justified.[55]

The most common type of disputes before courts of general jurisdiction are disputes concerning the lawfulness of an employer's decision on dismissing an employee. In relation to the grounds for dismissal consisting of failure to achieve work results and lack of the requisite knowledge and skills, this would mean examining whether, before dismissal, the employee was warned of the existence of grounds for dismissal, whether the reasons stated in the notice and in the dismissal decision are the same, whether an appropriate period was allowed for achieving work results, etc. If that is established, the court will then examine the justification for the grounds on which the employee was dismissed.[56]

The question of the expediency of reinstatement arises particularly in relation to a ground for dismissal concerning the employee's skills. Therefore, in this situation, a dismissal based on a justified ground concerning the employee's ability is unlawful due to procedural errors. The court would allow for such an employee to be reinstated, upon their request. However, they would be returned to the same position from which they were dismissed because they failed to achieve work results, i.e., to a position for which they lack the requisite knowledge or skills. It is clear that the employee would once again be in a situation where they could be dismissed. This raises the issue of the relationship between the essence and the form of the dismissal, and it appears justified to give precedence to the essence. This supports the position that, in cases involving this ground for dismissal, there is not always room for reinstatement, and that the positive-law solution introducing compensatory damages in place of reinstatement is sound.

If, in the course of the proceedings, it is established that grounds for dismissal did exist, but that the employer acted contrary to the provisions of the Law governing the dismissal procedure, the court will deny the claim for

[55] Judgment of the Supreme Court of Cassation Rev 2 678/18, dated 20. 12. 2018, cited in: Popović, M. (2020). *Prestanak radnog odnosa.* Belgrade: Zavod za udžbenike, 98. Also unlawfully (but justifiably) dismissed was a medical technician from a healthcare institution who had committed prohibited sexual acts against patients, 89 0 Rs 075407 23 Rs 2, affirmed by the Supreme Court of the Republika Srpska, 89 0 Rs 075407 24 Rev.

[56] Živanović, B. (2013). Sporovi povodom prestanka radnog odnosa pred sudom opšte nadležnosti. *Zaštita prava u oblasti rada, (*ed. Zoran Ivošević). Belgrade, 137.

reinstatement.[57] This provision indicates that the court will, *ex officio*, deny the claim for reinstatement if it finds that the dismissal was justified but unlawful. Case law likewise predominantly takes the view that procedural errors in the dismissal process do not justify reinstatement.[58]

Accordingly, under the current provisions, an employee who has been dismissed unlawfully is entitled to compensatory as well as restitutive damages. In that regard, the question arises whether this concerns one type of damages or two. This question is not merely legal in nature; it also has social and, above all, economic significance, given the substantially different rights and obligations of the employer and the employee in the case of cumulative, as opposed to alternative, compensation. The author believes that these forms of damages should be cumulative, because the apparent purpose of compensatory damages is to serve as a substitute for reinstatement, rather than for the other consequences of unlawful dismissal; this position is also supported by the case law of first-instance and second-instance courts.[59] Bearing in mind the employee's factual subordination to the employer and the fact that dismissal is nevertheless the *ultima ratio* for impaired relations between employer and employee, it cannot be expected that the employee should, in every case, seek reinstatement and continue working for the employer if, for example, it is likely that the employee would thereafter be exposed to workplace harassment. Compensatory damages are therefore an appropriate solution, although they should be subject to certain limits in order to prevent abuse, and the court

[57] Labor Law, *Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Decision of the Constitutional Court, 113/2017, and 95/2018, Art. 191.

[58] Trifunović, P. (2015). Novi zakon o radu dva sporna pitanja subordinacije. *Bulletin of the Supreme Court of Cassation,* 3/2015, 271. In defining the legal consequences of unlawful dismissal, the legislature made an omission. Namely, in attempting to distinguish between justified but unlawful dismissal and unjustified but lawful dismissal, an error occurred. Thus, the legislature provides that if, in the course of the proceedings, the court determines that the employee was dismissed without legal basis, but the employer proves in the course of the proceedings that there are circumstances reasonably indicating that continuation of the employment relationship, taking into account all the circumstances and the interests of both parties to the dispute, is impossible, the court will reject the employee's request to be returned to work and will award damages. However, bearing in mind that the grounds for dismissal are the employee's conduct, abilities, or the employer's needs, this provision does not appear clear. If there are no grounds for dismissal, it is not clear how the employer will prove that there are circumstances reasonably indicating that continuation of the employment relationship, taking into account all the circumstances and both parties' interests, is impossible.

[59] For example: Judgment of the Appellate Court in Kragujevac, Gž1 1476/10, of January 12, 2011. Available at: http://www.kg.ap.sud.rs/gz-1.-1476.10.html, accessed on September 10, 2015, Judgment of the Appellate Court in Novi Sad, Gž1 2978/12, of November 26, 2012. Available at: http://www.ns.ap.sud.rs/index.php/src/sudska-praksa/271-gz1-2978-12, accessed on September 10, 2015.

should be empowered to examine the reasons why the employee seeks compensation instead of reinstatement.[60]

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[60] This type of damages has nothing to do with damages for lost wages. Damage in the form of lost wages is a necessary legal consequence of unlawful dismissal. The employer owes it regardless of whether the employee seeks reinstatement. Thus, damages awarded in lieu of reinstatement and damages in the amount of lost wages constitute two distinct types of damage. As a consequence of unlawful dismissal, damage may also occur in the form of diminution of the employee's property, that is, prevention of its increase, as well as non-pecuniary damage. Therefore, the worker has a right to damages because of unlawful dismissal, but the purpose of these provisions is not only to repair damage, but also to deter employers from resorting too readily to dismissal. Compensation for pecuniary damage is aimed at restoring the employee's financial situation to the level it was at before the decision on dismissing the employee was adopted, and primarily concerns lost wages and other earnings. Kovačević, LJ. (2016). *Valjani razlozi za otkaz ugovora o radu.* Belgrade: Faculty of Law, Center for Publishing and Information, 181.

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