

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
- [2] Is there an obligation for the employer to give 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 »?
- [4] If the employer doesn't give the real reasons for the dismissal to the employee, can he still invoke them in court?
- [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?
- [6] What are the consequences on the employer for not giving reasons or for giving inadequate reasons:
 - The nullity of the dismissal?
 - An obligation to continue the contractual relationship (reinstatement)?
 - Sanctions?
 - Civil sanctions provided by the law?
 - Financial sanctions (damages) for a wrongful dismissal?