



## ASSOCIATION OF JUDGES OF THE REPUBLIC OF MACEDONIA

Court Palace Skopje  
Krste Misirkov bb  
1000 Skopje, Macedonia  
Phone / Fax: ++ (389-2) 3136-416  
e-mail: mja@mja.org.mk

### REPORT FOR THE FOURTH STUDY COMMISSION OF THE IAJ

Under the presumption that the questions of this questionnaire are referring to the Institutions operating in public interest, we can give you the following answers:

1. Considering that the Law on Public Institutions (published in the Official Gazette of the Republic of Macedonia, number 32/05 from 11<sup>th</sup> of May 2005) in its transitional and final provisions, in the Articles 113 and 114, prescribes the term for harmonization of the work and acts of the Public Institutions and organizations of collective labour, which haven't been transformed by now, and that term is six months, calculated from 19<sup>th</sup> of May 2005 (the final time-limit is 19<sup>th</sup> of November 2005), still in practice, according to the abovementioned law, there aren't any records of registration in the Registry of the Court competent for proprietary transformation of the Public Institutions, so, at this point, we cannot perceive the consequences of such transformation, especially in the relations of the rights between the two parties (the employer and the employee). However, having in mind the modalities of privatization, prescribed in Article 96 of the abovementioned law, according to which the privatization will be undertaken, the law prescribes in details what will happen with the employees.

2. The consequences from the privatization of the society enterprises and of the enterprises with mixed capital, in regard with the labour relations between the two parties (employer and employee), depends on the largeness of the enterprise (small, middle and large enterprise) and the chosen model of proprietary transformation, prescribed by the Law on Transformation of the Enterprises with Society Capital (Official Gazette of the Republic of Macedonia, number 38/93, with the amendments), accordingly to the largeness of the enterprise. Usually and most often, the small enterprises choose **the buy out from the employees'** model of proprietary transformation, whereas both features – the owner and the employee – are embodied in the personalities of the employees. The transformation was “painlessly” undertaken in the small enterprises, without relieving from work any employees. However, the consequences of the proprietary transformation of middle and large enterprises were different, depending on the chosen model of transformation, according to the Law on Transformation of the Enterprises with Society

Capital. Namely, if the chosen model was **sale of the enterprise to the persons who will take over the management with the enterprise, or transformation of the claims of the creditors into a permanent stake**, then it was possible a large number of the employees to be laid off from work.

3. According to the Law on Public Institutions, special chapter (9) was introduced, entitled as “proprietary transformation”, which refers to the Public Institutions and Organizations. Namely, the Law defines the Public Institution as a form of organization for delivering public services not registered as commercial activity (non-commercial activity) and which are, according to the law, activities of public interest.

4. At this point, it is not possible for us to quantify it, due to the fact that the time frame for submitting applications for harmonization according to the Law on Public Institutions is not over yet.

5. The Law on Public Institutions, in the Article 94 prescribes that the provisions of the Law on Transformation of the Enterprises with Society Capital, referring to the exemption from obtaining proprietary rights over public property, as well as over the goods and objects of special cultural and historical significance, which are determined by law as goods of public interest for the Republic of Macedonia and are under special protection of the constructive and agricultural lands and the right for their usage and management, the provisions for the methodology for evaluation of the subject of the privatization, for the costs of the procedure for privatization, the payment method and the right of the employees for purchase under privileged terms, will apply appropriately to the privatization according to the Law on Public Institutions. In the Article 93, Paragraph 4 of the same law is prescribed that from privatization are excluded gifts, donations, legacies, heritage and other property and goods which are under special legal or negotiated regime.

6. In the Law on Public Institutions, opposite to the modalities prescribed by the Law on Transformation of the Enterprises with Society Capital, regarding the proprietary transformation, there are some concessions, in the direction that this Law prescribes some privileged solutions for the employees, which were not prescribed with the Law on Transformation of the Enterprises with Society Capital.

7. As an example: if the modality for proprietary transformation is chosen – sale of the part of the facility or equipment of the public institution, in this case, according to the Article 106, Paragraph 1 of the Law on Public institutions, the employment for the employees will be terminated, but in Paragraph 2 of the same law is prescribed that with the agreement for the sale, the buyer is obliged to take over the employees of the public institution, whose employment was terminated, and to commence new, full-time employment with them.

8. We cannot provide you with an answer for this question, due to its unclear formulation.

9. His employment will be terminated.

10. In principle, there are no limitations, because they have the right to go on a strike, according to the Labour Relations Law (Official Gazette, number 62/05, from 28<sup>th</sup> of July 2005), and according to the Law on Public Institutions, in which, in the Articles 83 to 87, the right of the employees to go on a strike is regulated.

**Violeta Popovska and  
Zlata Stamboliska  
Judges at the Trial Court Skopje I Skopje  
Republic of Macedonia**