4th Study Commission, German Answers

What are the consequences of privatisation of public companies and, or public functions regarding the parties rights in labour relations?
What are the consequences of the change of legal structures of a private enterprise regarding the parties rights in labour relations?

1. Question: Are public entities in your Country, or public functions with them, facing a phenomenon of privatisation? Is it possible to quantify it? Did the legislator in your country provide for any kind of legal restriction?
Answer: There is a tendency of public employers to transfer all functions of public services (like canalisation, water, electric energy, telephone), that do not require state authority (like police and jurisdiction) to private enterprises, where the public employer holds 100% of the shares, so e.g. the German Telecom Corp., Deutsche Post Corp., German Rail Corp.). This also concerns enterprises of basic public services on the community level like water supply, heating, electricity, public transportation, tourist services etc.. The reason for this phenomenon is to cut down the risks for the financially tight communities.

Question: Is it possible to quantify it?
Answer: There are no reliable statistics on privatised public companies. But one can say that at least in Western Germany the privatisation of public companies has been finished in all mayor towns. In smaller communities this is not the case due to the fact that private companies can – due to the small number of inhabitants – not be run with profit.

Question: Did the legislator in your country provide for any kind of legal restriction?
Answer: There are restrictions in anti-trust law and the law on the change of the legal form of societies, but this does not concern labour law.
Furtheron the basic supply of public services must be secured. Only where this is secured for example by control of the privatised company through a majority of shares in the hand of the community/local authorities – the public authorities may privatise a public company.

2. Question: Has your country a specific set of rules concerning change in legal structures of public or private companies?
Answer: In the laws on the constitution of communities and counties there are regulations that have to be observed when a public company is privatised. This will be controlled by the authorities that exercise the legal control on the communities. On the federal level there are similar regulations in the law on the principles of public budgets.
For the split of the former Deutsche Bundespost (Federal German Mail) into the German Telecom Corp. and the Deutsche Post Corp. the federal legislator made a specific law.

3. Question: In the affirmative, please describe the conditions for the application of such rules and their consequences in the relationships between the employer and the workers.
Answer: In Germany major public companies like the Federal German Mail had the problem, that parts of their employees were civil servants who did not want to give up this status (lifetime status). As it is not allowed to employ civil servants in private companies these civil servants formally belong to the federal ministry of finance, that has dispatched them to German Telecom Corp or German Mail Corp. These enterprises have to fulfill all commitments that the federal ministry of finance would have as employer of these civil servants. They even have to pay the pensions to the ministry.
Question: Precise in detail the obligations to be met by the employer before or at the moment when a change in the legal structure of his company occurs

Answer: If the change is of any harm to the rights of the employees the employer is obliged to look for an agreement with the Betriebsrat (a mostly mandatory council representing the workers), eventually he would have to set up a so called “social plan” which is basically an agreement to compensate economic disadvantages or the loss of employment. The Betriebsrat has a right to enforce such a “social plan”. When setting up such a “social plan” the social situation of the employees is to be regarded on the one hand, on the other hand there are the economic needs of the company; the survival of the company and of the remaining employments may not be endangered.

All other regulations on the codetermination of employees have to be safeguarded. A termination of employments sole for the reason of the change of the structure of the company is not allowed as the employments are by law automatically transferred to the new company (sec. 613a CC).

Question: Which are the legal mechanisms that assure in your country the maintenance of worker’s rights, especially those granted by collective agreements, face to the criteria of maximum profitability pursued with such type of structural changes?

Answer: According to sec 613a CC all employments are transferred automatically to the new company/employer with all rights and obligations. If these rights or obligations have been established by a treaty between the employer and the representation of the workers or the association of employers and trade unions they become part of the new employment treaty between worker and the new employer. These rights and obligations established by collective treaties may not be changed within one year (sec 613a par.1 sent.4 CC) unless the collective treaty would have expired anteriously. But if the new company is bound by another collective treaty only the latter one is applicable (sec.613a par.1 sent.3 CC).

Question: Which are the consequences that must be faced by a worker who refuses to work for the “new employer”?

Answer: According to sec.613a par.6 CC the worker has the right to protest against the change of his employment to the new employer within one month after having received the information on the change. Then his employment remains with the “old employer”. If the old employer still has jobs where the remaining worker can work the employment is to be continued with the old working conditions. But if the “old employer” has transferred all jobs, for which the worker is suited, to the new employer, the remaining worker can be fired with the consequence of the loss of his employment.

Question: Did your country restrain the personnel’s right to use collective actions against a structural change?

Answer: No.

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