

DEMOCRATIC TRANSITION AND THE PRIVATIZATION PROCESS OF SOCIAL PROPERTY IN KOSOVO

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ABSTRACT

Being part of the former Socialist Federation of Yugoslavia, according to the Constitution and applicable legislation, Kosovo had social ownership expressed through social enterprises, state properties and ownership by private owners. This system was unique to former Yugoslavia and differs from other former socialist countries. In this aspect, Kosovo, in the democratic transition process, faced the challenges of transforming the first two types of ownership to adapt to the market economy. Social ownership (social enterprises) was presented for privatization through the competent institution (Kosovo Trust Agency, Privatization Agency of Kosovo), while state enterprises received a new status - public enterprises which were transformed into joint-stock companies. This paper elaborates on the privatization process of social and state property according to the model of the free market economy. The paper analyses the legislation and the role of competent institutions as carriers of the property transformation process in the Republic of Kosovo. The purpose of this paper is to analyse the difficulties and challenges of the process of democratic transformation of the society and state institutions of Kosovo from the Socialist System to the Liberal Democracy expressed through the transformation of ownership - the process of privatization of social enterprises and the transformation of state enterprises into public joint stock companies. The paper is analysed by a methodological framework expressed through analysis and synthesis, descriptive method, statistical and comparative method. The paper highlights the difficulties which Kosovo has been passing and continues to face as a new state in the process of privatization and the unwanted effects that this process has had on the economic development of the country.

Key words: *democratic transition, privatization process, social enterprises, Privatization Agency of Kosovo, privatization methods.*

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1. INTRODUCTION

The beginning of the 90s in South-Eastern Europe marked the beginning of radical changes in the political, economic and all other spheres of social life.¹ This is how Kosovo was as a result of these social changes. The transition in Kosovo is closely related to the building of market institutions and the recovery of the destroyed economy. Based on the definition of the notion of transition, we can say that transition is a long comprehensive and transformative period, which is realized with radical reforms both in the economic and legal fields, as well as in the political field, which means changing the existing inefficient system and transition to another efficient system. The speed of changes conditioned the speed of ideas that preceded the realization of the transition to the market economy. Here the contemporary thought about the problems laid out for solution could not but influence the contemporary market economy itself.

In former Yugoslavia, as a socialist country, social property was dominant. This form of ownership was based on the Marxist ideology of “social equality”. Based on ideological premises, social ownership was sublimated in the Constitution of SFR and internal legislation. With the 1974 Constitution and the 1976 Law on United Labour, social ownership was the expression of socialist economic social relations between people, which is the basis of free united labour and the ruling position of the working class in production and reproduction, as well as the basis of personal property acquired with one’s own work, which serves to satisfy human needs and interests. No one could create ownership rights over these properties and assets, neither the social-political community (municipality), nor the united labour organizations (various economic subjects) nor the group of citizens and individuals on any property legal basis². According to this abstract definition of the SFRY Constitution, no one had and could create ownership rights over social property. So, the finding without precedent in the legal theory and practice of other Western countries is that the social property did not have an owner who could exercise their authorizations in an absolute manner, but it only had an “administrator”.³ Through the legislation in force were established the united labour organizations with which the workers governed, as well as other forms of organization, including organizations in the form of social economic enterprises, self-governing communities of interest (associations) and other self-governing organizations and social-political

¹ Rupnik, J.: *Ditari Ballkanik (Balkan Diary)*, Prishtina, 2004, p. 45 & pp. 71-72.

² Constitution of the SFRY, 1974, p. 13.

³ Gashi, A.: *Mbrojtja e pronësisë-Një studim sipas të drejtës në Kosovë dhe Konventës Evropiane për të Drejtat e Njeriut (Property protection-A study according to the law in Kosovo and the European Convention on Human Rights)*, Tirana, 2021, p.35.

communities.⁴ Since these forms of organizations were governed by workers (the workers' council), in the legal literature we often find that the workers are called owners, due to their powers in governance within the united labour organization.⁵ The workers in the united labour system acquire the right to govern the assets of social ownership not based on ownership of the assets of labour, but by virtue of the union of labour in the basic organization of united labour. The remuneration of their work is done according to the results of work in the organization where they work and not according to market values.⁶

2. THEORETICAL FRAMEWORK

Seen from the constitutional provisions, according to some Yugoslav authors, social property is not a property right in the legal-civil sense, but a constitutional and administrative right which was regulated by some laws which provided only for its administration and governance. This is because according to the law in force, social property lacked owners who had absolute rights over it as per Roman law, such as: "the right of ownership, the right of use, and the right of disposal (ius utendi, ius fruendi, ius abutendi)"⁷ It should be noted that the right of use also existed under Yugoslav law and is an important element of the definition of property rights. Being part of such a socialist system, Kosovo also approached the privatization of social property in the phase of the transformation of the system into a free market economy. For this privatization to happen, the legal basis and the competent institution for the implementation of this process were initially created. The monetary assets collected from the enterprises sold according to the legislation in force are allocated to the Privatization Fund, while 20% are distributed to the former employees of those enterprises. This paper addresses the legislative and institutional aspects of the

⁴ Constitution of the SFRY, 1974, p.13.

⁵ Gashi, A.: *Mbrojtja e pronësisë-Një studim sipas të drejtës në Kosovë dhe Konventës Evropiane për të Drejtat e Njeriut (Property protection-A study according to the law in Kosovo and the European Convention on Human Rights)*, Tirana, 2021, p.35.

⁶ Podvorica, H.: *Procesi i transicionit dhe privatizimit të pronës në disa shtete të Evropës Qendrore, Juglindore dhe në Kosovë (The process of transition and privatization of property in some countries of Central and South Eastern Europe and in Kosovo)*, Prishtina, 2004, p. 87 & Ademaj, S.: *Aspektet makroekonomike të transformimit dhe privatizimit të ndërmarrjeve shoqërore në Kosovë (Macroeconomic aspects of the transformation and privatization of social enterprises in Kosovo)*, Prishtina, 2002, p. 195 & Mustafa, M.: *Specifika e transicionit në Kosovë dhe menaxhimi i projekteve të tijë (Specifics of transition in Kosovo and management of its projects)*, Prishtina, 1998, p.20 & Sadiku, M.: *Transformimi i ndërmarrjeve shoqërore në Kosovë (Transformation of social enterprises in Kosovo)*, prishtina, 2001, pp.85-86.

⁷ Mousourakis, G.: *Fundamentals of roman Private Law*, Springer-Verlag, Heidelberg, 2012.

process of privatization of social property in Kosovo. The paper explains how the privatization process was conducted in Kosovo, the challenges it faced, and its effects.

The privatization process in Kosovo has special characteristics: first, Kosovo started the privatization process with a great delay of thirteen years; second, the value of the capital of the enterprises to be privatized had been decapitalized to a considerable extent due to the war in Kosovo in 1998-1999; third, since Kosovo was under the international administration of the United Nations (hereinafter referred to as UN) from 12 June 1999 to 17 February 2008, when Kosovo was declared an independent state, privatization was defined as the exclusive competence of UNMIK and the Kosovo Trust Agency had authority to administer public and social enterprises and manage the privatization process. In the transition period, continuous efforts have to be made to create the environment that leads to the connection and operation of the market system with its elements, such as private property and democracy. Therefore, the principle of the rule of law is undoubtedly one of the most important and essential principles for every democratic state and society. The establishment of the rule of law represents a challenge for the democratic transition in Kosovo, and in particular for the transformation of social property. Without the realization of privatization, we cannot even have a successful transition. Marija Lavinge in her book "The Economics of Transition" says that privatization means the transformation of state-owned enterprises into privately-owned enterprises, reforms of the banking and tax systems, as well as the creation of capital markets, etc. In a word, privatization means the transformation of state and social property into private property. Today there are several definitions of privatization. Marija Lavinge, defines privatization in the narrowest sense, as a legal transformation of property rights from the state to a private agenda, while in a broad sense, she says that privatization includes all measures that contribute to the denationalization of economic activity, including also cases of long-term leasing and the creation of completely new enterprises, because, in this sense, privatization is equivalent to liberalization. Similar to this definition is another definition, which states that privatization is a general process of installing the private sector in the property structure or the management of social enterprises.⁸

The sale of state-owned industries has been known as 'privatisation' since the 1980s. The term 'privatisation' is broadly synonymous with 'de-nationalisation'. Widely defined, privatisation can take many forms, including the sale of government buildings or other assets, the provision of services by the private sector that was previously provided by the government, as well as the

⁸ Cerović, B., *Privatizacija socijalne svojine (Privatization of social property)*, Belgrade, 1991, pg.288-290.

transfer of responsibility for an industry from the public to the private sector through the sale of government-owned securities (shares and bonds).⁹ In this sense, privatization is also defined as a crisis of the economic and political system in post-communist countries, which is conditioned by the need for the complex process of transition, where privatization will have a special place as a fundamental presupposition for building a market economy.¹⁰ The basic objective of privatization is to increase economic efficiency. With the designation of the owner of the property, the way of managing the enterprises will also be changed, which will be subject to market rules - price liberalization and free competition. The argument for increased efficiency is based on historical experiences according to which systems with dominant private property have developed faster and more successfully than systems with state or social ownership of the means of production.¹¹ Privatization, according to the legal concept, is defined as the transfer of ownership, right over property or business from the government to the private sector.¹² Thus, the government ceases to own the business or property. Bennett et al.¹³ consider privatization as a kind of freedom creator from direct state control of the enterprise to its transfer into private hands. Meanwhile, Megginson and Netter¹⁴ document that privatization, as a political, social and economic action can mean “the intentional sale by a government of state-owned enterprises (SOEs) or its assets to private economic agents”. For scholars of economics, privatization remains to be the transfer of ownership of goods and services from the public sector to the private sector. On the other hand, according to a group of authors,¹⁵ politicians try to equate privatization with commercialization. According to economists, privatization is done with the aim of economic growth, through the promotion of private initiatives development of a market economy, and creation of free

⁹ Rhodes, C., Hough, D., Butcher, L.: Privatisation, *Research Paper*, 14/61 2014.

¹⁰ Zec, M., Mijatović, B., Đurišić, D., Savić, N.: *Privatizacija, nužnost ili sloboda izbora (Privatization, necessity or freedom of choice)*, Jugoslavenska knjiga, Belgrade, 1994, p. 1 & Sullivan, D.J.: *Announcement on prosperity, privatization of state enterprises*, Vienna, 2002, p. 89.

¹¹ Hetemi, M.: *Sistemi i ri ekonomik dhe rregullativa ligjore (New Economic System and Legal Regulations)*, Prishtina, 1998, p. 110.

¹² The Economic Times, 2015.

¹³ Estrin, S., Bennett, J., Urga, G., Maw, J.: Privatisation Methods and Economic Growth in Transition Economies, *FEEM Working Papers*, (105.04) 2004.

¹⁴ Megginson, W., Netter, J.: *From State to Market: A Survey of Empirical Studies on Privatization*. *Journal of Economic Literature*, 39(2) 2001.

¹⁵ De Castro, J. O., Uhlenbruck, K.: Characteristics of privatization: Evidence from developed, less-developed and former communist countries, *Journal of International Business Studies*, (28) 1997, pp. 123-143.

competition, as well as with the aim to reduce government intervention in the economy. Other reasons for privatization are considered to be categorised as low level of management, lack of resources for development, but also lack of investment in outdated equipment. Scientific theories that deal with the topic of privatization have brought forward arguments that with privatization, better utilization of physical and human resources is achieved¹⁶. Economists consider that developing countries have used privatization as a tool to improve the productivity of social enterprises, which is usually two to three times lower than the performance of private enterprises, and in some cases, as in the provision of better-quality services, but also the approach of capital investments, even lower. According to the trends and development of privatization, for the period 1990 - 2003, 120 developing countries have carried out 7860 transactions during their privatization process.¹⁷ Another argument, which goes in favour of privatization, is that enterprises which are subject to planning for their development, from the central level, are ineffective, therefore, by privatization is achieved the removal of their ownership rights from centralist planning. As for the process of privatization in the various states of Central and South-Eastern Europe, the same path or the same concept has not been followed. In fact, because of the process of implementation of privatization, different concepts of privatization are presented, which can be summarized in two main ones. The first is the concept of rapid privatization through shock therapy known as “big bang” or radical. Whereas the second is the gradual concept of privatization, known as “step by step”.¹⁸ It should be borne in mind that in transition countries, privatization has not been possible to be carried out easily and with an accelerated procedure for various reasons. In these countries, various experiments, known as “pilot projects”, are often designed and implemented for several issues that provide the opportunity to change the legal framework, transferring experiences from other countries without accurate calculations. However, for these countries, some authors consider privatization as the only way out of the economic crisis.

3. METHODOLOGY

During the work on the study, I have utilized various scientific and professional resources, including university texts, scientific papers and articles, analyses, statistical data, constitutional and legislative acts related to democracy, the rule

¹⁶ Estrin, S., Hanousek, J., Kocenda, E., Svejnar, J.: The Effects of Privatization and Ownership in Transition Economies, *Journal of Economic Literature*, 47(3) 2009.

¹⁷ Kikeri, S. Nellis, J. Shirley, M.: *Privatization- The lessons of Experince*, World Bank, Washington D.C., 2005.

¹⁸ Bashota, N.: *Ekonomia Politike (Political Economy)*, Prishtina, 1998, p. 472.

of law, and especially the privatization of public and social property. The study was conducted with various scientific methods, especially with the empirical and analytical methods and with the methods which are typical for scientific research in the social sciences. Numerous analyses suggest that the process of transformation and privatization does not develop along a constant, unchanged line. The privatization processes so far go in the direction of the implementation of different techniques and models, as a result of the legalization of the specific circumstances of the economies of different countries and the goals that are set to be achieved with privatization. As the most important methods for the privatization of socialist economies in the Eastern European countries, are distinguished the following: 1. sale; 2. leasing of companies (granting on concession); 3. sale of shares to workers and managers; 4. private sale of shares; 5. free distribution of shares to citizens; 6. distribution of shares to employees; 7. distribution of shares (vouchers) to citizens.¹⁹ As models of privatization are considered: distribution of shares to company employees (internal privatization), distribution of shares to all citizens of adult age (voucher system), sale of shares to local or foreign strategic investors, as well as return of properties to former owners, whose property was nationalized during communism without compensation.²⁰

Kosovo Trust Agency (2002) defines it as the preferred method for the privatization of social enterprises: spin-off, special spin-off, liquidation, and long-term leasing. The spin-off method will be used for the first time in the privatization of the Kosovar economy. In terms of operating policies, it is considered that an enterprise has met the criterion of sustainable business if the enterprise with social capital has paid off its debts and has enough working capital left to successfully conduct its business activities. Unlike the ordinary spin-off, which had as a basic element the high bidding price, the special spin-off, in addition to the condition of the highest bidding price, also requires the fulfillment of some other elements. Voluntary liquidation means that an enterprise with social capital can close down the business and liquidate. Liquidation, as a method of privatization, has also been applied in many other countries in transition, in cases where the enterprise was not solvent and could not fulfil its obligations to the state and creditors. As another method of privatization according to the Regulation of the Kosovo Trust Agency (2002/12, 2002), long-

¹⁹ Podvorica, H.: *Procesi i transicionit dhe privatizimit të pronës në disa shtete të Evropës Qendrore, Juglindore dhe në Kosovë (The process of transition and privatization of property in some countries of Central and South-Eastern Europe and in Kosovo)*, Prishtina, 2004, p. 165-166.

²⁰ Estrin, S., Bennett, J., Urga, G., Maw, J.: *Privatisation Methods and Economic Growth in Transition Economies, FEEM Working Papers*, (105.04) 2004, p. 89.

term leasing is provided, where it is expressly defined that an investor can lease the assets of a state-owned enterprise for a long term. Bennett, Estrin, and Maw (2004) argue that the choice of privatization method is determined by the bargaining power of governments against potential buyers. The more severe the economic situation of a country, the more potential negotiators use the opportunity to sell properties at a lower price, so that they themselves can benefit from these transactions. Megginson and Netter (2001) consider that several factors influence the method of privatization, which include: (1) the history of asset ownership, (2) the financial and competitive position of Social Enterprises, (3) the government's ideological view of markets and regulation, (3) the past, current, and potential future regulatory structure in the country, (4) the need to pay important interest groups in privatization, (5) the ability of the government to commit credibly to respect property rights of investors after alienation, (6) capital market conditions and the existing institutional framework for corporate governance in the country, and (7) the government's willingness to allow foreigners to own alienated assets. States that have implemented policies of social property privatization have had many dilemmas and difficulties in finding the most suitable ways and methods of privatization. These dilemmas are related to the ways and specifics of each state which differ from each other. Therefore, a model of privatization used in one country does not mean that it is suitable for the other country. Full privatization has been found to have led to 'outsider' ownership in both Hungary and Estonia, where there was a high ratio of foreign participation. Privatization in countries in transition has often happened to be a peaceful, but also civilized, revolution.²¹

3.1. PRIVATIZATION AGENCY OF KOSOVO (PAK)

The Agency is authorized for administration, including authorization for the sale, transfer and liquidation of enterprises and assets of Social Enterprises. For the realization of this mission, the Agency maintains and administers each enterprise (under its mandate) in trust and for the benefit of their owners and creditors, as well as sells or liquidates enterprises and assets following the law.

The Privatization Agency of Kosovo is an independent Agency established by the Assembly of Kosovo and constitutes one of the fundamental pillars of the economic structure of the country. Its mandate is directly related to building a free market economy through the transformation of social property, which should empower the private sector, as the main carrier of economic

²¹ Mema, F.: *Nga anon balanca e pas privatizimit të ndërmarrjeve? Dështim apo Sukses (Which way is the post privatization of enterprises balance leaning? Failure or Success*, Tirana, 2007, p. 156.

development. In support of the Government, the Agency has helped and advised regarding the establishment of the Sovereign Fund by the Government. Social Enterprises (SOEs) have operated in various sectors including metal processing, plastic, paper, hospitality, mining, agro-industry, agriculture, forestry, construction material, construction, textile, winery and winegrowing, beer production, tobacco, wholesale, and retail. SOEs occupy about 90% of Kosovo's industry and mines, 50% of commercial retail space, and less than 20% of agricultural land, including all commercial agricultural land and most of Kosovo's forest land. Most of Kosovo's industrial property, agricultural land, forests, commercial urban land and commercial property are owned by SOEs. The privatization of these assets and the attraction of foreign investors as well as those from the diaspora, the region and Kosovo are expected to have a positive impact on the economy and the creation of new jobs. Currently, there are 595 Enterprises/working units which are under the administration of the Agency of which:

- 516 make the total of Social Enterprises and New Enterprises; and
- 79 make the total of assets/working units in Kosovo, where the headquarters of SOEs are outside Kosovo (see Table 1).

Table 1. Number of assets (Social Enterprises) under the administration of the Agency

Number of assets (Social Enterprises) under the administration of the Agency	595
Put on liquidation	579
Number of SOEs on liquidation closed by decision of Special Chamber	(37)
In the process of liquidation	542
Kosovatrans and Forestry Economies that will not be put on liquidation	9
Not put on liquidation yet*	18

Source: PAK Annual Report, 2022

3.2. SALE OF ASSETS

Since 13 June 2002, when the privatization process officially began in Kosovo, until 31 December 2022, the total assets sold in Kosovo are 2289, from 120 sales waves, while the amount of sales of these assets is: 771,474,206 euros.²²

²² Privatization Agency of Kosovo, Annual Report, 2022.

Below we illustrate the process of funds for Social Enterprises under the administration of the Privatization Agency of Kosovo (see Table 2).

Table 2. Process of Funds in Trust from Social Enterprises

	2003 to 31 December 2020	Period 1 January - 31 December 2022	2003 to 31 December 2022
RECEIPTS IN BANK ACCOUNTS	€	€	€
Sales income	771,474,206	6,096,934	777,571,140
Rental income	47,499,730	5,130,354	52,630,084
Interest earned	34,844,700	-	34,844,700
Fee for participation in sales tenders and confiscations of BID deposits	8,875,564	5,400	8,880,964
BID deposits of bidders	-	-	-
Other income	7,452,604	148,330	7,600,934
Founding capital of the Agency	1,013,200	-	1,013,200
TOTAL RECEIPTS IN BANK ACCOUNTS	855,687,749	15,471,311	871,159,060

Source: PAK Annual Report, 2022

4. DISCUSSION

4.1. DEMOCRATIC TRANSITION

The beginning of the nineties in South-Eastern Europe started a new process of democratic changes, of which Kosovo was also a part, which marked the beginning of the overthrow of the socialist dictatorships, as a logical consequence of the democratic processes in the region. After the war of 1998-99, the UN Security Council on 10 June 1999 adopted resolution 1244, with which Kosovo was placed under UN administration,²³ which lasted until 17 February 2008, when Kosovo was declared an independent and sovereign state. Thus, Kosovo adopted its Constitution (2008) which defines its legal and political order. In terms of the governance system, Kosovo applied the model of a par-

²³ Bajrami, A.: *Demokracia Parlamentare (Parliamentary Democracy)*, Prishtina, 2005, pp. 22-32.

liamentary republic, based on the principle of the separation of three powers. Such a parliamentary system of government, is mainly based on the role of the parliament in the formation of the government and the formal election of the President.²⁴ Building the rule of law represents a challenge to the democratic transition in Kosovo.²⁵ Kosovo is, with great difficulty, creating the logic of the rule of law and everyone's obedience to the law. Human and citizen freedoms and rights represent a special segment of the democratic transition.²⁶ This process aims to transform the citizen, as a value of democracy, into a subject of democratic processes.²⁷ According to the legal doctrine, the transition in Kosovo represents a process of profound transformations, in all sectors of economic and social life.²⁸ Changes in economic and social systems are difficult and complicated processes; they require their time and have unavoidable costs. To reach capitalism, the transition must be served with its gene, private property.²⁹ Privatization is the approach that generates institutions and crystallizes the mechanisms of the market economy.³⁰ The goal of the transition is the development of the private sector, which requires the creation of an environment for the development of private initiative and free enterprise.³¹ The

²⁴ Constitution of the Republic of Kosovo, K-09042008, 09.04.2008, Articles: 86 and 95

²⁵ Robaj, A.: *Demokracia parlamentare dhe shteti i së drejtës në republikën e Shqipërisë (Parliamentary democracy and the rule of law in the republic of Albania)*, Prishtina, 2007, p. 58-59.

²⁶ Pëllumbi, S.: *Dritëhije të tranzicionit (Shadow of the transition)*, Tirana, 2000, p. 53 & Biberaj, E.: *Shqipëria në tranzicion (Albania in transition)*, Tirana, 2001, p. 15 & Hana, L., Telo, I.: *Tranzicioni në Shqipëri: arritje dhe sfida (Transition in Albania: achievements and challenges)*, Tirana, 2005, p. 11 & Angel, A.: *Problems of Albanian Democracy*, Tirana, 1995, pp. 12-25 & Omari, L.: *Shteti i së drejtës (Rule of Law)*, Tirana, 2002, pp. 43-46 & Zaganjori, X.: *Demokracia dhe shteti i së drejtës (Democracy and the rule of law)*, Tirana, 2022, p. 70; Saliu, K.: *E drejta Kushtetuese I (Constitutional Law I)*, Prishtina, 2004, pp. 102-106.

²⁷ Robaj, A.: *Demokracia parlamentare dhe shteti i së drejtës në republikën e Shqipërisë (Parliamentary democracy and the rule of law in the Republic of Albania)*, Prishtina, 2007, pp. 58-59.

²⁸ Bajrami, A.: *E drejta e Kosovës në tranzicion (The right of Kosovo in transition)*, Prishtina, 2001, p. 22 & Podvorica, H.: *Roli i pa zëvendësueshëm i Parlamentit të Kosovës në përcaktimin e kornizave të privatizimit (The irreplaceable role of the Parliament of Kosovo in determining the framework of privatization)*, Prishtina, 1997, p.15

²⁹ Cerović, B.: *Privatizacija socijalne svojine (From nationalization to privatization)*, Belgrade, 1991, pp. 288-290.

³⁰ Lavigne, M.: *Transition economy, from the socialist economy to the market economy*, Prishtina, 2002, p. 4 & Mustafa, M.: *Strategjia e zhvillimit të ekonomisë private, aktivitetet ekonomike dhe zhvillimi ekonomik i Kosovës (Private economy development strategy, economic activities and economic development of Kosovo)*, Prishtina, 1999, p. 60.

³¹ Zec, M.: *Privatizacija, nužnost ili sloboda izbora (Privatization, necessity or freedom of choice)*, Belgrade, 1994, p. 1.

transition in Kosovo is closely related to the building of market institutions and the recovery of the destroyed economy.³² The way privatization is carried out constitutes the fundamental determinants of the future economic, social, and political profiling of countries in transition, the increase of economic efficiency and the standard of living.³³

4.2. PRIVATIZATION PROCESS IN KOSOVO

In the economic reform of a country in transition, privatization plays a central role and contributes positively to the transformation of ownership from state ownership to private one, but also the country's economy. Privately owned enterprises are argued to be more efficient than those owned by the state.³⁴ The common denominator of the studies is that private ownership has given better effects than public ownership, in the function of profit maximization and ownership preservation. On 13 June 2002, with the entry into force of the Regulation on the establishment of the Kosovo Trust Agency, the process of privatization in Kosovo officially began, the essence of which is the transformation of social and public property into concrete owners and the construction of the market economy system.³⁵ Privatization as a process has wide variations that depend on the concrete conditions of each country, on the economic level of the country's development, on the objectives set by each government in the economy of a country, as well as on many other economic, political, and social factors.³⁶ In this context, Kosovo should act in the direction of avoiding opportunities for the repetition of flaws and weaknesses shown in other countries.³⁷

After the establishment of the UNMIK Administration, the IV pillar evaluates privatization as a strong priority for the development of the private sector of the

³² Hashi, I.: *Ristrukturimi dhe privatizimi i ndërmarrjeve të mëdha dhe ndërmarrjeve publike në Kosovë (Restructuring and privatization of large enterprises and public enterprises in Kosovo)*, Prishtina, 2002, p. 74.

³³ Baxhuku, G.: *Procesi i privatizimit të ndërmarrjeve strategjike në Shqipëri (The process of privatization of strategic enterprises in Albania)*, Tirana, 2002, p. 115.

³⁴ Hanousek, J., Estrin, S., Kocenda, E. Svejnar, J.: The effects of privatization and Ownership in Transition economies, *Journal of Economic Literature*, 47(3) 2009, pp. 35-40.

³⁵ Podvorica, H.: *Procesi i transicionit dhe privatizimit të pronës në disa shtete të Evropës Qendrore, Juglindore dhe në Kosovë (The process of transition and privatization of property in some countries of Central and South-Eastern Europe and in Kosovo)*, Prishtina, 2004, p. 87.

³⁶ Mema, F.: *Privatizimi në Shqipëri, arritjet, të metat e ardhmja (Privatization in Albania, achievements, shortcomings and the future)*, Tirana, 1997, p. 7.

³⁷ Podvorica, H.: *Roli i pa zëvendësueshëm i Parlamentit të Kosovës në përcaktimin e kornizave të privatizimit (The irreplaceable role of the Parliament of Kosovo in determining the framework of privatization)*, Prishtina, 1997, p. 231.

market economy and the construction of institutions and mechanisms of the market economy in Kosovo.³⁸ Commercialization was first seen as the concept of privatization which shaped the policy of allowing commercialization agreements between socially owned enterprises and private investors.³⁹ However, commercialization endangers the realization of other transition projects, such as: establishing a market economy, and social infrastructure, creating development funds, and financing the development of small and medium-sized enterprises.⁴⁰ As an instrument of privatization, foreign direct investment undoubtedly has qualitative advantages. Investments of new capital would not only improve the performance of enterprises, improving the quality of products and increasing competition but would also solve the important issue of financial and organizational restructuring, replacing outdated technologies with new technologies, the issue of the market and other issues of vital importance for the effective activity of enterprises.⁴¹ Therefore, foreign investments are a powerful engine of modernization. On the other hand, the stable macroeconomic environment constitutes a key aspect for attracting foreign investors, which can bring many important decision-making benefits, including the transformation of technologies, job creation and export development.⁴² The experience of former socialist countries, which were successful in the privatization process, such as Hungary, the Czech Republic, and Poland, suggests that foreign investments are essential in terms of financing development. And, the success of the privatization of these countries is related to the high degree of absorption of foreign investments, with which they changed and supplemented the privatization laws to create security and suitable conditions for foreign investors.⁴³ Of course, the benefits from foreign investments are great, therefore it is necessary that the privatization programs are designed in such a way that there is enough room for the participation of foreigners in the privatization process of the Kosovar economy, investing their capital.⁴⁴ In the first two decades of the

³⁸ Voss, J.: *Social enterprises and their privatization*, Prishtina, 2002, p. 59.

³⁹ International Crisis Group, 2001, p. 21.

⁴⁰ Sadiku, M.: *Metodat dhe modelet e privatizimit në Kosovë (Methods and models of privatization in Kosovo)*, Prishtina, 1999, p. 85.

⁴¹ Podvorica, H.: op.cit., p. 87.

⁴² Lavigne, M.: *Transition economy, from the socialist economy to the market economy*, Prishtina, 2002, p. 4.

⁴³ Selmanaj, S.: *Problemi agrar nyje e përgjithshme në kompleksin e kundërthënive të shoqërisë Kosovare (Agrarian problem is a general node in the complex of contradictions of Kosovar society)*, Prishtina, 2002, p. 199

⁴⁴ Podvorica, H.: *Procesi i transicionit dhe privatizimit të pronës në disa shtete të Evropës Qendrore, Juglindore dhe në Kosovë (The process of transition and privatization of property in some countries of Central and South-Eastern Europe and in Kosovo)*, Prishtina, 2004, p.

privatization process, many empirical studies were undertaken by many economists and researchers, especially in the first years of transition, as it was a new, interesting, and quite challenging process that was happening. The study data for 21 countries, according to the research conducted in 79 privatized companies, prove that there has been a significant increase in profit, more efficient working operations, increased capital investments, increased employment, etc.⁴⁵ The studies also examined privatization experiences in Central and Eastern Europe. Thus, a study by a group of authors⁴⁶ compared privatization and performance in 128 privatized enterprises and 90 state-owned enterprises in the Czech Republic, Hungary, and Poland, during the years 1990-1993 after the start of privatization. They found that privatization on average increased performance, while the main effects were immediate increases in revenues and profits in enterprises that were privatized by foreign buyers. Barbara & Patena⁴⁷ addressed, among other things, special factors, such as the impact of the legal basis - policies on the performance of enterprises and their impact on financial and operational performance. They undertook the study of a database of 6228 private and state enterprises in countries such as the Czech Republic, Hungary, Bulgaria, Romania, Slovakia, and Slovenia, which they looked into for the period 1992-1995. Their results show that the legal basis has a significant impact on the performance of enterprises. The opinion of economic experts is that substantial reforms in the economy are only possible if the people of the respective country are also enabled to participate in such debates.⁴⁸ The basic condition for achieving this goal is transparency over the entire privatization process. The people need to understand the benefits and achievements that privatization brings, to ensure broad support and avoid misunderstandings. Surveys conducted two years after the privatization initiative in Poland proved that only 2% of the population fully understood what privatization is, while 30% of the population had no idea what such a thing could be.⁴⁹ In

107 & Mustafa, M.: *Program cilësor dhe strategji të qëndrueshme të privatizimit (Quality program and sustainable privatization strategies)*, Prishtina, 2001, p. 29.

⁴⁵ Estrin, S., Bennett, J., S., Urga, G., Maw, J.: Privatisation Methods and Economic Growth in Transition Economies, *FEEM Working Papers*, (105.04) 2004, p. 89.

⁴⁶ Frydman, R., Gray, C., Hessel, M., Rapaczynski, A.: When does Privatization work? The Impact of private Ownership on Corporate performance in the Transition Economies, *Journal of Economics*, 114(4) 1999.

⁴⁷ Barbara, B., Patena, W.: Post Privatization Corporate Performance in Poland, *CASE Working Paper*, 125(1) 2015.

⁴⁸ Sullivan, D. J., *Announcement on prosperity, privatization of state enterprises*, Vienna, 2002, pp. 35-55.

⁴⁹ Toland, M.: *Privatizimi është proces i domosdoshëm në Kosovë (Privatization is necessary process in Kosovo)*, Prishtina, 2001, p. 83.

Kosovo, informing the people about the privatization process, in general, is insufficient. The lack of transparency creates a vacuum related to the progress of privatization, hinders the possibility of building public opinion, and reduces prevention against the negative phenomena of the transition process and privatization in general.⁵⁰

4.3. LEGAL REGULATION

There is no real privatization, which will enable the transfer of social property into the hands of private property and the creation of market institutions and mechanisms without a real legal framework. The experiences of the former socialist countries of Central and Eastern Europe showed that the lack of a legal framework, in most countries, caused irreparable damage to the overall process of privatization. Based on the fact that Kosovo in the period from 10 June 1999 to 17 February 2008 was under the international administration of the United Nations Organization, called UNMIK, then, according to its competence, UNMIK started issuing the first legal acts in the field of privatization. Thus, on 13 June 2002, it issued Regulation 2002/12⁵¹, on the creation of the Kosovo Trust Agency (KTA), where the KTA is defined as an independent body with full legal identity, which has the powers to administer socially owned enterprises and public enterprises.⁵² The regulation of the Kosovo Trust Agency could not in any way fulfil the existing legal gap for the implementation of the privatization process, since Kosovo, like other countries, needed laws that would regulate not only the operating techniques of privatization and administrative procedures but also other areas related to the regulation and functioning of market mechanisms and institutions. With the provisions of the Regulation, the Kosovo Trust Agency was established as a completely independent body, leaving aside the Assembly, the Government, and scientific and professional institutions. However, after 17 February 2008,⁵³ when Kosovo was declared an independent and sovereign state, the privatization process also changed its course as from now on the privatization process will be regulated and administered by the state bodies of the Republic of Kosovo. Thus, the

⁵⁰ Vaszka, E.: *Privatizimi në Hungari, rezultatet dhe çështjet e hapura (Privatization in Hungary, results and open issues)*, Prishtina, 2001, pg.108; Sadiku, M., *Privatizimi i Kompanive të mëdha shoqërore (Privatization of large social companies)*, Prishtina, 2002, p. 108.

⁵¹ UNMIK: Regulation, 2002/12, on the Establishment of the Kosovo Trust Agency, 2002.

⁵² Wittkowsky, A.: *Some views on the Regulation, for the creation of the Kosovo Trust Agency*, Prishtina, 2002, pp. 13-16.

⁵³ Constitution of the Republic of Kosovo, Article, 1.

Assembly of Kosovo issues the Law on the Privatization Agency of Kosovo⁵⁴ as well as other laws related to privatization, as well as a significant number of legal acts are issued by the PAK itself⁵⁵ as follows: General Rules of Tender- 2022; Law on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency related matters⁵⁶; Law no. 04/L-035 on the Reorganization of Certain Enterprises and Their Assets⁵⁷; Law no. 04/L-061 on sale of apartments in which there is tenure right⁵⁸; Law no. 02/L-33 on Foreign Investments⁵⁹, etc.

4.4. SPECIAL CHAMBER OF THE SUPREME COURT

In 2011, the Assembly of Kosovo issued a law on the establishment of a special court related to privatization.⁶⁰ The purpose of this law is to determine the jurisdiction, competencies, organization and functioning of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency-Related Matters (Article 1). This law has been supplemented and amended several times (2012, 2014, 2016, 2017), so that in 2019, this law was repealed and the new Law on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters⁶¹ which is in force was adopted. So, the Special Chamber of the Supreme Court is competent for all issues related to privatization in Kosovo. However, this court, even though according to the law has jurisdiction only for matters related to the Privatization Agency, it is not efficient and functional at all, as the statistics regarding the number of disputes before this court are concerning. According to the figures of the Privatization Agency, there is an extremely large number of judicial disputes before this court, namely, about 16,000 cases registered in the Special Chamber and 9,000 unconfirmed cases all unresolved⁶².

⁵⁴ Law on the Privatization Agency of Kosovo, Law No.04/L-034.

⁵⁵ General Rules of Tender, 2022.

⁵⁶ Law on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency related matters. (2011,2012, 2014, 2016, 2017).

⁵⁷ Law on the Reorganization of Certain Enterprises and their Assets. (2011, 2022).

⁵⁸ Law on Sale of Apartments in which there is Tenure Right. (2012, 2022).

⁵⁹ Law on Foreign Investments. (2006, 2014).

⁶⁰ Law on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency related matters. (2011).

⁶¹ Law no. 06/L-086

⁶² Kosovo on Privatization Agency, Annual Report, 2022.

4.5. ADMINISTRATION OF ASSETS

According to its mandate, from 2002 to 31 December 2022, the Agency has administered and seeks to administer (including assets outside the territory of Kosovo) a total of 4,628 assets of Social Enterprises. This number represents the number of all sold and unsold assets that have been identified by the Agency within the Republic of Kosovo and outside the Republic of Kosovo. Below are tabular data of assets by territory or type from 2002 to 31 December 2022.⁶³

The remaining (unsold) assets with which PAK still administers are a total of 2,365, of which 1,548 are assets from the land category, while the assets outside Kosovo are 163 assets of Social Enterprises.⁶⁴ However, this number may change in subsequent periods, depending on the change in the status of SOEs or the identification of the assets of the respective SOEs (see Table 3 and Table 4).

Table 3. Number of unsold assets by category and region

Region	1 Other Assets	2 Agriculture Lands	3 Other Lands	Total	%
Pristina	234	245	62	514	23%
Peja	209	271	142	572	26%
Prizren	131	408	21	490	24%
Gjilan	44	173	30	249	11%
Mitrovica	198	170	27	406	17%
Total	816	1267	282	2365	100%

Source: PAK Annual Report, 2022

Table 4. Number of unsold assets outside Kosovo

Country	Number of assets	%
Bosnia and Herzegovina	15	9%
Croatia	5	3%
Montenegro	35	21%
Macedonia	8	5%
Serbia	99	61%
Slovenia	1	1%
Total	163	100%

Source: PAK Annual Report, 2022

⁶³ Op.cit.

⁶⁴ Op.cit.

4.6. SUCCESSES AND FAILURES

Privatization does not produce the same effects in developed and less developed countries. Privatization is easier to be carried out in countries with free market economies, while in less developed countries and transition countries, privatization is necessary for development. Scholars of economics point out that attention to the effects of the success or failure of privatization is being focused on the financial dimensions of performance, such as profit, operational efficiency, and productivity. In support of this, a scientific study on performance impacts, conducted by Frydman et al. (1999), on 500 privatized enterprises in the Czech Republic, Hungary, and Poland, has proven that foreign-owned enterprises perform better than internally owned ones. Another study was conducted on seven countries in transition, the Czech Republic, Hungary, Romania, Poland, Bulgaria, Slovenia, and Slovakia.⁶⁵ Analysing the operational performance of state-owned enterprises and privatized enterprises, concluded that privatized enterprises operate better than state-owned enterprises, especially in the second year of privatization. In a study report carried out in Kosovo regarding the performance of privatized enterprises, it is proved that the performance of enterprises that have been privatized with a special spin-off has a higher monthly turnover than that of those enterprises that are privatized with the normal spin-off. However, despite the maximum commitments of the PAK to accelerate the process of transformation of social property according to its legal mandate, there are a significant number of external factors that present a challenge to the process as a whole. These challenges remain for the following years as well, and as such can be summarized as follows:

- Extremely large number of judicial disputes (about 16,000 cases registered in the Special Chamber and 9,000 unconfirmed cases), about 3,000 cases in basic courts as well as 2 international arbitrations);
- Lack of updates on expropriations and payments for expropriations from Government Decisions that consequently affect unreasonable delays in the distribution of 20% to employees and delays in the liquidation of SOEs;
- Illegal constructions on social properties - the dynamics of their treatment, delays the liquidation process of SOEs;
- The lack of a final legal solution for the facilities of Social Enterprises in use by public institutions (leasing or expropriation);
- Lack of cadastral updates in municipalities;

⁶⁵ B 2562268, 2015. Barbara, B., Patena, W.: Post Privatization Corporate Performance in Poland, *CASE Working Paper*, 125(1) 2015.

- An international arbitration (Sharrcem) where the PAK was sued; and
- Two arbitrations (Grand Hotel and Petrol Stations) where the Republic of Kosovo was sued.

5. CONCLUSION

States that have implemented social property privatization policies have had many dilemmas and difficulties in finding the most suitable privatization ways and methods. This process was especially difficult in the countries of South-Eastern Europe where in addition to the building of the rule of law and stable democracy, the process of privatization, which sought to be harmonized with the building of the market economy, was necessary to be implemented. The privatization process in Kosovo has been dealt with more by local and regional researchers and less by foreigners. It is important to mention that very well-known researchers of privatization in different countries of the world (Lopez-Calva and Roland) have also dealt with privatization in Kosovo, where among other things, they have analysed the obstacles of privatization in Kosovo. They have concluded that there are five main obstacles to this process such as the political environment, the administrative efficiency, the flow of shareholders, the structure of the market, and the obstacles in the issue of information. The results of the study of the process of democratic transition and privatization of social property in Kosovo lead us to the following conclusions:

- Economic and property transformations are a special challenge of the democratic transition in Kosovo. The difficult economic situation and high unemployment are challenges for the future of the country and the democratic transition.
- Spontaneous privatization in almost all former socialist countries, including Kosovo, represents an unlawful transformation of property. This phase of transition and privatization was accompanied by many weaknesses and uncertainties.
- The delays that appeared, related to the issuance of the legal framework, as a result of the malfunctioning of the rule of law in the first stages of privatization, enabled the emergence of anarchy and legal uncertainty.
- Increasing economic efficiency and building a market economy system is the fundamental goal of all countries in transition. The construction of the open economy system is also an important element for the development of the private sector, which enables the rapid growth of employment and economic well-being.

- Kosovo approaches the privatization process with a very big thirteen-year delay compared to other former socialist countries in Eastern Europe. However, Kosovo had the historical opportunity to learn from the experience of former socialist countries and not to repeat the flaws and mistakes of others.
- The special feature of Kosovo's privatization is that Kosovo is the first country in the world where the privatization process was first administered by the United Nations Administration (UNMIK), and then transferred to domestic state bodies.
- Failure to design an effective privatization process in long-term projections poses a great risk for the outcome of all privatization.

Taking into account the current position of Kosovo and the circumstances in which it is located, we can conclude that the democratic transition, although fragile, with the indicators of democratic development shows that evident results have been recorded in this process.

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