GLPS & BIRN

PANIC SELLING

ASSESSING THE MAIN CHALLENGES AND DEFICIENCIES OF KOSOVO'S PRIVATIZATION PROCESS

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ABOUT GLPS

Group for Legal and Political Studies is an independent, non-partisan and non-profit public policy organisation based in Prishtina, Kosovo. Our mission is to conduct credible policy research in the fields of politics, law and economics and to push forward policy solutions that address the failures and/or tackle the problems in the said policy fields.

ABOUT BIRN

The Balkan Investigative Reporting Network (BIRN) is the leading investigative and analytical journalism organisation in Kosovo. Its award-winning media products include the TV programmes "Life in Kosovo" and "Justice in Kosovo", the Englishlanguage newspaper Prishtina Insight, and the web portals Gazeta Jeta ne Kosove and KALLXO.com. BIRN also has ongoing monitoring projects covering the court system and the implementation of the Kosovo-Serbia agreements. BIRN Kosovo is part of the regional BIRN network, which puts out Balkan Insight and other media products in the region.

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EXECUTIVE SUMMARY

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Executive Summary

Since its inception, Kosovo's privatization process has been subject to vehement criticism. Kosovo's unique position in the world, its status as post-war in addition to post-communist transition, its international administration and ownership disputes with Serbia have meant that the process is more challenging compared to others in the post-communist space. The whole process of selling off all socially-owned enterprises (SOEs) is referred as 'mass privatization' since it was characterized by a rapid sale to private (so-called 'strategic') investors through a tendering procedure. The SOEs were sold without an appropriate assessment or a clear long-term strategy regarding the benefits and consequences for employees or the economy.

This policy analysis aims to provide an overview of the main challenges and problems encountered during the privatization process in Kosovo. The analysis highlights the considerable problems of the privatization process in Kosovo. These include but are not limited to: institutional dualism (the involvement of U.N. institutions and Kosovo institutions), ownership disputes, Kosovo's unresolved international status, methods of privatization, the negative impact on employment, highly under-priced sale of SOEs, corruption, undervalued agricultural land, non-utilization of privatization funds, and the exclusion of citizens from the privatization process. Around 500 SOEs were privatized, but examples of successful privatization cases in Kosovo are extremely rare. Only a small number of enterprises are currently functional and even fewer continue production at pre-privatization levels. Therefore, privatization is considered to have damaged rather than improved the production capacity of Kosovo, and thus its economic prosperity.

This policy analysis provides recommendations for actors and relevant institutions such as the Privatization Agency of Kosovo (PAK), Government of Kosovo, Rule of Law Institutions, and International representatives. PAK must consider the re-tendering option for enterprises sold off through a special spin-off method that failed to meet the tendering obligations. PAK should also revise the criteria for selecting the winning bidder, and ensure more effective monitoring and collection of fines for the investors that fail to meet the conditions. Rule of Law institutions should adopt a more proactive approach to investigate cases of corruption.

Privatization was supposed to be a cornerstone of the transition to democracy and market economies.

I. BACKGROUND

I. Background

Privatization, the process of transfering socially-owned enterprises from public to the private ownership, has triggered the interest of many actors, including politicians, academics private and public employees. Experts in the field both praise and criticize privatization, making its adoption as a policy a challenging decision that requires serious assessment. Privatization offers flexibility and room for innovation while at the same time risks negatively impacting the morale and security of employees. The privatization of SOEs in Kosovo necessitated the establishment of new strategies and legal frameworks with the main aim to develop the economies of developing countries.[1]

After the fall of socialism, profound political and economic transformations characterized post-communist/socialist countries and Kosovo is no exception. Privatization was supposed to be a cornerstone of the transition to democracy and market economies.[2] In western countries, privatization was mainly confined to particular enterprises, but in post-communist countries the privatization process took a different meaning.[3] In these countries, privatization was to play a fundamental role in the transformation of the entire economy into a market-driven one. It required the processing of a large stock of enterprises from state ownership to private ownership, the development of the necessary elements and institutions of a market economy (including the human skills needed for the new economy), and the commercialization of companies before and after ownership changes.[4]

It was been often argued that privatization in post-communist countries in Eastern Europe needed to be rapid and all-inclusive to make the economic transition irreversible, to stimulate allocative and adaptive efficiency, as well as to make the macroeconomic stabilization more credible.[5] By clearly designating property rights, and by reducing damaging state interventions, privatization was considered to provide improved incentives, monitoring and increased competition. Consequently, the improved efficiency was thought to stimulate the private owner to pursue much-needed capital investment.[6]

1 Kousadikar, A. and Singh, T.K. (2013). Advantages and Disadvantages of Privatisation in India. International Journal of Advanced System and Social Engineering Research. Vol 3(1). pp. 18-22
2 Savas, E.S. (1992). Privatization in post-socialist countries. Public Administration Review. Vol. 52 (6), pp. 573-581
3 Goldstein, M. and Gultekin, B. (1994). Privatization in Post-communist Economies: A Theoretical Analysis, NATO Economic Colloquium series
4 Ibid
5 Agarwal, J.P. and Nunnenkamp, P. (1992). Methods and sequencing of privatization: what post-socialist countries can learn from Chile. Kiel Working Papers, No. 527 http://econstor.eu/bitstream/10419/611/1/042680344.pdf
6 Tan, J. (2008). Privatization in Malaysia: Regulation, rent-seeking and policy failure. Routledge Taylor and Francis Group: New Yorkhttp://www.untagsmd.ac.id/files/Perpustakaan_Digital_2/PRIVATIZATION%20 Privatization%20in

It has been often referred to as 'mass privatization,' since irrespective of importance, all SOEs were to be sold hurriedly to private investors via a tendering procedure.

Following the end of communism, many countries saw privatization as a tool to transform their socially-oriented economies towards market economies; given the fact that the former system was considered unproductive and inefficient in fulfilling the social demand.

Therefore, privatization as a concept represented an organized legal process through which the state transferred the title of socially owned enterprises (SOEs) into privately owned enterprises (POEs) with the aim of making these assets and enterprises more productive, efficient and competitive. This in turn would contribute to fulfilling social needs - improving the quality of goods and services and reducing the role of the state in the economy.[7]

Given its specific circumstances, the privatization process in Kosovo can be characterized as one of the most challenging of all post-communist countries. The challenges of the privatization process in Kosovo were characterized by institutional dualism. They were spearheaded by the United Nations Mission in Kosovo (UNMIK) but also by Kosovo Institutions. There was the persistent issue of ownership disputes. Another impediment has been the unresolved status of Kosovo, which declared independence only in 2008. The unresolved status hindered the interest of foreign investors, which in turn negatively affected the flow of foreign direct investment (FDI). Structural and institutional deficiencies, which are frequently stressed as serious impediments to privatization in post-socialist countries, were also prevalent in Kosovo, whose economy operated on non-existent capital markets and insufficient savings.

A specific challenge for Kosovo has been the functionality and revitalization of SOEs due to high depreciation and overutilization of assets, outdated technology, and mismanagement and demolition of many SOEs before and during the conflict. The privatization process in Kosovo has continuously been subject to strong criticism. It has been often referred to as 'mass privatization,' since irrespective of importance, all SOEs were to be sold hurriedly to private investors via a tendering procedure.[8]

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[7] Gashi, H. (2011). The legal conflict regarding the privatization of socially owned enterprises: Amendments to the Law on the Special Chamber of the Supreme Court, the Law on PAK and other relevant laws. GAP Policy Brief

[8] Knudsen, R. A. (2010). Privatization in Kosovo: The International Project 1999-2008. Norwegian Institute of International Affairs: Norway

According to the latest figures on poverty (2011), 29.7% of Kosovars live in poverty

It is generally perceived that the SOEs were sold without a clear long-term strategy regarding potential benefits or consequences on employees or the economy.[9] It can be argued that it was solely concerned with transferring the property rights to private owners and not necessarily with achieving the oft-touted economic goals.

Generally, the process has been characterized by several problems: lack of serious investors (especially foreign ones), corruption, symbolic (paltry) sale prices, high rates of job losses, the delayed yet very unsatisfactory allocation of 20% of the proceeds from privatization to SOE employees and freezing of privatization funds, among others. The privatization process is coming to an end, but it did not meet the intended expectations because only a few privatized enterprises can be considered successful.

Although privatization was the principal economic strategy of international state-builders in Kosovo, after nine years of international and six years of local supervision, Kosovo continues to struggle with high rates of unemployment, poverty and corruption. According to the latest figures on poverty (2011), 29.7 per cent of Kosovars live in poverty and 10.2 per cent in extreme poverty[10], whereas unemployment remains very high, at 35.3 per cent in 2014.[11] Moreover, the economy is persistently characterized by a large trade imbalance due to high dependence on imports and a very low export base.[12]

Therefore, given that the privatization process is almost finished and is perceived as largely unsuccessful and unable to meet its intended economic objectives, this policy analysis aims to provide an overview of the main challenges and problems encountered during the privatization process.

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[9] Visar Ymeri from Levizja Vetvendosje!, Haxhi Arifi, head of BSPK and Safet Gerxhaliu, president of the Kosovo Economic Chamber of Commerce

[10] Households are considered poor and extremely poor when the per capita consumption falls below the set poverty threshold. In Kosovo, the poverty and extreme poverty thresholds are set at €1.72 and €1.20, respectively, per adult equivalent per day (adjusted to reflect the 2011 prices) (SOK Repor 2011)

[11] The figures are for 2011 which at the same time are the latest poverty figures published by the Kosovo Statistics Agency (KAS). For more see KAS (2012). Consumption Poverty in the Republic of Kosovo in 2011 and KAS (2013). Results of the Kosovo 2014 Labour Force Survey.

[12] For a more detailed overview on trade balance figures see the exports and imports times series available at: http://bqk-kos.org/?cid=2,124

The second section briefly describes the process, and examines the institutional and legal framework.[13] The third section analyzes the adopted privatization methods and their respective problems as well as identifying some of the main challenges and problems of the process and their potential impact.

In addition, it elaborates on five important privatization cases and their effects on the economy, employment, and operations of the enterprises. The last section provides recommendations as how policy makers should approach privatization.

We developed a methodological framework which consists of two levels of input. First, we have assessed the legal framework regulating the privatization process, reviewing reports, analysis and opinions in written media concerned with this process. Second, we conducted in-depth interviews with political party representatives, employees and business representatives.

We also requested information and insights from the Privatization Agency of Kosovo regarding the privatization process; however, initially we did not receive any information. After several months, the Agency responded to our second request but no substantial insight on the progress of the overall privatization process was provided.

[13] For a more detailed overview of the legal aspects of the privatization process in Kosovo see Knudsen (2010) (2013); Hoxha (2011) and Muharremi (2005) since these studies are primarily concerned with this aspect

The privatization process is coming to an end, but it did not meet the intended expectations because only a few privatized enterprises can be considered successful.

II. THE PRIVATIZATION PROCESS IN KOSOVO: LEGAL AND INSTITUTIONAL FRAMEWORK

II. The privatization process in Kosovo: legal and institutional framework

When the Yugoslav economy was at its peak, around 300 SOEs and POEs were operating in Kosovo.[14] Unfortunately, during the 1980s and 1990s, due to lack of investment, mismanagement of SOEs, and political conflicts, many enterprises were demolished. After the ravages war, most of the enterprises were in poor condition and thousands of employees remained unemployed. As a result, Kosovo started its post-war, post-communist transition period in a very poor economic situation.

The end of the war marked the presence of international bodies in Kosovo. The United Nations Mission in Kosovo, UNMIK, had legislative and executive authority in Kosovo, led by the Special Representative of the Secretary-General (SRSG) with four Deputy SRSGs. It functioned through four 'Pillars:' (I) Police and Justice, managed by the UN, (II) Civil Administration, also managed by UN, (III) Democratization and Capacity-Building, managed by the Organization for Security and Co-operation in Europe (OSCE), and (IV) Economic Reconstruction, managed by the European Union (EU).[15] From 1999 to 2008 privatization was the main activity of Pillar IV. International officials perceived - in spite of various economic and political problems – that mass privatization was the most suitable and appropriate strategy for Kosovo's economic reconstruction and development. The EU Pillar focused mainly on SOEs (even though it was assumed to be concentrated on both SOEs and POEs) which functioned, inter alia, in the mining, food production, agriculture and transportation sectors. Meanwhile, the social ownership concept was ambiguous and indeterminate since the ownership was 'divided' between workers, municipalities, and the state. Discerning precisely which state was a further complication when the possibilities included the Yugoslav Federation, the Republic of Serbia and former Kosovo Province, which led to serious complications. Due to ambiguity of ownership and concerns over personal liability the international officials were uncertain about how to proceed. This led to delays, and the privatization process started only in 2002.[16]

The Kosovo Trust Agency (KTA) was established based on UNMIK Regulation No. 2002/12 on the 13th of June 2002.

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[14] Sahiti, A., Elshani, A., and Kajtazi, S. (2012). Privatization In Kosovo -Case Study: The Post And Telecom Of Kosovo. In: Society Internationalization - Effectivity and Problems. Peja, Republic Of Kosovo: Dukagjini College. pp.379-386

[15] Muharremi, R. (2005). Misioni I kombeve të bashkuara në kosovë dhe privatizimi I pronës shoqërore përshkrim kritik I procesit actual të privatizimit në Kosovë. KIPRED:Prishtinë

[16] Knudsen, R. A. (2010). Privatization in Kosovo: The International Project 1999-2008. Norwegian Institute of International Affairs: Norway

"The Kosovo Trust Agency (hereafter the "Agency") is established as an independent body pursuant to section 11.2 of the Constitutional Framework. The Agency shall possess full juridical personality and in particular the capacity to enter into contracts, acquire, hold and dispose of property and have all implied powers to discharge fully the tasks and powers conferred upon it by the present Regulation; and to sue and be sued in its own name."[17]

[17] UNMIK Regulation No. 2002/12 on the Establishment Of The Kosovo Trust Agency, Chap. 1, Sec. 1, pp. 1

The KTA was responsible for the administration of public and social enterprises as trustees of their owners, based on the regulations. The KTA was supposed to undertake activities to enhance the value and governance of the enterprises, and perform other necessary tasks as stipulated in the regulation.[18] The main objective of the KTA was to privatize SOEs through methods of regular, conditional, and special spin-off. These in turn were supposed to benefit both the country and the potential owners of the businesses. Through the spin-off method, a new company was created, either as joint stock company or a limited liability company, where the assets of an SOE were to be transferred, but the liabilities would remain with the old enterprise. Shares of the new company would be owned by the old enterprise and administered by the KTA. Potential creditors were eligible to put forth their claims. The shares administered by the KTA would be sold to potential private investors. Besides the highest bid, conditional and special spin-off encompassed meeting conditions related to investments and employment.[19] Proceeds/Earnings from spin-off sales were kept in the Central Bank of Kosovo in a trust fund by the KTA and now PAK. More precisely, each privatized enterprise would have its own account and the proceeds would be kept in the fund until the creditors' claims were settled. Only then could the funds be transferred to the state budget.

Meanwhile, the Special Chamber of the Supreme Court was established by UNMIK Regulation 2002/13 to deal with KTA matters. It has the prime authority for claims and counterclaims related to challenges to the Agency's decisions and fines initially based on Regulation No. 2002/12, claims against KTA for financial losses, enterprises presently and previously administered by KTA, those regarding the recognition of a right, title or interest in property of an enterprise presently or previously administered by KTA, enforcement of powers of the KTA, and other matters specified by the law, amongst others.[20] According to Knudsen (2010), the KTA regulation of 2002 specified that Serbia's transformations should be considered only if they occurred according to the applicable law and did not violate the European Convention of Human Rights. Hence, any transformation that does not meet the two aforementioned criteria should be ignored by KTA.

18 UNMIK Regulation No. 2002/12 on the Establishment Of The Kosovo Trust Agency, Sec. 1
19 Kosovo Trust Agency. SOE Division. Available at: http://kta-kosovo.org/html/index.php?module=htmlpages&func=display&pid=1. Last accessed: 13th May 2014
20 Regulation No. 2002/13 On The Establishment Of A Special Chamber Of The Supreme Court Of Kosovo On Kosovo Trust Agency Related Matters, Sec 4.

The privatization process continued despite international officials' fear of personal liability. Nevertheless, this process stopped during the third wave of privatization for a period of eighteen months, starting in May 2003. This stagnation in the privatization process was attributed to the changed policies by newly appointed managing director of Kosovo Trust Agency, Maria Fucci. She insisted that all of the transformations that took place during the Milosevic regime should be considered valid except if it could be proven that the laws have been violated. Thus, the privatization process was delayed due to difficulties in evaluating the transformations and because of international officials' fear of liability. However her policies were criticized by the US office in Prishtina, KTA staff, experts, and media in Kosovo, so she was dismissed. KTA then amended the regulation and the privatization process restarted on March 2005.

The effect of the delays was manifested in the deteriorated value of the SOEs, because the KTA had not allowed many enterprises to operate in the interim. This in turn had a negative impact on the sales price. There were few potential investors interested, and their bids were considerably lower than the real value of SOEs. As a result, the SOEs were sold at extremely low prices, leaving potential creditor claimants, employees and the economy with very little benefit. The majority of the enterprises were sold short of conditions, meaning that the buyers could close the initial operations, dismiss the workforce, and use the premises as warehouses, gas stations, and apartments.[21]

Kosovo's independence in 2008 led to the transfer of responsibilities from UNMIK to Kosovo institutions. Before the international officials left in June 2008, they terminated the mandate of the KTA and transferred their responsibilities to the PAK, which operated under local authorities.

The PAK was established as a successor of KTA with the promulgation of the Law on the Privatization Agency of Kosovo- Law No. 03/L- 067- which entered into force on 15 June 2008 and then repealed on September 2011 by Law No.04/L-034. [22 / 23]

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21 Knudsen, R. A. (2010). Privatization in Kosovo: The International Project 1999-2008. Norwegian Institute of International Affairs: Norway
22 Privatisation Agency of Kosovo (2009).Work report: August 2008-August 2009. PAK: Prishtinë
23 Law No.04/L-034 On Privatisation Agency of Kosovo

“The Property Agency of Kosova (PAK) is established as an independent public body that shall carry out its functions and responsibilities with full autonomy. The Agency shall possess full juridical personality and in particular the capacity to enter into contracts, acquire, hold, and dispose of property and have all implied powers to discharge fully the tasks and powers conferred upon it by the present law; and to sue and be sued in its own name.”[24]

[24] Privatisation Agency of Kosovo (2009).Work report: August 2008-August 2009. PAK: Prishtinë, pp.7

PAK officials accessed the KTA headquarters on 24 August 2008. They found a confusing and catastrophic condition of the documents and the premises.[25] The office equipment had been removed, leaving the space empty, and the majority of the documents had been either burned in the yard or removed from the offices.[26] Confidential documents related to the decisions of the board of directors and evaluations of SOEs privatized, amongst others, were missing. Nevertheless, a server with electronic copies of KTA documents was found by PAK officials.

Despite the logistical nightmares, PAK continued its work by using regular and special spin-off, and voluntary liquidation methods. Their vision was to privatize and liquidate roughly 599 SOEs and allocate the money to the economy of the Republic of Kosovo.[27] Furthermore, PAK's organizational structure was divided into four areas: the Board of Directors, Asset Sale, Corporate Governance, and Executive Branch. The Board of Directors is the main decision-making body; Asset Realization Division comprises of Sales and Liquidations Department; the Corporate Governance Division comprise of the units of Trepca, Control and Supervisory, Direct Administration, and Monitoring Unit; and the Executive Branch comprises of Departments of Regional Coordination, Finance and Budget, Legal, Administration, and Human Resource. The Internal Audit Unit and Public Relations unit report directly to the management or the Board of Directors.[28] However, PAK Management compiled a reorganization plan so that the Agency functions through two pillars, Sales Division and Liquidation. The implementation of this reorganization commenced in 2012. The Board of Directors, from 2009, consisted of eight members (5 locals and 3 internationals) and from 2010 onwards an observer –either local or international- was added to the structure of the Board.[29] The latter was maintained until 2013. In 2012, the Board consisted of Prof. Asoc. Dr. Blerim Rexha (chairman), Skender Komoni (Deputy Chairman), Bernadette Roberts (Director), Dardane Peja (Director), Haxhi Arifi (Director), Hubert Warsmann (Director), Maja Milanovic (Director), Dr. Mohammed Omran (Director), and Michelle Moran (Observer).[30] The chairman of the Board, Blerim Rexha, was nominated by then-Prime Minister Hashim Thaçi, despite of the fact that the former used to be closely related with the PDK party.

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25 Digjet tërë dokumentacioni I privatizimit. Telegrafi. 8 September 2008 [online]. Available at: http://www.telegrafi.com/ekonomi/lajme-ekonomi/digjet-tere-dokumentacioni-i-privatizimit.html

26 Privatisation Agency of Kosovo (2009). Work report: August 2008-August 2009. PAK: Prishtinë

27 PrivatisationAgency of Kosovo (2009). Work report: August 2008-August 2009. PAK: Prishtinë

28 Privatisation Agency of Kosovo (2009).Annual Report 2009. PAK: Prishtinë

29 Privatisation Agency of Kosovo (2009).Annual Report 2009. PAK: Prishtinë; Privatisation Agency of Kosovo (2010). Annual Report: January-December 2010. PAK: Prishtinë; Privatisation Agency of Kosovo (2011). Annual Report: January-December 2011. PAK: Prishtinë

30 Privatisation Agency of Kosovo (2013). Annual report 2012: March 2013. PAK: Prishtinë

More precisely, Blerim Rexha was the head of the Telecommunications Department in the Cabinet of Good Governance, which had been established by PDK when the party had been in opposition. Rexha became the Deputy Minister for Energy and Mines when PDK came to power. This clearly indicates that the process of board selection was characterized by political interference.[31] During 2013, Rexha, Bernadette Roberts, and Dardane Peja resigned from their positions and were not part of the PAK's Board of Directors anymore.[32] Peja and Roberts stated that they were not satisfied with the way the Agency was managed by Rexha. Moreover, the US Embassy, represented by Roberts on the PAK board, pointed out that the government should hire competent and ethical individuals who pursue a transparent privatization process. Rexha in his resignation letter apologized for not being able to implement the recommendations for increased transparency and change to the privatization models.[33] Even though the Law on Privatization Agency specifies that PAK can hold meetings with five board members, the board completion its essential for the privatization process since the major decisions should be taken by all board members. As a result of undefined delays in appointing the board members, the General Auditor requested that the government draft regulations which would define a clear deadline with regards to the appointments in order for the PAK to initiate its functioning.[34]

Given that the mandate of the international board members expired on 31st August 2014, PAK's board remained with only three board members.[35] For more than a year, PAK's board of directors remained incomplete despite various promises by the government that the board will be completed, first in April and later on in July 2015.[36] Finally, the board members were appointed and then voted by the Assembly in December 2015. Until then, PAK continued to operate without a functional board to make final decisions regarding the privatization process. This led to problems regarding the decisions concerning the use of the privatization fund, tenders, the sale and liquidation of certain enterprises, the allocation of the 20% of the proceeds to the SOE employees, and payments towards potential creditors, among others.

[31] Olluri, P. (2012). Thaçi Nominon Njeriun e Partisë për Shef të Privatizimit. Jeta në Kosovë. 12 November 2012. Available at: http://gazetajnk.com/?cid=1,3,3772

[32] Privatisation Agency of Kosovo (2013).Annual report 2013. PAK: Prishtinë

[33] Hoxha, D. (2013)Valë Dorëheqjesh Që Paralizuan Bordin e AKP-së. Jeta në Kosovë. 17 May 2013. Available at: http://gazetajnk.com/?cid=1,987,5586

[34] Auditori Propozon Konkurs për Bordin e Drejtorëve të AKP-së. Jeta në Kosovë.8 July 2013. Available at: http://gazetajnk.com/?cid=1,3,5981

[35] Arifi, S. Bordii AKP-sëmbetetvetëm me 3 anëtarë.Kosova Press. 3 September 2014 [online]. Available at: http://www.kosovapress.com/sq/ekonomi/bordi-i-akp-se-mbetet-vetem-me-3-anetare-24244/

[36] Mustafa premton se nëprill do tëkompletohetbordii AKP-së. Koha Net. 14 March 2015 [online]. Available at: http://koha.net/?id=27&l=48628;Bordii AKP-sëkompletohetnëkorrik. Aktuale.mk. 22 June 2015 [online]. Available at: http://www.aktuale.mk/bordi-i-akp-se-kompletohet-ne-korrik/

International officials perceived – in spite of various economic and political problems – that mass privatization was the most suitable and appropriate strategy for Kosovo's economic reconstruction and development.

III. PROBLEMS THAT CHARACTERIZED THE PRIVATIZATION PROCESS AND ITS CONSEQUENCES

III. Problems that characterized the privatization process and its consequences

"it was not impossible for many SOEs to re-start production, it is rather that the privatization process stopped it instead of supporting it."

SOEs used to have an important role in Kosovo's economy.[37] According to the KTA (2004), SOEs 'represented 90 per cent of Kosovo's industrial and mining base, 50 per cent of commercial retail space, and 20 per cent of agricultural land - including all prime commercial agricultural land and the vast majority of Kosovo's forests.'[38] Moreover, they used to employ at least tens of thousands of individuals.[39] This clearly shows that SOEs were also a significant potential resource for economic development.

According to Riinvest (2002), following the relatively high decrease in capacity utilization during the period of Serbian control, a stable increase in the level of capacity utilization of SOEs surveyed can be observed. In 1999 it was 28.3 per cent and it increased to 41.8 per cent by 2001.[40] In other words, many SOEs managed to recover during the early post-conflict years and the general trends of these enterprises were positive: because economic activity in 2000 compared to 1999 was doubled. However, this was not observed after privatization. Shock absorbers factory (Fabrika e Amortizatorëve) is an excellent example of successful efforts to re-initiate production after the conflict. This enterprise was about to renew its 1980s-era contract with Renault. However, privatization led to the failure of this enterprise.[41] Its buildings are currently being rented (or have been) to several other private small-to-medium enterprises such as Klan Kosova, Devolli Company and to the Kosovo Customs Agency. It seems that "it was not impossible for many SOEs to re-start production, it is rather that the privatization process stopped it instead of supporting it."[42] According to the latest data, Shock Absorbers Factory is monitored by PAK .[43] Overall, out of around 500 SOEs privatized, very few are considered success stories or even functional. One challenge towards achieving functionality and revitalization has been the high depreciation and utilization of SOEs as well as the outdated technology. In the time that passed, many SOEs lost their share in global markets. All of these factors negatively influenced their prospects of survival in national and regional markets; however, this does not justify the fact that the vast majority of the enterprises failed, bankrupted, and/or are largely unsuccessful. Below we elaborate on some of the main problems that characterized this process as well as the resulting consequences.

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[37] RIINVEST, (2001). SOEs and their privatization/transformation. In cooperation with Center for International Private Enterprise, Washington, supported by USAID. Pristina: RIINVEST; Kosovo Trust Agency (KTA) (2004). Draft strategy of the privatization department of the Kosovo Trust Agency.
[38] Kosovo Trust Agency (KTA) (2004). Draft strategy of the privatization department of the Kosovo Trust Agency, pp.1. Available at: http://www.esiweb.org/pdf/bridges/kosovo/1/14.pdf
[39] RIINVEST, (2001). SOEs and their privatization/transformation. In cooperation with Center for International Private Enterprise, Washington, supported by USAID. Pristina: RIINVEST; Kosovo Trust Agency (KTA) (2004). Draft strategy of the privatization department of the Kosovo Trust Agency.
[40] Riinvest (2002). Socially Owned Enterprises and Their Privatization. Research Report. Available at: http://www.riinvestinstitute.org/publikimet/pdf/10.pdf
[41] Ymeri, V. (2014).Privatization Process in Kosovo. [Interview]. 25th April 2014
[42] Ymeri, V. (2014).Privatization Process in Kosovo. [Interview]. 25th April 2014
[43] The data obtained from the Privatization Agency of Kosovo, November 4, 2015.

1. The decision to privatize

II. The privatization process in Kosovo: legal and institutional framework

One of the major problems with privatization has been the decision to privatize itself, more precisely the circumstances under which the decision was made. In democratic societies, privatization is debated, questioned and analysed by politicians, experts, and other important stakeholders, and the decision to privatize as well as the methods to be applied are generally based on the economic reality of the country.

Contrary to other post-communist countries, privatization in Kosovo was chosen as the principal economic strategy by international officials of UNMIK and the EU Pillar and not by the state itself, given its undefined status. Their decision to choose privatization as the main approach to address Kosovo's economic challenges was not based on particular characteristics or in-depth analysis of the economy.[44] According to Knudsen (2010) "privatization was chosen for Kosovo mainly because UNMIK was a "state building" operation – all operations of this kind implement a template of liberal economic reform – so privatization was predetermined to be the approach to Kosovo's economy for international officials. It was a preset choice." [45] According to Visar Ymeri, President of Levizija Vetevendosje!, known as the "Self Determination Movement," privatization was presented in the public as an unquestionable choice for Kosovo even though it was not based on prior economic analysis proving that privatization was the best strategy for the economy,[46] at least at that particular point in time. However, Zenun Pajaziti from PDK argued that privatization was in fact the best possible alternative.

According to him an important drawback was the lack of sufficient international expertise and political will to perform a more thorough assessment of the situation [at that time] and to install functional mechanisms and proper legal framework.[47] Moreover, although it is a political issue, privatization in Kosovo has been completely treated as a technical one, leaving Kosovars out of the real decision-making process.

[44] Knudsen, R.A. It's about time to question privatization in Kosovo. Albania Press, 07 October 2010 Available at: http://www.albaniapress.com/lajme/12585/Its-about-time-to-question-privatisation-in-Kosovo.html
[45] Knudsen, R. A. (2010). Privatization in Kosovo: The International Project 1999-2008. Norwegian Institute of International Affairs: Norway;
[46] Ymeri, V. (2014).Privatization Process in Kosovo. [Interview]. 25th April 2014
[47] Pajaziti, Z. (2014). Privatization Process in Kosovo. [Interview]. 28th April 2014

2.
Privatization methods: main problems

Regular, Conditional, and Special Spin-offs

The privatization process in Kosovo involved three main methods. Studies reveal that the chosen methods for privatization in Kosovo reflected international officials' caution of directly selling SOEs.[48] The way privatization was designed and the methods chosen failed to ensure that the value, viability or governance of SOEs would be preserved or enhanced. Around 500 SOEs have been privatized since the beginning of the process. Twenty per cent of those were privatized through a special spin-off method and an estimated 10 per cent of all SOEs were put up for liquidation because they were considered non-viable. The vast majority of the enterprises were privatized through regular spin-off sales.[49]

The spin-off methods aimed at selling the assets of SOEs only and not their liabilities. This resulted in the original ownership remaining undefined. More precisely, under this method, the assets of an SOE were channeled by the KTA into a subsidiary company referred to as 'NewCo' which would be sold to a private party via a tender procedure.[50] Therefore, although the NewCo would have the rights and interest of the original SOE, the liabilities would remain with the latter, which would not operate but continue to exist. The criticism behind this method of privatization is that it allowed the buyer to change the operations of the enterprise and/or dismiss the employees. As noted earlier, many enterprises are inactive or have shifted to some other activities and in several cases the former employees remained jobless. By way of comparison, Serbia has cancelled roughly 25 per cent of its privatizations because the buyers changed the operations/activities of the business or were not able to keep up with the level of activity.[51]

Under the 'Special spin-off' procedure, SOEs were sold to investors subject to certain conditions which mainly included commitments to maintain the original operation, to make set investments, and to retain a certain number of employees. The criteria for selecting the winner included a points-based methodology, which involved 50 per cent of the points for the price, 25 for committed investments and the remaining 25 per cent for employment commitments.

[48] Knudsen, R. A (2013). Privatization in Kosovo: 'Liberal Peace' in Practice, Journal of Intervention and Statebuilding. Vol. 7 (3), pp. 287-307

[49] Knudsen, R. A. (2010). Privatization in Kosovo: The International Project 1999-2008. Norwegian Institute of International Affairs: Norway; Ahmeti, N. S'monitorohen ndërmarrjet e privatizuara. Evropa e Lire. 23 February, 2014. Available at: http://www.evropaelire.org/content/article/25274033.html

[50] Muharremi, R. (2005). Misioni I Kombeve Të Bashkuara Në Kosovë Dhe Privatizimi I Pronës Shoqërore Përshkrim Kritik I Procesit Aktual Të Privatizimit NëKosovë. KIPRED: Prishtinë;

[51] Ivan Vujačić, and Vujačić, J.P. (2011) Privatization in Serbia – Results and Institutional Failures.Economic Annals. Vol. 56(91). p. 89-105

The eight successful stories of privatization promoted by PAK

This method was applied in privatizing those SOEs considered the most important for the economic development of Kosovo.[52] However, despite the conditions, the special spin-off was criticized for two reasons. First, a lack of mechanisms to ensure that the potential buyers have the capacity to preserve or develop meaningful operations, stand by their obligations or contribute to increased economic activity and overall development – most of which could be partly attributed to the regular spin-off, as well. Second, another criticism was the lack of mechanisms to ensure that obligations were fulfilled by NewCo buyers.In comparison to Kosovo, Serbia's selection criteria for the potential buyer included, in addition to the employment and investment conditions, an environmental program, as well.[53] Montenegro's criteria for selection of strategic investors included price, records of the company, business plan, employment opportunities, and ecological issues.[54] Moreover, Slovakia published guidelines with 11 specified criteria which were to be used during the evaluation of the privatization projects, such as price, employment, apprenticeship and environmental program, and financial capabilities, amongst others.[55] In Kosovo, the mechanisms for filtering the potential buyers included a standard background check by sending a formal request letter to the police and a short procedure aimed at ruling out the most obvious suspicions of money laundering.[56] According to Knudsen (2010) there are no cases reported where the potential buyer was excluded on this basis during the internationally-led privatization. On the other hand, only eight out of 26 SOEs sold via the Special spin-off turned out to be successful, meaning they managed to fulfill the set conditions.[57] The eight successful stories of privatization promoted by PAK are 'Ferronikeli', 'Kllokoti', 'Vineyard Stone Castle', 'Hotel Theranda', 'Trofta', 'M&Sillosi', 'Peja Brewery and 'Hotel Nora'.[58] First, Ferronikeli employs more than 1000 persons, both regular and contracted, and is the largest private enterprise focused on the heavy industry. It accounts for more than 50 per cent of Kosovo's overall exports. So far, more than €60 million have been invested in this company. Ferronikeli's minerals are exported worldwide to, among others, Germany, China, Italy, India, and Korea.

52 Knudsen, R. A. (2010). Privatization in Kosovo: The International Project 1999-2008. Norwegian Institute of International Affairs: Norway;

53 Ivan Vujačić, I. and Vujačić, J.P. (2011) Privatization in Serbia – Results and Institutional Failures. Economic Annals. Vol. 56(91). p. 89-105

54 Vukotic, V. (2011) Global Development Network South East Europe and the research project on Long-term Development of Southeast Europe: Privatization in Montenegro. Podgorica

55 Mikloš, I. (1995) Corruption Risks In The Privatisation Process A Study Of Privatisation: Developments in the Slovak Republic Focusing on the Causes and Implications of Corruption Risks. Bratislava

56 Ibid

57 Ahmeti, N. S'monitorohen ndërmarrjet e privatizuara. Evropa e Lire. 23 February, 2014. Available at: http://www.evropaelire.org/content/article/25274033.html

58 Privatisation Agency of Kosovo, Storje te sukseshme. Available at: http://www.pak-ks.org/?page=1,17. Accessed on 4 June, 2014

Peja Brewery was privatized in 2006 and in a period of 3 years roughly €20 million were invested.

Second, Water Factory 'Kllokot,' which currently employs 200 persons, produces 7000 litres per hour, around 40 million litres of water each year. In a short period of time, it has managed to be the most successful water company in Kosovo by investing more than €4 million. Kllokot water is available in Albania, Macedonia and Switzerland. It is expected to be part of the ones in the region and Europe. Third, Vineyard and Winery "StoneCastle" located in Rahovec employs roughly 260 regular persons with additional ones engaged during the grape harvest. It is one of the largest wineries in Kosovo and the region because it produces up to 12 million litres of wine and exports its products to various European countries.[59]

Fourth, Hotel Theranda, in Prizren, was highly damaged before its privatization and, in order to become useful and functional, significant investments were needed. Approximately €850,000 have been invested since 2006 which helped it become partially functional. Nowadays, the hotel employs 18 persons and it is expected to increase this number with the completion of the renovation process. The fifth company is Trofta, a fish production company which has had various essential investments since privatization. The investments improved the working conditions and led to a significant enhancement in its fish production, making it very successful. Trofta aims to create new capacities in the fish production and reach regional and European markets. Sixth, after privatization of M&Sillosi, the various investments that took place in order to improve its technology led to a significant increase in the production capacities of flour. Currently, it has a grinding capacity of 200 tons per day and a silo capacity of 55,000 tons of wheat which makes it a very successful and powerful company in Kosovo. Seventh, Peja Brewery was privatized in 2006 and in a period of 3 years roughly €20 million were invested. Its initial capacity was 300,000 hectolitres of beer per year. Now with 612 employees capacity has reached 900,000 hectolitres of beer per year. Last but not least, Hotel Nora did not operate from 1996 until its privatization. Currently, it employs 90 persons. Part of Gllareva Company is Motel and Market Nora, as well as a factory for weapon production which, after privatization, was transformed into a food industry with 50 employees.[60]

59 Data acquired from Privatisation Agency of Kosovo, 9 September 2015
60 Ibid

26 key enterprises for economic development of the country have been privatized through special Spin-off by Kosovo Trust Agency (KTA)

Irrespective of the few success stories of privatization via the special spin-off method, the second most commonly heard criticism related to the special spin-off procedure is the lack of mechanisms to ensure that obligations were maintained by NewCo buyers. Nevertheless, not all enterprises privatized through the method of special spin-off have fulfilled the required obligations under the contract. According to PAK, a total of 26 key enterprises for economic development of the country have been privatized through special Spin-off by Kosovo Trust Agency (KTA). As the successor of KTA, PAK has inherited the spin-off contracts and supervised their respective buyers in terms of fulfillment of contractual obligations. Moreover, a number of enterprises were also privatized with special conditions such as SharrCem, Llamkos, Amortizatoret, Famipa, Dubrava Dairy Farm, Emin Duraku Kompleksi Industrial, Emin Duraku Edico and Trepca Industrial Batteries Factory.

Some of the enterprises privatized through special spin off and special conditions are in the monitoring process whereas some resulted in the withdrawal of shares. More precisely, two enterprises privatized through special spin-off which are being monitored for compliance with the sales contract by PAK are IDGJ Tobacco LLC and NBI Suhareka/Agrokosova Holding. The enteprises privatized through special conditions which are still in the monitoring process are Sharr Cem, Sharrcem, Cattle Farm Dubrava, Emin Duraku Edico, Industrial Combine Emin Duraku, Hotel Onix Bath of Peja, FBI Trepca in Peja, Amortizatorët, Famipa in Prizren and Hotel Union in Prishtina. The rest of the enterprises privatized through special spin-off have been released from the monitoring process by PAK.[61] Additionally, out of all the enterprises privatized through conditions and special spin-off, four of them: MIM Golesh, Hotel Grand, Ztrezovc Mine and Llamkos- resulted in withdrawal of shares due to the non-fulfilment of contractual obligations.[62] A 2014 reports reveal that MIM Golesh enterprise is back under the administration of PAK since its buyer did not fulfil his or her obligations. This decision was challenged and caused protests by the employees who complained that they lost their jobs. According to them, the mine created good conditions to generate income after an investment worth 24 million Euros .

[61] Data acquired from Privatisation Agency of Kosovo, 4 November 2015
[62] Data acquired from Privatisation Agency of Kosovo, 9 September 2015

This protest was supported by the officials of the Municipality of Lipjan who state that employees' concerns and demands should be taken into consideration by PAK.[63] Furthermore, PAK's decision regarding the aforementioned enterprise caused concerns of politicians and management of the enterprise.

They perceive that these decisions are dubious and unlawful and as such PAK should be investigated.[64] In addition, Hotel Grand on 2th February 2015 was included in the process of liquidation since, when privatized, the buyer promised to invest 20 million Euros and employ around 400 individuals. However, he or she was unable to meet investment and employment commitments; hence PAK decided to withdraw the shares of the Hotel Grand buyer which led to the hotel's commencement of the liquidation process.[65] Llamkos enterprise and Ztrezovc Mine were subject to the same fate of withdrawal of shares.[66] This is an indication that the investors bid without having neither the necessary experience in conducting that type of activity nor the capital to meet the investment they committed to undertake in the contract.

On the other hand, the enterprises which are privatized without conditions are not monitored by PAK; hence, it remains a responsibility of the respective municipality to deal with them and decide what activities are allowed to take place in the premises of these enterprises.[67]

63 Punëtorët e Goleshitpovazhdojnë me kundërshtimendaj AKP.Bota Sot. 3 November 2014 [online]. Available at: http://botasot.info/lajme/339065/punetoret-e-goleshit-po-vazhdojne-me-kundershtime-ndaj-akp/
64 AKP, hap ankand për shitjen e materialit të Minierës së "Goleshit" pa përfunduar rasti ne gjykatë. Telegrafi. 24 April 2015. Available at:http://www.telegrafi.com/ekonomi/lajme-ekonomi/akp-hap-ankand-per-shitjen-e-materialit-te-minieres-se-goleshit-pa-perfunduar-rasti-ne-gjykate.html;Musa, P. (2015) Osmani: AKP duhet të hetohet për vendimin e Goleshit. KosovaPress. 15 February 2015. Available at: http://www.kosovapress.com/sq/ekonomi/osmani-akp-duhet-te-hetohet-per-vendimin-e-goleshit-35590/
65 Hotel Grand del në likuidim. Gazeta KNN. 7 February 2015 [online]. Available at: http://www.gazetaknn.com/news/2431/18/Hotel-Grand-del-ne-likuidim
66 Data acquired from Privatisation Agency of Kosovo, 9 September 2015
67 Data acquired from Privatisation Agency of Kosovo, 9 September 2015

In addition to the above, according to Mr. Safet Gerxhaliu, head of the Kosovo Economic Chamber of Commerce, one of the main impediments of a successful privatization process, special spin-off in particular, is the weak rule of law. This enabled the lack of compliance with buyers' contractual requirements.

Therefore, despite a modest success (8 out of 26 enterprises privatized through special spin-off), the overall result of the privatization process is highly unsatisfactory. Most of the enterprises changed operations, dismissed employees, and there were indications of dubious decisions during the entire process. The methods employed by PAK were highly ineffective and given that, the Government, international actors along with the Agency should have come up with alternative methods that could have led to a better and successful process of privatization.

Various countries such as Serbia, Montenegro, and Slovakia, among others, after years of using the same methods with unsuccessful results, applied other methods of privatization which led to better results.[68]

68 Ivan Vujačić, I. and Vujačić, J.P. (2011) Privatization in Serbia – Results and Institutional Failures.Economic Annals. Vol. 56(91). p. 89-105; Vukotic, V. (2011) Global Development Network South East Europe and the research project on Long-term Development of Southeast Europe: Privatization in Montenegro. Podgorica; Mikloš, I. (1995) Corruption Risks In The Privatisation Process A Study Of Privatisation: Developments in the Slovak Republic Focusing on the Causes and Implications of Corruption Risks. Bratislava

Hotel Theranda, in Prizren, was highly damaged before its privatization and, in order to become useful and functional, significant investments were needed. Approximately €850,000 have been invested since 2006 which helped it become partially functional.

PRIVATIZATION CASES IN KOSOVO

Case I: NBI Suhareka (AgroKosova Holding[69])

NBI Suhareka, which used to produce tons of wine and other grape products and owned 700 hectares of grapes, was privatized in 2006. Its employees supported its privatization in order to expand the enterprise and increase production. They were willing to buy the enterprise so that their dedication and effort would be focused on the enterprise and the increase in production. However, they were not supported by neither the then-Mayor of Suhareka, Mr. Sali Asllani, nor the then-Minister of Trade and Industry, Mr. Bujar Dugolli. The latter even suggested that the employees make an agreement with QMI business and buy the company together. Nevertheless, the enterprise was offered to the other bidder, whose offer was around €17,000 higher. The Kosovo Trust Agency signed a contract with the buyers of the enterprise, QMI and Vinicolo Fantinel Group. In order to privatize the enterprises, KTA used the special spin-off method which obliges the owner to commit certain investments, employ a specified number of people and at the same time not to change the location or activity. Once the privatization process finished, real problems started to take place. The shareholders of Ex-NBI Suhareka, now AgroKosova Holding, entered into various agreements which led to the gradual destruction of the enterprise.

Seven months after privatization, all employees were forced out of the enterprise by the new owners and PAK officials. For a period of three months, former employees set up tents in front of the enterprise and reclaimed the property. They accused the officials of KTA and PAK, as well as the Mayor of the Municipality of Suhareka, Mr. Blerim Kuçi of being involved in the purchase of the enterprise along with the foreign investors. This indicates that there was political interference and suspicious deals in the privatization of this enterprise. Mr. Kuçi signed an agreement with QMI, who paid 450,000€ in their name with the promise of selling him (Mr. Kuci) the 'wine cellar' located at the center of the Municipality of Suhareka. In other words, once the privatization process has finished, Mr. Kuçi was to become the owner of the land after destroying the wine cellar. In addition, they claimed that KTA came when the preparatory work was carried out and that their only duty was to send the grapes to the cellars.

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[69] Author's adoptions retrieved from articles and videos from electronic media: 'Jeta ne Kosove' and 'Kallxo'.

The employees left roughly 1 million liters of wine and the officials took all the reserves and instead of sending them to the cellars, sold them in Rahovec. Moreover, during the grape harvest in November, someone cut the grape vines. Former employees state that due to the dubious deals of politicians involved, around 400 employees remained unemployed, and the enterprise is destroyed. The employees met with officials of KTA and then KAP and filed many complaints; however, no action was taken in this regard. They sent evidence of manipulations with the employees and destruction of the grape wines. However, they only received criticism regarding their interference in the business of the owners.

Moreover, the director of QMI (Italian Furniture Center) stated that they invested millions of euros in the enterprise and accused their partner, Mr. Fantinel, of failing to meet investment commitments and seeks more shares in the enterprise. The disputes between the owners were followed by suits and countersuits until September 2014 when the court named Mr. Fantinel the prime shareholder. He expelled the other co-investors, Roberto Migoto and Aziz Tafa.

Despite various attempts, employees were not reinstated, so they continued seeking to return to their positions through protests, during May and November 2014, in front of the company, but they were unable to enter the premises. They requested that PAK withdraw the shares from the current owners since they did not manage to meet their obligations of investing €8.6 million and employing 345 persons.

Case II: Grand Hotel Prishtina[70]

Grand Hotel, which used to be the one of the biggest hotels in Yugoslavia, was privatized by the Kosovo Trust Agency in 2006 through the special spin-off method. The KTA privatized the hotel for €8 million to the owner of 'Unio Comerce' company, Mr. Zelqif Berisha. According to the sales contract, the latter committed to invest roughly €20 million over a two year period and employ over 400 persons. By 2010, the owner had invested €1.2 million and PAK was warning him to comply with the contract.

The hotel's problems commenced when Mr. Selim Pacolli (brother of Behxhet Pacolli) of Mabetex Company and Remzi Ejupi, Eurokoha Company, claimed to own 60% of the shares of Grand Hotel Prishtina. the Special Chamber of the Supreme Court did not recognize Mr. Pacolli and Mr. Ejupi as the owners of Hotel Grand. Despite the disputes among stakeholders, there were accusations of the involvement of bribes by state officials and the former director of the board of PAK, the late Dino Asanaj. Pacolli and Ejupi said that Ukë Rugova, Astrit Haraqija, Gazmend Abrashi and Naser Osmani asked for a bribe in the name of Mr. Asanaj; however, EULEX's investigations were closed against the accused due to lack of evidence.

On May 3, 2012, Privatization Agency of Kosovo decided to withdraw the shares of the "Grand Hotel" from Mr. Berisha because he had failed to fulfil the commitments according to the contract. He was obliged to invest €20.2 Million and hire 270 employees during the first six months and another 540 until the end of 12 months. All these commitments were supposed to be finalized by October 13, 2009.

PAK also provided several penalties to the owner for nonfulfillment of the obligations of the contract, but no payment was received by PAK. Mr. Berisha stated that the reason behind the lack of commitments was related to the ownership disputes and as a result filed a suit against PAK to the Special Chamber of the Supreme Court. On July 17, 2014 the court decided in favor of PAK and withdrew the shares of current owner of the Grand Hotel.

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[70] Author's adoptions retrieved from articles and videos from electronic media: 'Jeta ne Kosove', 'Kallxo', Koha Net, and PAK's decisions.

This decision remained the same even after being brought to the Constitutional Court in 2015. Meanwhile, all employees were paid through the income received from the rent of several stories in the building of the Hotel. Moreover, in the meeting of the Board of Directors of PAK on August 2014, it was decided that Hotel Grand on 2th February 2015 will be included in the process of liquidation which means that all employment contracts will be cancelled according to the law. The 92 employees of Grant Hotel, on the other hand, signed a petition asking for their rights and sent it to the Commission for Human Rights, Gender Equality, Missing Persons and Petitions.

They asked to unblock the current situation of the hotel, sign service contracts with all employees, and remain as employees of Grand Hotel until the sale of the hotel takes place. Meanwhile, the acting Managing Director of liquidation at PAK stated that the process of liquidation has been postponed since the Government could not appoint the Board of Directors. According to him, in the coming months will be decided whether Grand Hotel's workers, which were removed in February 2015, will be part of the hotel or will receive a raise in salaries

Case III: Steel Pipe Factory (IMK)[71]

The Steel Pipe factory (Fabrika e Gypave) operating in Ferizaj, was privatized in 2007 through a spin-off method which left more than 900 workers unemployed. During the privatization process, there were only two bidders, Arian Hasani and Driton Fetahu, who during the first rounds offered €3,350,000 and €200,000 respectively. During the second round, Mr. Fetahu did not change his bidding offer at all, whereas Mr. Hasani offered €7,000 more than in the first round, respectively €3,657,000 Euros. Thus, the Steel Pipe factory was bought by Mr. Hasani, who invested around €13,200,000 into it. According to the factory's employees, Mr. Hasani might have had some under-the-table agreement with politicians and businessmen since his only wealth included an apartment in Ferizaj. According to the lawyer Mr. Baftiu, who has been fighting for the workers' rights for more than 20 years, businessman Mustafa Bucaliu bought the factory for his grandson Mr. Hasani, even though most probably there are also politicians involved. Even though Mr. Hasani refused to say anything on the matter, Mr. Ibrahim Bucaliu, the owner of the Emerald Hotel and HIB, said that he had no personal involvement with regards to the privatization of the Pipe Factory in Ferizaj. In June 2011, the Pipe Factory sold its shares to 'Mabetex', owned by the brother of Deputy Prime Minister of Kosovo Mr. Behgjet Pacolli, for only €3,069,000; a lot less than the factory's worth. With regards to the privatization process, the trade-union director of the factory stated that there were many interested buyers, even foreign ones such as Germany and Bulgaria, however during the spin-off only two bidders were interested, as elaborated above. The former director of the Pipe Factory, Mr. Adem Metushi, stated that Mr. Hasani was a decent person but for sure did not possess the money and wealth to buy the factory. Whereas, PAK spokesperson Ylli Kaloshi said that the Agency verified the buyer's background; – more precisely, the verification process was conducted by the UNMIK organs, according to whom the buyer had fulfilled the criteria. Mr. Metushi further recalled that during the privatization process deputy director of the KTA was Ahmet Shala. According to Mr. Adem Metushi, the privatization of the Pipe Factory was all orchestrated by politically influential figures and assisted by other individuals. In this context, a former member of the KTA board, Mr. Haki Shatri, did not recall much about the case, however, he stated that the management of the KTA at that time had close relations with politicians. He added that there was a belief that

[71] Author's adoptions retrieved from articles and videos from electronic media: 'Jeta ne Kosove'.

someone from the PDK party was leaking information which might be very valuable during a privatization process. On the other hand, the former workers of the Steel Pipe factory, who used to have a stable social and economic life, now live in very difficult economic conditions. Being forcibly dismissed during the Serbian regime from 1989-1999, they sued the factory at the Municipal Court in Ferizaj in order to demand their rights and compensation. The decision of the Municipal Court in Ferizaj in 2002, confirmed also by the Constitutional Court, stated that employees are entitled to receive a compensation amounting to 25 million euros for the 900 employees who had been forcibly dismissed from 1990-2001. According to the judge Mr. Maloki, the court decision had to be executed by the competent institutions, the Government and Privatization Agency of Kosovo. However, in 2008, after being notified by the KTA that the Pipe Factory started its liquidation process, the Municipal Court in Ferizaj issued another decision E. Nr. 469/05 which eliminated the execution of the previous one. In 2010, the Constitutional Court obliged the Government of Kosovo and PAK to compensate the factory's former employees with an amount equivalent to 26 mil Euros. The decision also specified that the Government and PAK should, within 6 months, notify the Court regarding the measures taken for the execution of the judgment; however, no measures were taken by any of these institutions. According to PAK's spokesperson, PAK has fulfilled all of its obligations with regards to this case. The government of Kosovo did not respond at all to queries on this matter. The former employees of the factory have protested constantly in front of the Municipal court of Ferizaj seeking their promised compensation. Up to 2013, they have organized around 100 protests, which take place every Monday in the center of Ferizaj. They have met also with the former deputy minister of finances, Mr. Ramadan Avdiu, who promised that this problem would be solved and that he would personally consult Mr. Blerim Rexha, the former board director of PAK. The protesters also received visits from former Prime Minister Hashim Thaqi in 2014 when they went on a strike in front of the Government building. Shortly after, as decided by the Assembly, the Government of Kosovo and PAK were obliged once again to fulfill their duties and compensate the former employees of the factory with 50% of the total amount. PAK's spokesperson blames the nonfulfillment of this on organizational difficulties, such as the incomplete board of directors. According to the legislation, all decisions on payments made from the privatization material gains require three positive votes of the international board directors of PAK. As of now, the former employees of the Pipe factory have not been compensated and neither PAK nor the Government have done anything to this regard.

Case IV: of Sharr Cem[72]

The privatization of Sharr Cem, a cement plant, assessed as one of the most successful privatization cases in Kosovo, was investigated by the prosecution after the Office of General Auditor had discovered that the factory was sold below the market value. Sharr Cem was sold for 30 million euros in 2010 to the Greek company Titan under dubious and obscure procurement procedures and surely below its market value. Since 2000 Sharr Cem had been commercialized by a Swiss company with a 10 year contract, but six months before the contract expired, the Titan company bought the factory for only 30.1 million Euros, even though according to the municipality officials of Hani i Elezit the factory's annual profit was around 20 million euros. The privatization of the Sharr Cem factory was praised by Dino Asanaj, Board Chairman of PAK as a success and by Mr. Pieter Faith, head of the International Civilian Office (ICO), as the largest foreign investment in the industrial sector in Kosovo.
The Auditor General's report on the financial statements of the Privatization Fund for the period Dec 2010 to June 2011 stated that the PAK had favored from the beginning the winning company of the contract for the advisory transaction services for the privatization of Sharr Cem. According to this report, the procedure for this contract initially went through the procurement unit, but was canceled later in order to proceed with re-tendering through the method of internal procurement procedures. More to the point, PAK sent invitations to only 5 companies for the bidding and selected Raiffeisen Investment as a consultant for €580,000. Raiffeisen Investment, which had been selected through non-transparent procedures according to the auditor's report, determined a sale price for Sharr Cem which was well below market value. Moreover, the auditor highlights that PAK did not respect the privatization procedures and the law, starting from the contracting of the consultant to the eventual privatization of Sharr Cem. Hence, the auditor believes that PAK, negotiating solely with the buyer, favored the Sharr Cem buyer. However, the general director of Titan said that when they took over the management of Sharr Cem after Holcin, they were aware that they would have to compete for the privatization of Sharr Cem as well. According to the legislation, he added, the company managing Sharr Cem had the right to directly negotiate with PAK. Moreover, with regards to the value of the sale, he stated that the company operated at a loss during the first 5 to 6 years, and only then became profitable, but that profits were surely lower than 20 million euros.
Mayor of Hani i Elezit Refki Suma said that the municipality opposed the privatization of Sharr Cem, and that it is against the procedures followed and the sale price, but not against the buyer per-se. According to the mayor, the real value of Sharr Cem is between 80-100 million Euros. For that reason, they filed a lawsuit against PAK. PAK's spokesperson said the agency had led an open and transparent privatization process by notifying local and international institutions operating in Kosovo about the beginning of the privatization

[72] Author's adoptions retrieved from articles and videos from electronic media: 'Jeta ne Kosove'.

process and the methods followed. Moreover, PAK formed a committee for the implementation of this privatization process, with representatives from ICO, European Commission experts on the field, and representatives of trade unions, Sharr Cem Company and PAK officials. PAK's Board of directors, based on best international practices, contracted the transaction consultant Raiffeisen Investment which evaluated the company and offered a fair market price, by taking into consideration the protection of assets, employment, production and environmental protection. The newspaper 'Jeta ne Kosove' requested access to the documents related to the audit of the privatization fund. However, Mr. Lage Olofsson, former General Auditor stated that that is impossible to share these because the case is under investigation from the State Prosecution Office and access to such documents might affect the development of the investigation. The State Prosecutor's spokesperson, Ms. Liridonë Kozmaqi, confirmed that they had the case but said they could not share documents with Jeta ne Kosove due to the prosecutor's absence.[73]

With regards to employment, the mayor said that the new owner dismissed more than 80 beneficiaries of social assistance, who did not work but received 60% of their previous salary. Mr. Mitsou clarified that these employees, who went into early retirement for specific reasons, had an agreement with the previous management. Moreover, according to him, these employees were not on PAK's list when Titan took over the management. In this regard, the employee representative at PAK Mr. Haxhi Arifi, and the director of the Construction workers union Mr. Avni Hajdini did not receive any complaints from Sharr Cem employees since its privatization. Currently, Sharr Cem employs 490 workers, compared to 790 before the privatization. Some of the employees retired and others were dismissed.

With regard to the environmental pollution, the Ministry of Environment and Spatial Planning sued Sharr Cem because they failed to install a system to detect the level of air pollution from the gas and dust emissions in accordance with the Kosovo's laws. The Ministry has also requested that the company start preparing the necessary documents in order to apply for a water use permit and for discharge of water chemicals during the production process. In failing to comply with such regulations, Sharr Cem endangers the environment and the wealth of inhabitants around. With regards to this suit, Sharr Cem representatives were not willing to share any information. According to the Law No. 03/L-160 on Air Protection from Pollution, article 39, the fines for companies which do not comply with the legislation might extend to 50,000 Euros.

[73] The prosecutor was on vacation, as elaborated by Ms. Kozmaqi.

Kosova Petrol[74]

Kosovo Petrol Company has for 12 years been using petrol stations which were built and operated by the Croatian company INA (a former Yugoslavian social enterprise). 45 per cent of the shares are held by the Croatian state. Owner of Kosova Petrol Bedri Selmani currently uses the petrol stations of INA through his established company after the war. In 2000, UNMIK granted Selmani a temporary permit to use the petrol stations in order to fulfill the petrol needs for the country during the winter of 2000, the first winter after the war. However, Selmani still continues to use the petrol stations despite the fact that INA has requested to restart their operations. The Croatian authorities consider this an 'occupation of property,' which has been acknowledged also by PAK.

In 2005, the former President of Croatia Stjepan Mesic and the former Prime-Minister Ivo Sanader requested that Kosovo's institutions to solve this case and return the management of petrol stations to INA. After the visit that President Mesic paid to Kosovo in July 2005, the former Minister of Trade and Industry Bujar Dugolli, requested from the head of Pillar IV of UNMIK Joachim Ruecker and the managing director of KTA Jasper Dick that the petrol stations of INA not be used illegally by Kosova Petrol. However, even after these requests, the KTA board held only one meeting with regards to this topic. According to the former Prime Minister Bajram Kosumi, such requests by the Croatian authorities were made even before 2005. Kosumi personally met with Croatian PM Sanader, and the latter requested that the INA case be solved; however, the Kosovar authorities did not have at that time any answer with regards to the case developments.

The Director of INA filed a lawsuit before the Special Chamber of the Supreme Court in 2005 requesting the return of the property. According to the Sahit Sylejmani, director of the Special Chamber of the Supreme Court, this case is one of the oldest cases not solved yet. Its prolongation may have been the result of changes to judge panels. In the meantime, Selmani, who occupied INA's petrol stations, said that this issue had been resolved legally and he did not want to comment further. An UNMIK agreement specified that Selmani had to pay 35,000 euros per month for the utilization of the petrol

[74] Author's adoptions retrieved from articles and videos from electronic media: 'Jeta ne Kosove'.

stations. Selmani paid his financial obligation only from January 2000 until December 2001, and did not continue to do so despite that fact that he still uses the Petrol stations. He owes millions of euros to the Kosovar state. In 2013 Selmani, who is associated with powerful influential individuals such as Hashim Thaci and parliament speaker Kadri Veseli, received several negative responses with regards to sale licenses his company applied for. According to the Ministry of Trade and Industry, the Division of Market Regulation of Oil, Kosova Petrol currently does not possess any sales license. The argument for the last license rejection highlights that the business entity Kosova Petrol is not in a contractual rental relationship with the owner of the immovable property as confirmed by the Kosovo Property Agency. However, Selmani says that institutions will grant Kosova Petrol sale licenses again since the latter has property rights to use the petrol stations for 99 years, even though Selmani has failed to show such proof to the institutions. Selmani personally met with the former Minister of Trade and Industry Mimoza Kusari in May 2013 about the sale-licenses his company had applied for.

The Minister stated that they could not grant such licenses to the company since the latter had presented the same expired UNMIK document a couple of times which did not prove anything about the property his company had illegally been using. Since the company failed to present a document which shows the valid contractual relationship of Kosova Petrol with the owner of the immovable property, the Licensing Department within MTI in June 2013 rejected also the import license of Kosova Petrol. Before the rejection took place, former MTI officials responsible for licenses simply grant such licenses to Kosova Petrol even though the regulations did not allow it, due to Selmani's powerful political ties. The chief inspector of the market inspectorate, Ruzhdi Shehu, says that they did not initiate any court case against Kosova Petrol since the company's selling points has always met the technical terms. The company has problems with 'property' utilization which is not the competence of market inspectorate. However, between September and November 2013, the Oil Inspectorate filed a complaint against Kosova Petrol with the argument that the company was still illegally selling oil derivatives at 35 points of sale even though its sale licenses had expired and have not been renewed.

In January 2014, the technical staff of Kosova Petrol started a strike since the company had not paid 250 employees since November 2012. Starting in January 2014, seven employees left their jobs since the company had failed to compensate them. The chairman of the Union of Workers of Kosovo Petrol, Ali Sylejmani, stated that some of the employees had sometimes received only 100 euros due to discriminatory practices within the company. According to him, the management and technical staff were not paid at all. However, according to the Labour Inspectorate, by the end of 2013 only two employees had filed complaints against the company for non-compensation. Even though the company and its employees have reached an agreement under the supervision of the labour inspectorate, Kosova Petrol did not fulfill the agreement.

In June 2014, PAK decided to lease 10 of the sale points (petrol stations) used by Kosova Petrol through a public auction. The spokesperson of PAK stated that natural or legal persons who have occupied the property and against which court proceedings were initiated to release the property, cannot participate in the bidding process, as the case of Kosova Petrol. PAK's spokesperson did not say anything with regard to the other points of sale that Kosova Petrol still uses illegally. Consequently, PAK decided that the utilization of these 10 gas stations must be transferred to a new company, IP Kos. INA, the Croatian company which built these points of sale, expressed its discontent with regards to the decision taken by PAK as well as the fact that they were not notified about these changes. PAK, on the other hand, is entitled to administer the social properties until the Special Chamber of the Supreme Court solves the INA case, which was filed in 2005.

Source: Author's research retrieved from articles and videos from electronic media: Jeta ne Kosove, Koha Net, Kallxo, and PAK's decisions.

3. Inclusion of all SOEs in the privatization process

The privatization process in Kosovo is also referred as 'mass privatization' given the fact that it covered all SOEs, irrespective of importance. Even enterprises with significant economic importance were included. Although the special spin-off method was adopted as a means to preserve the enterprises' value and avoid potential change of destination, as noted above, this was not achieved due to several drawbacks highlighted above.

An alternative privatization approach would have been gradual privatization, which would first involve efforts to start revitalizing an enterprise (as proved possible in the case of several SOEs)[75] which would as a result increase its value. This could be followed with a partial privatization (i.e. 30 per cent of the enterprise) in times when the enterprise has produced up to a point when the need for further capital investments would become evident.

This would positively affect enterprises' value as well as attract serious local and foreign investors. Additionally, in order to avoid public mismanagement, the commercialization of management of that particular SOE could have been an additional important step.[76]

[75] For more details see Riinvest (2001; 2002)
[76] Ymeri, V. (2014).Privatization Process in Kosovo. [Interview]. 25th April 2014

4. Ownership disputes

In other words, social ownership as a concept left ownership uncertain as 'no one,' and at the same time 'everyone,' was considered the owner.

After the war, property was inherited from the socialist system of Yugoslavia, which was very different from Western Europe's concept of property. After World War II Marshall Josip Broz Tito and his administration began transforming all property to social ownership. First, there was a phase of nationalization. With the Federal Constitution of 1974, construction and agricultural land, buildings, and apartments, amongst others, became social property. No one had the right to obtain ownership of assets that were considered social property. Thus, the social ownership was divided among workers, municipalities, and the state (In Kosovo, objects could belong to Yugoslav Federation, Republic of Serbia, or Kosovo Province).

These categories were considered the three potential agents of society.[77]
In other words, social ownership as a concept left ownership uncertain as 'no one,' and at the same time 'everyone,' was considered the owner. This ambiguity posed essential difficulties in the privatization of Kosovar SOEs and international officials were worried regarding potential claims against SOEs in Kosovo.[78]

In addition, the international officials feared the possibility of being held liable which led to a delayed and complicated process of privatization and the adoption of 'unique' methods of privatization. Therefore, this resulted in lack of both institutional and individual responsibility.

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[77] Muharremi, R. (2005). Misioni I Kombeve Të Bashkuara Në Kosovë Dhe Privatizimi I Pronës Shoqërore Përshkrim Kritik I Procesit Aktual Të Privatizimit Në Kosovë. Kipred: Prishtinë
[78] Knudsen, R. A (2013).Privatization in Kosovo: 'Liberal Peace' in Practice'. Journal of Intervention and State-building. Vol. 7, No. 3, pp. 287-307

5. Institutional dualism

The privatization process in Kosovo, compared to other countries, was not considered and prepared by the state. UNMIK established an independent authority in charge of leading the process. Nevertheless, the decision-making power remained with UNMIK, since the deputies of SRSG decided the vital votes. In this way, privatization in Kosovo was characterized by an institutional dualism which according to Mr. Hoti, an LDK representative, 'resulted in the process being led by individuals who did not necessarily have the incentives to maximize the value of the privatized enterprises and achieve positive effects on employment and other aspects.'

The institutional dualism had two different impacts on privatization. The positive impact of dualism is the support of international experts whose expertise was crucial for post-communist countries, especially for Kosovo.

The drawback relates to the disagreements regarding the entire process, methods of privatization and decision making among UNMIK representatives and Kosovar institutions. This in turn had a negative impact on proper and adequate decision-making regarding privatization matters. [79]

[79] Gashi, H. (2011). The legal conflict regarding the privatization of socially owned enterprises: Amendments to the Law on the Special Chamber of the Supreme Court, the Law on PAK and other relevant laws. GAP Policy Brief

6. Exclusion of the citizens from the privatization process

A fast track, rather than a gradual privatization, characterized Kosovar SOEs. Because of the speed, citizens lacked the opportunity to participate in this process. Most private individuals had very limited accumulated wealth and most importantly faced severely limited capital constraints, largely due to the unfavourable banking conditions, especially very high interest rates and non-existence of capital markets.

This mainly stems from the methods chosen to privatize such enterprises which did not involve selling shares to either employees or distributing them to citizens in Kosovo as had been the case with other post-communist countries. Serbia in its privatization process used the 'worker buyout model' in which current and former employees and managers as well as citizens were given the opportunity to buy shares at a 30 per cent discount.[80] Employees were given an additional one per cent discount up to a total discount of 70 per cent with each additional year of experience/employment.[81] Montenegro used a similar approach: employees received 10 per cent of the shares for free and were given the opportunity to buy shares up to 30 per cent of the value of capital with a 30 per cent discount and an extra one per cent for each year of experience, with payment obligations for 10 years. Citizens had the opportunity to buy shares that were not bought by the employees, with a 30 per cent discount to be paid for the same period (10 years) with an extra 10 per cent for cash payments.[82]

Slovenia also offered a 50 per cent discount to employees to be able to buy shares with payment obligations within five years.[83] Other countries that adopted this method of privatization including Macedonia, Croatia, Poland, Romania, and Slovakia.[84] If Kosovo would have used this method, it would have saved enterprises from changing their designation and/or activity, increased the productivity and job security of employees.

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80 Hadzic, M. (2002) Rethinking Privatization in Serbia.Eastern European Economics.Vol. 40(6). p. 6-23
81 Ivan Vujačić, I.And Vujačić, J.P. (2011) Privatization in Serbia – Results and Institutional Failures. Economic Annals. Vol. 56(91). p. 89-105
82 Vukotic, V. (2011) Global Development Network South East Europe and the research project on Long-term Development of Southeast Europe: Privatization in Montenegro. Podgorica
83 Mencinger, J. (2006) Privatization in Slovenia.Slovenian Law Review.Vol. 3(1-2). p. 65-81
84 Begovic, B., Mijatovic, B., and Zivkovic. B. (2000) The New Model of Privatization in Serbia. Center for Liberal Democratic Studies: Belgrade

7. Deterioration of SOEs employees' position/situation post privatization

It has been generally argued that the privatization process has diminished rather than improved employment prospects in Kosovo, especially that of former SOE employees. Given that 'workers' councils' have also been given power over SOEs during the Yugoslavian regime –mainly managerial rights – as well as considering their contribution to the enterprise, the provision of allocating 20 per cent of proceeds from privatization to workers seems largely unsatisfactory and insufficient. The representatives of the union of independent trade unions of Kosovo (BSPK) claimed to have asked for a higher per centage of proceeds.

However, their persistence did not lead to successful results. According to the head of this union, the distributed provisions have, on average, amounted to 500 Euros per worker.[85] Moreover, despite its insufficiency, there have been delays in distributing the benefits since, to date, out of 90 million euros total, only 40 million have been distributed.[86] The primary responsibility for the delay has been generally attributed to the ineffectiveness of the Special Chamber of the Supreme Court to issue final decisions.

This encouraged protests by several organized unions which led to PAK's decision to change the policy of partial distribution of 20 per cent. However, even to date, a considerable portion of the funds remains blocked. According to the PAK annual report for 2012, the following have been listed as some of the main reasons for the delay:

a) The unwillingness of the management of some SOEs to prepare and finalize the initial list;

b) An incomplete PAK Board of Directors, which affected the publication of final list for around 20 enterprises, although the procedure of handling complaints by the Complaints Review Committee of Workers Lists (KSHLAP) has been completed;

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85 Arifi, H. (2014). Privatization Process in Kosovo. [Interview]. 12th May 2014

86 The figures are reported in the latest PAK Monthly Financial Reports for period January - March 2013 (trust funds), page 11.

Around 40,000 employees lost their jobs as a result of privatization

c) The lack of final decisions by the Special Chamber of the Supreme Court regarding appeals, the objections submitted by employees in this court as well as significant delays in submitting the information (data) with regard to the number of complaints and objections.[87] Moreover, the absence of international members of the Board of the Privatization Agency[88] created a deadlock not only in the distribution of the 20 per cent of provisions to employees but also in the distribution of payments to potential creditors during the liquidation of SOEs. For the distribution of the abovementioned funds, PAK needs the approval of three international members of the Board which according to law is also the final completion of the liquidation of an enterprise.

Moreover, due to the privatization process, the number of those who have lost their jobs was not even roughly equivalent to the number of those who have found job opportunities in the private sector. A large number of employees remained unemployed after the SOEs were privatized, since most of them either shifted their activities to another field or failed. One of the reasons could have been the reduction in the number of workers due to technological advancements or outdated or irrelevant skills for that particular activity. Former SOE workers encounter chronic unemployment due to very poor employment opportunities.

According to Haxhi Arifi, member of the PAK Board of Directors, around 40,000 employees lost their jobs as a result of privatization. Of particular concern is the fact that most of them are more than 50 years old, a relatively old age to find employment or re-enter the labour market. Therefore, the privatization process can be generally concluded to have resulted in considerably more jobs being lost rather than created. Moreover, the persistently high unemployment rates and sparse job opportunities, especially in rural areas, employment perspective for the former SOE employees seems hopeless. Therefore the majority of former SOE employees today live in very difficult economic conditions.

87 Privatisation Agency of Kosovo (2013). Annual report 2012: March 2013. PAK: Prishtinë

88 Due to the resignation of the international board member Ms. Bernadete Roberts which represented USA, AKP board remains incomplete.

8. Highly underpriced sale of SOEs

Kosovo's factories, hotels, and agricultural land, inter alia, were sold for roughly 600 million euros total.

The perceived underpricing of sales was a prominent feature in the public debate on privatization, which was mainly a consequence of lack of assessments of the value of SOEs. Many SOEs did not have time to become economically viable before being privatized, leading to sales prices well below market value and generally at tremendously low prices. The perceived low value of SOEs in the eyes of potential investors is the result of mismanagement and damage caused for decades as well as the persistence in privatizing these enterprises without first making them functional. As a result, although the privatization process is in its final stages, Kosovo's factories, hotels, and agricultural land, inter alia, were sold for roughly 600 million euros total.

Factories that used to employ thousands of individuals are now transformed into collective residential buildings and warehouses.[89] Considering that such SOEs used to account for 90 per cent of Kosovo's industry, this amount is largely unsatisfactory and insufficient - even if challenges due to the conflict are taken into consideration. Unlike Kosovo, Serbia restructured some of its biggest enterprises before privatizing them so that they could recover and be viable enough to attract sufficient investments.[90]

The contrast is so stark that, as Musa Limani, privatization expert, rightly puts it, 'Tobacco Nis in Serbia alone was sold for 500 million euros.' A single business was sold for more than the price of Kosovo's entire former economy, which was sold off for 600 million euros.[91]

[89] Pare pa bereqet. Gazeta Ekonomia. 23 June 2015 [online]. Available at: http://gazetaekonomia.com/pare-pa-bereqet/
[90] Hadzic, M. (2002) Rethinking Privatization in Serbia. Eastern European Economics. Vol. 40(6). p. 6-23
[91] Xharra, B. Privatizimi drejt fundit. Zëri. 28 August 2013. [Online]. Available at: http://old.zeri.info/artikulli/13458/undefined

9. Negative impact on employment

Privatization is generally perceived as unsuccessful in attracting serious investors that would revitalize, improve and preserve the value of the enterprise. According to the Head of Kosovo Chamber of Commerce, Safet Gerxhaliu, the privatization process in Kosovo lacked foreign investors because they were largely discouraged by weak rule of law and corruption.

The majority of the SOEs were sold without any condition or obligations to maintain the branch designation, employment or on future investments. Consequently, the lack of conditions enabled the owners to use the enterprises in whatever way they saw fit. As a result, most investors used the enterprise as mere buildings (storage, for their land, construction of apartments or other business activities such as hotels, restaurants, etc.) rather than revitalizing them and making them operational. This can be largely attributed to the spin off method, in which only the assets were sold to the investor, who did not have to assume the SOE's obligations to other parties.

This resulted in failure to also fulfill another goal of privatization, generation of employment. Privatization in general has resulted in a very large number of workers losing their jobs. In other words, as argued above, Kosovo has lost more jobs than it has created via the privatization process. This claim was supported by experts on economic issues and by Safet Gerxhaliu, the head of the Kosovo Economic Chamber of Commerce.[92]

[92] Privatizimii "dështuar" indërmarrjevepublike.Telegrafi. 9 February 2015. [online]. Available at: http://www.telegrafi.com/ekonomi/biznes/privatizimi-deshtuar-ndermarrjeve-publike.html

10.
Politicization of the privatization process and corruption

Despite the fact that privatization has been broadly accepted in principle, institutional weaknesses which resulted in problems of patronage and corruption are the main causes for the failure of privatization in developing countries.[93] In developing countries, privatization is characterized by a lack of entrepreneurial capacity and/or capital constraints. More precisely, individuals and/or groups bidding to privatize enterprises may not necessarily be entrepreneurs with proper vision but often are politically powerful and/or well-connected individuals.[94]

Privatization processes have often been considered to provide opportunities for many interested parties to engage in insider dealing and political control/manipulation of the process for their own benefit.[95] Claims of corruption in privatization have been common in the Balkans. According to Balkan Insight, Serbia cancelled almost 30 per cent of its privatization deals due to corruption or mismanagement in 2011. In 2012 the parliament of Montenegro approved a request to investigate claims of corruption associated with privatization of its telecommunications provider in state ownership.[96] With regards to Kosovo, the opposition, NGOs, as well as international diplomats accused PAK of selling SOEs to non-serious buyers with political connections.[97] Doubts have been raised in public about scheming during the bidding processes. The NGO Cohu claimed that the privatization of 'Jugoterm' enterprise in Gjilan was done on an illegal and corrupt basis as it involved several people serving as ministers at that time. According to Cohu, the internal auditor of the KTA and the legal office confirmed that this case involved scheming.[98] There were claims concerning the suspicious involvement of the then-deputy prime minister Lutfi Haziri and minister of internal affairs Fatmir Rexhepi, among others.[99]

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93 Tan, J. (2008). Privatization in Malaysia: Regulation, rent-seeking and policy failure. Routledge Taylor and Francis Group: New York http://www.untagsmd.ac.id/files/Perpustakaan_Digital_2/PRIVATIZATION%20Privatization%20in%20Malaysia,%20Regulation,%20rent-seeking%20and%20policy%20failure.pdf
94 Ibid
95 Hawley, S. (2000). Exporting Corruption;Privatization, Multinationals and Bribery. The Corner House. Available at: http://www.thecornerhouse.org.uk/resource/exporting-corruption-0
96 Karadaku, L and Kabashaj, S. PrivatizimiiKosovës pa njëligjprivatizimi.SETimes, 28 June, 2012(online). Available at: http://www.setimes.com/cocoon/setimes/xhtml/sq/features/setimes/features/2012/06/28/feature-01
97 Bytyqi, F. Kosovo privatization boss quits over transparency concerns. Reuters, 16 May 2013 [online]. Available at: http://www.reuters.com/article/2013/05/16/us-kosovo-privatisation-idUSBRE94F0P220130516
98 For a more detailed reaction see the press release of NGO. Cohu available at http://www.cohu.org/sq/Reagime-p/Komunikat-p-r-shtyp-Nj-privatizim-q-korruptoi-gjysm-n-e-kabinetit-Ceku-69, accessed on 02.06.2014
99 OrganizataÇohu! (2006) Një privatizim që korruptoi gjysmën e kabinetit Çeku. Organizata Çohu: Prishtinë; For more details see the press release of NGO. Cohu available at http://cohu.org/sq/zyre-antikorrupsion-reagime/Nje-privatizim-qe-korruptoi-gjysmen-e-kabinetit-Ceku-101

Several former and current officials of PAK have also been (suspected) accused of abusing power and the Kosovo Police conducted several arrests, but none of these cases have been concluded to date. The case of the enterprise NBI Suhareka is one example of suspicious activities during privatization. This enterprise is being monitored by PAK since it failed to meet the requirements for investment and employment, although it was privatized in 2006. It is also under investigation by Kosovo prosecution and EULEX, due to a dossier compiled by former employees accusing the ex-director of privatization agency, Ahmet Shala, of manipulation and abuse during privatization. The director of NBI Suhareka stated that the mafia is destroying the company and the entire process of its privatization was illegal.[100] According to Jeta ne Kosove, privatization of this enterprise implicated political representatives.[101] More precisely, the former employees accused PAK (and KTA) and erstwhile mayor of Suhareka Blerim Kuci of being illegally involved in the privatization process of the enterprise. The latter however, admitted to Jeta ne Kosove that he had a prior agreement with the investor to destroy the building after the privatization so he could use it for his own land. However, he considered this backroom deal legal.

Other dubious activities involving political interference and misuse of power by PAK undertaken during the privatization process are illustrated in the following examples. First, fictitious bills of around 900,000 euros, including other abuses, were discovered in the Podujeva "Fan" factory which resulted in the arrest of former officials and board members of PAK. This indicates that political officials were involved in the privatization process.[101] Second, it is assumed that during the privatization of cement factory "Sharr Cem," the former management of PAK undertook suspicious activities by violating laws and rules. Investigations began in 2012 when auditors identified that the sale price of the factory was below the market price. Third, various public figures were under investigation for abuses during the privatization of the "Grand Hotel," including the former board director, the late Dino Asanaj, charged with bribery, Uke Rugova, Astrit Haraqija, and Naser Osmani. [102]

100 "Suhareka" nen monitorim te AKP-se. Telegrafi. 31 August, 2013 [online]. Available at:http://www.telegrafi.com/ekonomi/suhareka-nen-monitorim-te-akp-se-46-15576.htm

101 Jusufi, S. Si porrenohet NBI Suhareka?.Jeta ne Kosove.13 December, 2011 [online]. Available at: http://gazetajnk.com/?cid=1,987,862

102 Politika kriminalizoi privatizimin. Kosovalive. 05 May, 2014 [online]. Available at: http://www.kosovalive360.com/politika-kriminalizoi-privatizimin.html

103 Veliu, E. and Selimi, A. Politikakriminalizoiprivatizimin. Zeri. 05 May, 2014 [online]. Available at: http://www.zeri.info/artikulli/33357/politika-kriminalizoi-privatizimin

These examples and many others explain the ineffectiveness of the privatization process along with other abuses and criminal activities undertaken meanwhile. However, to our best knowledge, none of the abovementioned cases or other allegations are concluded. Given that there is a perception in the public that the privatization of several other enterprises has been marked by political interference, abuse of power in privatization, further investigations should take place in order to uncover and punish those involved in cases of corruption or alternatively to clarify that such privatization cases have been fair and correct.

Serbia, Montenegro, and Slovakia during privatization witnessed various cases of corruption and based on that they tried to change the methods of privatization used in order to decrease/avoid the corruption cases or prosecute individuals involved in such cases. Between 1990 and 1994 Slovakia prosecuted 193 individuals. Out of those, 81 were charged, 14 acquitted, 12 convicted, in 3 cases charges were dropped, and no decision was taken with regard to 43 cases.[103]

In contrast, despite suspicions and investigations of various corruption cases, Kosovo's institutions, especially the rule of law ones, have not shown sufficient resolve and effort to deal with these cases.

104 Mikloš, I. (1995) Corruption Risks In The Privatisation Process A Study Of Privatisation: Developments in the Slovak Republic Focusing on the Causes and Implications of Corruption Risks. Bratislava

11. Understated agricultural land

The privatization process has also included selling agricultural land, which turned out to be sold to entrepreneurs, politicians, and construction companies but generally not to farmers. In other words, everyone but farmers benefitted from the process. The farmers and villagers initially owned the land, but land ownership was transferred to the state during the Rankovic regime. Despite their resistance to receive 'modest' compensation in return to their land from the Yugoslavian regime and appeals in courts, the farmers were unsuccessful in re-gaining the ownership of the land. Similarly, they failed to recover the ownership or receive compensation even during the privatization process.

By the end of 2012, some 111 agriculture enterprises and about 25,400 hectares of land were privatized. Only a few of the enterprises are still active. The average price for the land of these privatized enterprises was tremendously low, at 20.14 euros per acre. Although the average price per acre has slightly increased in the last two years, it is nevertheless far lower than real market prices.[104] The land was sold far below the real market value. In other words, the privatization authorities did not set a price floor based on market prices under which the land could not be sold. From an economic development point of view, privatization so far only further weakened the economy and became an obstacle for economic development opportunities. The land of agricultural enterprises of Mirusha in the municipality of Malisheva, which had been the property of the villagers from 1958, was sold for 11 to 12 euros per acre. Because of the construction of the highway in that region, the land that had been sold for 11 Euros then rose in value and when the land was expropriated to build the highway, the compensation value was over 1000 euros per acre. This in turn means that the person who bought it for 10,000 euros received one million euros from the government after only three years.[105]

Since the agricultural land was mainly privatized by entrepreneurs or investors without a clear vision and not by the farmers themselves as well as due to a tremendously higher re-sale price per acre, the land remains largely fallow.

[105] Vetvendosje. Privatizimi ja mori token bujqve! Gazeta Javore Vetvendosje. 8 October 2012. pp. 3. Available at: http://www.vetevendosje.org/wp-content/uploads/2013/09/vetevendosje_356.pdf

[106] Gashi, K. Zyrtarët Malishevas të Përfshirë në Shpronësime. Jeta ne Kosove.26 March, 2012 [online]. Available at: http://www.gazetajnk.com/?cid=1,987,1734; Vetvendosje. Privatizimi ja mori token bujqve! Gazeta Javore Vetvendosje. 8 October 2012. pp. 3. Available at: http://www.vetevendosje.org/wp-content/uploads/2013/09/vetevendosje_356.pdf

According to Liburn Aliu from Vetevendosje, 'the designation of about of privatized agricultural land has changed. During this process, there were few cases of privatization that resulted in production thanks to initiatives of farmers and their persistence despite unfavourable circumstances'.[106]

PAK claims that their job has been to ensure that the land was sold to the highest price bidder.[107] The high share of agricultural land offered a great opportunity to be used in the function of substituting the large dependence of Kosovo on imports.

However, the privatization of agricultural land did not involve any criteria which would ensure that the designation of land would not change. Moreover, the privatization of agricultural land was accompanied by suspicious cases, some of which ended with convictions. For instance, take the case of Nuhi Uka, the former president of the Municipal Court of Prishtina. Uka, along with seven other judges of the district and municipal court of Prishtina, an official of the KBI enterprise and a lawyer were accused of appropriating socially-owned property which had belonged to KBI Kosova Eksport. The judicial decisions of the aforementioned judges caused to the state an estimated damage of roughly 60 million euros. All of the involved parties in this case were found guilty of corruption.[108]

Similar to the other SOEs, privatization of the agricultural land is considered to have had a negative effect on the economy. It damaged the state's economy and the interest of innocent parties who initially owned the land.

107 Privatizimi ja mori token bujqve. Speech of Liburn Aliu in the Assembly of Kosovo session with regards to privatization in Kosovo.
108 Ibid
109 Salihi, Nj. Nuhi Uka: GjykimiQëStimulonKorrupsionin. Jeta ne Kosove.29 September, 2014 [online].

12. Non-utilization of privatization funds

5% are used for the operational expenses of PAK whereas the remaining 75% are kept in the trust fund until the examination of the creditors' claims is completed.

The funds accumulated from the sale of assets of social enterprises stands at about 600 million euros.[109] However, trust funds have not been utilized to fuel economic development in Kosovo, which had been heralded by the actors involved in privatization as one of the main benefits of the privatization process. In the so-called 'trust fund' each SOE has an account where the amount generated from the privatization is transferred. According to the law on PAK, 20 per cent of the privatization funds are distributed to the employees of the respective enterprises, 5 per cent are used for the operational expenses of PAK whereas the remaining 75 per cent are kept in the trust fund until the examination of the creditors' claims is completed.

The funds from privatization therefore are to remain frozen/blocked until the claims of the potential creditors are reviewed. In other words, the way this process is regulated has in fact put the whole privatization process (funds) in favor of the potential creditors – by prioritizing them - rather than in favor of economic development. Despite the delayed utilization of the funds, another criticism relates to the percentage of funds made available for creditor claims. Instead of 75 per cent, a smaller share of the funds could have been allocated for creditor claims, providing means for the remaining to be invested in favor of economic development. So far, the results of the privatization process clearly suggest that the proclaimed aim of boosting Kosovo's economic development through privatization is far from achieved.

In Serbia, on the other hand, from the revenues of the privatization of the its enterprises, 75 per cent were distributed to the State Budget, 5 per cent to Restitution Fund, 10 per cent to the Pension Fund, and another 10 per cent to the Infrastructure Fund. [110]

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110 Privatization Agency of Kosovo (2014). Financial Reports Trust Funds for the Period March 2014. Available at: http://www.pakks.org/repository/docs/140331_Financial_Reports_trust_funds_Jan_ _March_2014_ENGLISH.pdf

111 Ivan Vujačić, I.And Vujačić, J.P. (2011) Privatization in Serbia – Results and Institutional Failures. Economic Annals. Vol. 56(91). p. 89-105

Furthermore, of about 600 SOEs, PAK has so far managed to privatize most of them (406) by creating one or more new private enterprises. 834 new companies were created, their respective contracts were finalized, and 534 assets were sold through liquidation.[111]

Overall, the number of contracts of sale or privatization including asset sales and privatization through Spin-off is 1303. From the privatization process, €600 million has been collected in the trust funds which are deposited in the Central Bank of the Republic of Kosovo. At this point only €30 million has been transferred to the Kosovo budget.[112] Another €170 million is ready to be deposited into the budget; however, since the board of PAK still is not functional, the decision to transfer the funds cannot be signed.[113]

112 Data acquired from Privatisation Agency of Kosovo, 9 September and 4 November 2015
113 Data acquired from Privatization Agency of Kosovo, 9 September 2015
114 Pare pa bereqet. GazetaEkonomia. 23 June 2015 [online]. Available at: http://gazetaekonomia.com/pare-pa-bereqet/

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[115] Data acquired from Privatization Agency of Kosovo, 9 September 2015

IV. CONCLUSIONS AND RECOMMEN- DATIONS

IV. Conclusions and Recommendations

SOEs played an important role in Kosovo's economy until the conflict. Despite numerous challenges they remained a significant potential resource for post-war economic development. This was best portrayed by the successful re-initiation of production by several SOEs during the early years after the war. Nevertheless, out of around 500 SOEs privatized, successful cases are extremely rare and only a small number of enterprises are currently functional and maintain the original activities.

In the process of transforming their economies, developing countries have generally adopted privatization as a strategy to stimulate economic activity. In Kosovo, the process of 'mass privatization' and the decision to choose it as the main approach to address Kosovo's economic challenges was not based on particular characteristics or an in-depth analysis of the economy. The process is perceived to not have met the expectations and has been characterized by several problems such as lack of serious investors, corruption, symbolic sale prices, high unemployment rate, delayed yet very unsatisfactory allocation of 20 per cent of proceeds from privatization to SOE employees as well as freezing privatization funds. Ultimately, privatization is considered to have damaged rather than improved the production capacity of Kosovo, and therefore its economic prosperity.

Given that the process of privatization is almost over, there is little room for improvement. Nevertheless the focus of policymakers and relevant institutions should be directed towards the following issues

The Privatization Agency of Kosovo:

- Must consider the re-tendering option for enterprises sold off via special spin-off method, which failed to meet the tendering obligations.

- Should revise the criteria for the selection of the winning bidder during the re-tendering procedure. More precisely, in addition to the highest price, employment and investment conditions, a sound business plan, environmental conditions, as well as financial feasibility of the buyer should become requirements as well. This is an important precondition for attracting serious investors since it would ensure that the investor has a clear vision of how these criteria would be met as well.

▪ Should ensure more effective monitoring so that the investors that fail to meet the conditions do not delay the fulfilment of criteria without receiving adequate penalties, given that the monitoring period has thus far proved largely ineffective. This would enable the identification of negligible or non-serious investors. Therefore, Kosovo would reap the potential benefits deriving from privatization of such important enterprises, as well as prevent mismanagement and potential change of destination.

▪ Should ensure a more effective collection of fines, otherwise issuing fines will be ineffective since investors will not be driven to comply with the obligations deriving from the contract.

The Government:

▪ Should, excluding Trepca Corporation, propose to the Assembly a special law for transferring the ownership of remaining (un-privatized) SOEs, that have no business future, to the municipalities where they are seated, so that their assets may be used to attract foreign direct investors from the municipal governments (through concessions or PPPs).

▪ Should orient the delayed utilization of the remaining privatization funds towards capital investment projects rather than expenditures (salaries) in order to be available for economic development.

Rule of law Institutions:

▪ Should adopt a more proactive approach to investigating corrupt cases, given the general belief that corruption has been prevalent throughout the whole privatization process and only very few cases have been investigated yet not concluded.

International actors:

▪ Shall, for future reference, select and suggest more carefully the methods and ways of privatization to be adopted by a particular country. They should, beforehand, conduct a thorough economic analysis that would suggest that privatization was the best strategy for the economy of the country and afterwards decide on the most suitable methods of privatization to be adopted.

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