

PRIVATISATION vs RE-PRIVATISATION

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Abstract:

Privatization, that is, the transfer of ownership rights from the public to the private sector, is one of the crucial elements of market-oriented reforms in transition countries. In support of private sector investment in the economy, the Assembly of Kosovo have had adopted a set of laws, among which the 99 year lease of assets of "socially-owned enterprises" (SOEs). The Privatisation Agency of Kosovo (PAK) as the successor of the Kosovo Trust Agency is responsible for the privatisation and liquidation of SOEs. One of the challenges that PAK is facing and which inherited from the predecessor Agency is the unresolved status of "Gjakova Enterprises". These enterprises are pretending to be JSCs, arguing to have been transformed/privatised during the nineties with then applicable and non-discriminatory laws. This way, these companies, known as "Gjakova companies", since 1999 continuously are rejecting the jurisdiction of the Agency as given by UNMIK Regulation 2002/12 respectively, by PAK Law No. 03/L-067. Gjakova, once one of the most industrially developed towns in Kosovo, today the poorest one due to non-operating of SOEs. One of the reasons is said to be unresolved status of SOEs. On the other hand, the Agency failed to privatise most of them due to tremendous resistance of these companies. Thus, the aim of the paper is to assess whether the PAK goal to sell them has to do with privatisation or re-privatisation of certain "Gjakova JSCs". In order to bring a comprehensible view of the topic, a brief chronology of events and legislation at the time when transformation occurred will be presented, a research will be conducted, transformation will be reviewed in case by case studies for three Gjakova enterprises.

Key words: privatisation, transformation, economic development, foreign investments, joint stock companies, Gjakova enterprises.

JEL classification: B10, E20, I18

Introduction

The privatisation programme is run by the Privatisation Agency of Kosovo (PAK). The PAK has the mandate to grant concessions or leases, establish corporate subsidiaries, initiate bankruptcy proceedings and privatise Socially Owned Enterprises (SOEs). There are more than 500 SOEs in Kosovo. Some of them are large industrial complexes, while most SOEs are in the agricultural and trade sectors.

In support of private sector investment in the economy, the Assembly of Kosovo have adopted a set of laws to ensure a very investor-friendly environment including regulations on foreign direct investment, repatriation of capital, the purchase of real estate, the registration of businesses and land, and the 99 year lease of land formerly used by "socially-owned enterprises" (SOEs).

The Privatisation Agency of Kosovo (PAK) as the successor of the Kosovo Trust Agency is responsible for the privatisation and liquidation of SOEs. More than 500 business enterprises in Kosovo have been identified as Socially Owned Enterprises ("SOE-s"). The SOE sector employed an estimated 40,000 - 50,000 people listed as employees, operating in a variety of sectors. Prior to initiation of the privatisation program, the PAK inherited a number of SOE's which were commercialized through leases to local and international investors.¹

Despite the successful privatizations of SOEs in Kosovo done by Privatisation Agencies, the privatization of Gjakova Enterprises was quite successful. Many companies of Gjakova claim to have been transformed into Joint Stock Companies. Whilst, on the other hand, PAK insists to sell out these enterprises, emphasizing the status of these companies as socially owned, strengthening this way the privatization legal framework. The ambiguity of the phenomenon ended up in the Supreme Court of Kosovo in 2010. These various specific complications, including

several SOEs of western town of Gjakova, made the situation in this region even more complex.²

Herein, it has to be emphasized that the author was deeply involved in privatization process undertaken by KTA respectively PAK for several years. Such fact is considered to be a privilege for multiple accesses to data. Along gained experience and close observance of the privatization process, enabled author to accomplish the objective successfully. Hence, the study incorporates the research in three Gjakova companies: "Emin Duraku", "Jatex", and "Deva". Moreover, in order to make a better understanding for the reader, this paper includes economic situation, facts and circumstances of Gjakova Municipality, legal framework of 1990's privatization and of Kosovo, and research of three companies that were picked randomly to conclude the phenomenon of the study.

Purpose

The objective of the paper is to reveal the status of Gjakova enterprises³ which are claiming to have been transformed into private companies in the early nineties.

Research question

Did Gjakova companies adhere to certain applicable laws and was the transformation completed?

Hypothesis

H1: The Gjakova companies were fully transformed into private companies during nineties, and therefore there is no need to undertake a "re-privatisation";

H2: The Gjakova companies did not finalize the transformation initiated in early nineties and therefore must comply with privatization of its assets;

Background information

The autonomous privatization that began under the Marković Law proceeded on a larger scale in Serbia and

¹ PAK Work Report, October 2009

² Rita Augestad Knudsen, "Privatization in Kosovo: The International Project 1999–2008, 2010

³ Gjakova Enterprises are also called as Joint Stock Companies

Kosovo than elsewhere in former Yugoslavia. Privatization was further advanced by the Serbian Law of 1991 so that by 1994 the process was completed in 1,785 or in over 53% of total number of enterprises to be privatized. However, 1994 was the year where it was seen the biggest retreat in privatization. Reviewing the process by the Agency for Privatization resulted in the abolishment of privatization in 1,556 or 87% of total number of privatized enterprises.⁴ Re-evaluation because of hyperinflation of 1993 had not only blocked the process but led to the direct state control in enterprises where privatization was abolished and those to be privatized.

In September 2000, the leaders of 191 countries across the globe signed the Millennium Declaration. This Declaration contains a set of time bound, quantifiable global commitments called the Millennium Development Goals (MDGs). The MDGs represent a set of time bound and measurable goals derived from the declaration and act as a "call to action" for all nations. **The municipality of Gjakova** is the first municipality in Kosovo to commit to this Global Agenda. During the 2004 strategic planning process, the municipality approved its long-term vision to become a leading municipality in Kosovo in achieving the MDGs by 2015.⁵

Corporations and social enterprises make up a considerable economic potential for Gjakova municipality. Their recovery will be a good basis from the aspect of increased employment and economic development. According to PAK, today there are around 60 SOE, out of which some 48 are claiming to be Joint Stock Companies.

1.1 The matter of 'transformations'

Since the Yugoslav ownership system defined 'society' as the owner of Kosovo's SOEs – effectively giving this entity a stake in the privatization of SOEs as well as post-privatization proceeds – claimants arguing to represent society might be expected before the Special Chamber. These 1990s *transformations* were legally dubious, however, and 'opaque' in having been conducted in a manner that discriminated primarily against Kosovo's Albanian majority population, and for involving asset-stripping and illegal money transfers to foreign, private bank accounts.⁶

Privatization was not covered by the pre-1989 legal framework, for that reason the Markovic privatization laws were applied when transformations of enterprises were considered. These laws had been used in privatizations in Kosovo during 1990 and 1991, in particular for a number of enterprises in Gjakova.⁷ With reference to the Belgrade regime's pre-1994 privatizations, it has been concluded that these have been 'rightly regarded' 'as robbery'.⁸ Still, KTA officials have been troubled by the possible scenario of being accused of illegal expropriation if selling property previously subjected to transformations.

This fear made the 1990s transformations a key topic in various debates on liability and ownership when privatizing in Kosovo. The original KTA regulation of June 2002 stipulates two criteria for evaluating 1990s transformations when privatizing in Kosovo. Transformations should be taken into account only if they were carried out in line with applicable law, and if they were not conducted in a discriminatory manner or in violation of the European Convention on Human Rights. Any transformation that fails to meet these criteria should be disregarded by the KTA. Notably, transformations deemed 'acceptable' according to these criteria might be considered only 'for the sole purpose of identification of the Owners and distribution of the Proceeds' – in other words, not in order to return property to pre-privatization owners.⁹

Nevertheless, privatization ultimately concerns regulating ownership of property – and property ownership was regulated by pre-1989 Yugoslav laws. While novel in its specific call for *private* ownership, the post-1989 and Markovic laws did not cover an 'empty' legislative field: they were simply another way to regulate ownership of property located on the territory of the former Yugoslavia.¹⁰ The KTA regulation's applicable law criterion for evaluating the validity of transformations provided the grounds to argue that all 1990s transformations should automatically be discounted, because they had not been undertaken in line with the law applicable *at the time the KTA regulation was passed*.¹¹

Hence, applicable law in Kosovo was defined by UNMIK as pre-23 March 1989 law plus post-1999 UNMIK Regulations, whereas transformations had been carried out with reference to laws passed by Belgrade between 1989 and 1999, including the Markovic laws. Since also UNMIK's KTA regulation, as amended, defines 'Applicable law' in Kosovo as the 'law applicable in Kosovo pursuant to UNMIK Regulation 1999/24 of 2 December 1999, as amended, On the Law Applicable in Kosovo', KTA privatization officials claimed that only *pre-1989* transformations of Kosovo's SOEs and POEs would have to be evaluated according to the second criterion, concerning discrimination and human rights violations.¹²

Thus, the original KTA regulation does seem somewhat unclear on exactly how to determine the validity of the 1990s transformations, especially since 'transformation' is defined as 'a merger, transformation, (re-) registration, incorporation as a joint stock or limited liability company or partnership or other legal entity, bankruptcy, liquidation, insolvency, organization into a distinct form or other entity or any other event or process by which any of the following is altered with respect to that entity: its legal identity, form or nature or the nature of its ownership, or of its capital or its seat, and where any such event or process or any part thereof took place *at any time between 22 March 1989 and 13 June 2002*'.¹³

⁴ Lazić and Sekelj, 1997.

⁵ Economic development and poverty sustainable development strategy of Gjakova Municipality, 2006

⁶ Perri 2005; Mulaj 2007; Karadjis 2004.

⁷ Rita Augestad Knudsen, "Privatization in Kosovo: The International Project 1999–2008, 2010,

⁸ Lazić and Sekelj 1997.

⁹ UNMIK Regulation 2002/12, as amended, 5.4 (b).

¹⁰ Uvalić, M., 'Privatization in the Yugoslav Successor States: Converting Self-management into Property Rights', 1997

¹¹ UNMIK Regulation 2005/48

¹² USAID Memo, 2003

¹³ UNMIK Regulation 2002/13, as amended.

This however, may be taken to open for evaluating all transformations from the whole 1989–2002 period according to the second criterion, regarding discrimination and human rights.

Short economic description of Gjakova

Gjakova is known for a labour tradition in industry and agriculture. The most intensive period of economic development was during 1960–1990, notably the years 1975–90, when Gjakova municipality became a developed industrial town, where the textile industry with factories for weaving production, knitwear, heavy and light fabric began to appear. The metal industry was also well developed (through production of pipes, wire products, enamel dishes, Teflon or Zinc); as was the electronic industry with production of the electromotor; the food industry, the wine and drinks industry, the wood processing industry, the rubber industry, the production of technical gas, the tobacco industry, construction and construction material production. 16,000 workers along with many experts were employed in these industrial branches.¹⁴

Most of the technological and industrial objects were financed by foreign financial institutions such as the International Bank for Development and Reconstruction, World Bank, or through joint investment. Most products and services were of a high quality in accordance with international standards. A large portion of these companies' products were exported, including fruit juice, wine, chicken, fruits, tobacco, metal products and electrical products (pipes, dishes, washing-machine motors, electric motors for compressors and fridges, industrial electric motors, etc.), textile products, products of the wood industry, construction materials, chrome and rubber products. The value of these export was estimated to be around 100 - 120 million dollars a year. Gjakova municipality had a very developed agriculture system. With an agricultural land surface of 29,420 ha, out of which about 8,000 ha had an irrigation system, intensive farming cultures were cultivated, and orchards and vineyards were developed along with farming and forestry.¹⁵

Unemployment

A study of the trend for an increase in the number of job-seekers based on previous years shows that with an increase of about 2,000 of unemployed per year, Gjakova in 2015 may have about 18,000 more people unemployed by reaching theoretically a number of about 54,000 people. In order to decrease the level of unemployment in Gjakova from 30%, 2500–3000 people a year must then be employed.¹⁶

Compared with the administrative data above, the real rate of unemployment in Gjakova is believed to be higher. It is actually valued to be at a rate of about 42% based on UNDP studies. Nevertheless, it is important to emphasize that there is an informal employment market in Gjakova,

and these employed people are not represented in the total number of employed people nor in the registered number of job-seekers, but they are still considered a part of the number of unemployed.

In general, the obstacles for employment in Gjakova are the same ones that are seen throughout Kosovo:

- Delays in the privatization process of SOEs;
- Slow development of private economic sector, and especially of the private production sector;
- Difficulties in attracting foreign investment;
- Competition from imported products, especially agricultural products.
- Foreign investment for revitalization of industry is very low, the influences for this trend being:
 - (i) insecure political landscape; and
 - (ii) slow progress for identifying and adaption of measures to promote foreign investment, especially in the production sector.¹⁷

Gjakova Enterprises

After 1990, the capacities of Gjakova enterprises were little utilized, and many investment activities were stopped due to hyper inflation as a cause of political and economic situation. As a result, there are about 1,794 active businesses, out of which 1,731 are private businesses (most of them in trade and in services), 48 corporations, 9 social enterprises, and 6 public enterprises. There are about 60,000 m² of buildings that currently lie empty.¹⁰ However, all industrial potential for agriculture and services can be reactivated, and together with projects and with other enterprise initiatives, this can become an attractive and interesting potential for investors.

Functioning up have been the corporations of "IMN", "JATEX" (periodically), and Dukagjini, while other enterprises have not been active at all. Some of the corporations no longer operating did not manage to retain functional equipment and premises, resulting in a loss of economic resources invested during the years. The worst cases are the corporations "Emin Duraku", "Metaliku", and to a lesser extent the corporation "Ereniku". The equipment and premises were well taken care of in the corporations "Electromotori", "IMN", "Dukagjini", and "Jatex". The delay of the privatization process was also a factor in these cases.¹⁸

"Kompresori", Hotel "Pashtrik", "Modeli", "IMN", "Mulliri" and the factory of bread, "Agricultural Station", "Elast", and the butchery "Agimi" have now been privatised. Out of these, only "IMN" and "Modeli" are operating, with "Modeli" focusing a different production program than previously; the flour and bread factory started production, while Hotel "Pashtrik" has already partially begun working.¹⁹

Since April 2010, the corporations "Jatex", "Ereniku" and "Deva" were declared by the Board of PAK as Socially Owned Enterprises with 100% social capital. This fact is quite encouraging due to the possibility of attracting

¹⁴ Sustainable development strategy of Gjakova, UNMIK Report, 2004

¹⁵ Economic development and poverty sustainable development strategy of Gjakova Municipality, 2006

¹⁶ Based on UNDP studies, according to which one thousand employed people registered and by taking into account about 2000 people added to the active population each year.

¹⁷ Economic development and poverty sustainable development strategy of Gjakova Municipality, 2006

¹⁸ OSCE Report, Privatization in Kosovo, May, 2008

¹⁹ Regional Chamber of Commerce, Gjakovë.

investors, and creates an opportunity for building cooperation with small businesses.²⁰

All these show that in spite of transitional difficulties, Gjakovë/Dakovica municipality has the necessary natural, economic, and human potential to develop business rapidly. These represent attractive assets for local and international investors.²¹

Based on PAK Report,²² below is presented an overview in relation to the subject and the following situation regarding Gjakova Enterprises:

- ✚ Gorenje Elektromotori – KTA Board released its jurisdiction over the Company on December 2006;
- ✚ Dukagjini – KTA Board released its jurisdiction over the Company on April 2006;

PAK Board of Directors on April 2010 approved the status of three Gjakova Enterprises as Socially Owned Enterprises with 100% social capital, which are:

- Emin Duraku;
- Jatex;
- Deva;

Whilst, still the transformation to be reviewed and their status to be approved by PAK are the following: Ening; Ereniku Group; Metaliku; Metaliku Ena; 9 Nentori; The privatization Agency (KTA and PAK) has so far privatized a considerable number of enterprises, and most of the claimed transformations were in most cases disregarded by the Agency as invalid and which were not carried out in accordance with the law.²³

Privatised Gjakova Enterprises, formerly among the association of Gjakova "JSC's" resisting privatisation: Modeli, IMN Brick Factory, Mulliri, Agimi Mishi, Agimi, Ereniku - Poultry Farm, Ereniku - Primary Production.

Privatised Gjakova companies, various types of transformations but not part of association of JSC's: Elast, Pashtriku, Kompresori, Agricultural Station, AC Skivjan, AC Lipovec.²⁴

Legal Framework

In 1989, the initial conditions regarding the property regime were somewhat different in former Yugoslavia than elsewhere in central and eastern Europe, which crucially influenced the privatisation process throughout the 1990s. Under the system of 'social property', no one had property rights over enterprises assets, which officially belonged to society as a whole. Enterprises had the right to use socially-owned assets and to appropriate their product, but were never given full property rights since some important rights remained firmly in state hands.²⁵

Nevertheless, because of the system of self-management and the ambiguity of the property regime, many workers felt they were the real owners of their enterprise, in line with the interpretation that with the passing of time, group

property had unofficially replaced social property. These specific features of the Yugoslav economic system rendered privatisation in all successor states of former Yugoslavia more complicated than elsewhere. FR Yugoslavia has had various sets of privatisation legislation over the past decade. The laws have been numerous and frequently subject to change, which is probably one of the main reasons why so little progress has been achieved in this field. There were many laws promulgated by SFRY and /or Serbia. However, the enterprises subject to this paper were transformed based on Markovic Law.

In 1989, following IMF demands, mass privatization was initiated with the so-called Markovic laws. Of these laws, the 1989 Law on Enterprises aimed at 'encouraging' foreign investment, 'giving' managers full rights to hire and fire labor and 'erasing' the system of self-management.²⁶

These 'abrupt' 119 changes to Yugoslavia's system of social ownership and workers' management were politically destabilizing, prompting claims that they contributed to the break-up of the federation and 'destroyed class solidarity'. In retrospect it seems clear that the Markovic economic reforms succeed neither in reviving the economy nor in keeping the federation together.²⁷

Abrogation of Kosovo' Autonomy

In 1989 under the Regime of Milosevic the autonomy of Kosovo was abrogated by force. While in 1990 Serbia approved its constitution through which extended its power directly in the territory of Kosovo by abrogating all its institutions.²⁸

Through many legal acts the economy of Kosovo and the system of ownership rights for Albanians was destroyed. All ownership relations were in accordance with section 11, paragraph 2 of the Kosovo Constitution of 1974 and were regulated with constitution of SAPK and Kosovo Institutions had authorizations to promulgate respective laws.²⁹

Whereas under the authority of the federation was the promulgation of several laws that regulated general principles in ownership relations among those the most important ones were: Law on associated labor, Law on enterprises, Law on transformation of ownership and public property. With abrogation of Kosovo's autonomy the judicial system of Kosovo was destroyed and ownership

²⁰ PAK Report, 2009

²¹ Economic development and poverty sustainable development strategy of Gjakova Municipality, 2006.

²² Work report August 2008/August 2009 Privatisation Agency of Kosovo.

²³ OSCE Report, Privatization in Kosovo, May, 2008.

²⁴ Ibid.

²⁵ Uvalić, M., 'Privatization in the Yugoslav Successor States: Converting Self-management into Property Rights', 1997

²⁶ Woodward 1995b, Uvalić 2000: "The Markovic laws were followed by a decade with 'at least half a dozen' privatization laws", Uvalić 2000, p. 12.

²⁷ Ljubisa Adamovich: 'Economic transformation in Former Yugoslavia, with special regard to privatization', in Sabrina Ramet and Ljubisa Adamovich: Beyond Yugoslavia: Politics, economics, and culture in a shattered community, 1995.

²⁸ Human Rights Violation in Kosova, January-July 1994, Commission of Human Rights, Geneva, 1994.

²⁹ Constitution of Serbia approved on 28 September 1990, Official Gazette of RS, nr. 1/90. This constitution was promulgated in contradiction with all legal acts of ex Yugoslavia and in contradiction with the Constitution of SFRY of 1974, Constitution of Kosovo of 1974. With oppressive Constitution of Serbia the Kosovo was deprived of all institutional and legal authorities. Bodies and Institutions of that came out of constitution of 1974 were abrogated. With these changes Serbia directly governed Kosovo with oppressive measures.

relations were regulated with laws promulgated by Institutions of Republic of Serbia.³⁰

The regime of that time imposed oppressive measures in all institutions also in commercial enterprises. Promulgation of the Serbian Law on assets owned by Republic of Serbia had an extraordinary influence in the ownership rapports.³¹ Through this law in an arbitrary way Serbia defined as its state property all public and social properties of Kosovo including enterprises.³² Whereas, through a series of other laws the transformation of social property was affected Oppressive management was placed in commercial enterprises through the law on reorganization of enterprises, whereas through discriminatory laws ownership transformations of enterprises were carried out through privatization with nontransparent and discriminatory procedures.³³

Privatisation legislation of 1990's

Markovic Law (1989 Federal Privatisation Law, amended in August 1990) was the first law, adopted by the last government of the former Yugoslavia, based on which all Gjakova Enterprises were transformed.³⁴ The main privatization method was the sale of enterprise shares at a 30% discount to present and former employees, other citizens and pension funds, on the basis of the book value of assets, but employees (present and former) were given a further 1% discount for each year of employment, up to a maximum of 70% of the nominal value of the shares, to be paid within a period of 10 years. Though several limits on share issues at a discount had to be respected, the law in practice offered extremely favorable conditions primarily to insiders. The part of social capital not subscribed on preferential terms was to be offered at public auctions to domestic and foreign buyers. Since the destination of the remaining unsold social capital was not specified, the law implicitly envisaged its maintenance as a property form.³⁵ In Kosovo, the Markovic economic reforms were initiated as other dramatic developments unfolded. Kosovo was at the time an autonomous province of the Serbian Republic in the Yugoslav Federation, with a large Albanian majority. Milosevic gained power in Belgrade much on the basis of exploiting Serb anxieties over that Albanians constituted a majority in the province, and soon commenced on an organized campaign of ethnically based oppression. In 1989, Milosevic revoked Kosovo's autonomy and stepped up repression.³⁶

³⁰ Law on the Assets Owned by the Republic of Serbia, Official Gazette RS. No. 53/95, article 1; Tigani & Hysa, 1999

³¹ Ibid

³² Tigani & Hysa, 1999, p. 1-2.

³³ Law on conditions and procedures for transformation of socially-owned property into other forms of property, GZ no 48/1991, August 5th 1991.

³⁴ Also known as the 'Markovic law', by the name of the Prime Minister of former Yugoslavia;

³⁵ Federal Ministry of Development, Science and Environment & Federal Bureau of Development and Economic Policy, SR Yugoslavia – 1999, Economic Survey, Belgrade, 2000

³⁶ Lenard Cohen: *Serpent in the bosom: The rise and fall of Slobodan Milosevic*, 2001

Privatisation framework of Kosovo

Legal and regulatory frame work of the privatisation process pursuant to the Law on the Privatization Agency of Kosovo, the Agency has authority of administration of Socially-owned Enterprises (further as SOE) that are registered or operating in the territory of Kosovo and assets in the territory of Kosovo of such Enterprises.

Pursuant to Law No. 03/L-067, sections 6, 8, 9 and on behalf of Socially-owned Enterprises, PAK have authority to:

- Establish one or more corporate subsidiaries as "New Co" and transfer to such subsidiaries the rights and interests in all or part of assets of the Socially-owned Enterprise concerned. The shares of the subsidiaries thus established will be owned by the Socially-owned Enterprise concerned and be administrated by PAK;
- Sell all or part of the shares of subsidiaries established;
- Liquidate Socially-owned enterprises;
- Dispose of monies and other assets of Socially-owned Enterprises;

Furthermore and according to its Operational policies, PAK has authority to determine and conduct the process of privatisation on Socially-owned Enterprises where expedient, in accordance with the principles set out in the Regulation and these Policies.

The objective of the privatisation is to establish clear ownership over assets, facilitate and protect new investments, put idle assets into productive use, making a sustainable private sector and to obtain a fair market value. The Agency in accordance with the terms of the present Law has the authority to administer:

- Socially-owned Enterprises, regardless of whether they underwent a transformation;
- Any assets located in the territory of Kosovo, whether organized into an entity or not, which comprised socially-owned property on or after 22 March 1989;
- Minority Stakes, regardless of whether the relevant legal entity underwent a transformation.³⁷

Case study research

Subject to research of the paper are the three enterprises from Gjakova, respectively the transformation process in each of the following enterprises:

- ✚ Emin Duraku;
- ✚ Jatex;
- ✚ Deva;

Documents referring to transformation in each case were reviewed and analyzed by author carefully. Nevertheless, findings and main points referring to transformation for each case separately are presented in this part.

Emin Duraku

The entity was established in 1958 as Textile Industry "Emin Duraku", initially consisting of two units, knitting and textile processing. In 1965 the entity has established its third unit for spinning purposes and therefore, changed its

³⁷ PAK Law No. 03/L-067

name into Cotton Combine "Emin Duraku". In 1982, the Combine merged with Industry of Confection and Knitwear (Napredak) and established this way the Associated Textile Industry (ATI) "Emin Duraku".

In 1989 workers of enterprise³⁸ declared through a referendum on the organisation of the enterprise as an SOE. In 1990 the entity was registered as Business System ATI "Emin Duraku", L.L.C, consisting of 13 LLCs. Finally, in 1991, the entity was divided in two parts, distributing its property in two Holding Companies, "Emin Duraku" and "Jatex". Nine LLCs were transformed from "Business system" into nine JSCs, which comprised Holding Corporacy "Emin Duraku". Whilst, the other four LLCs were transformed into JSCs and established Holding Corporacy "Jatex". Since then, both entities were independent legal entities.

Accordingly, the enterprise falls under the jurisdiction of the PAK, as it was registered as an SOE in 1989. ³⁹ PAK Law, states that a transformation shall be regarded if: ⁴⁰

(i) is carried out in full compliance with Applicable Law, including payment for shares; and
(ii) is not discriminatory, nor in breach of the principals of the European Convention on Human Rights;
Thus, the following points characterize the transformation process of Emin Duraku:

➤ CC registration indicates the transformation of a part of Business system ATI "Emin Duraku" into Holding Corporacy "Emin Duraku", JSC, consisting of 9 JSC-s;⁴¹

➤ Transformation was done in accordance with the Law on Enterprises (OG SFRJ no. 77/88 as amended by 40/89, 46/90 and 61/90); this law is regarded as forming part of Applicable Law and is not regarded as being discriminatory;⁴²

➤ Decision on transformation was taken on 19.08.1991 by the Assembly of SOE, as a highest decision-making body of the SOE, which is in accordance with the law;⁴³

➤ Workers of enterprise on 19.08.1991 were invited to purchase shares publicly;⁴⁴

➤ Certain amount of discount predicted to purchase internal shares is in line with applicable law;⁴⁵

➤ No interim measures were imposed in the enterprise and no evidence of discrimination;

Implementation of transformation:

➤ No evidence of real payment of shares;

➤ No evidence that shares were paid through the certain bank account of the enterprise in accordance with the predicted provisions and laws;⁴⁶

➤ There is evidence that transformation was done retroactively; The salaries were increased 100% and were registered as purchased shares on retroactive basis;⁴⁷

➤ In addition, there is evidence that shares were registered retroactively using bonus payments for workers;

➤ The dates of the documents pertaining to the transformation do not correspond with each other; i.e. the decision on emission and issuing of internal shares is brought on 24.04.1991, whilst the decision on transformation from SOE into HC is dated on 19.08.1991;

➤ Evaluation of capital (revalorization) was not done according to the law on enterprises (OG 46/90);

➤ Balance sheets do not show the normal flow of transformation, since there are many discrepancies;⁴⁸

➤ Books of shares show that 82% of the transformation was completed by the end of 1991, which is none sense;⁴⁹

➤ Certificates on realized shares indicate that full payment was done during 1991 and 1992, which is in contradiction with balance sheet statement and other documents presented in SDR;⁵⁰

➤ In 1995, transformation was declared invalid by the Agency of Republic of Serbia for evaluation of capital;⁵¹

➤ There are no investments in the enterprise since 1989;

Therefore, the transformation was done in accordance with Markovic Law. The decisions and acts regarding the transformation, including registration of the transformation in the commercial court seem to be in line with applicable laws. However, the process of implementation of it seems to be invalid since there were no real payments of shares and for the reasons highlighted above.

Jatex

The company was founded in 1947 as "Craftsman Cooperative Napredak" by joint capital of 7 tailors in Gjakova. In 1982, the enterprise was merged with Associated Textile Industry "Emin Duraku", to split again from it in 1990 when transforming into Holding Company.

The Enterprise was registered as an SOE with commercial court registration Fi 551/89, and operated as part of ATI Emin Duraku. Subsequently was registered as a Holding Company with four units. The Enterprise falls under the jurisdiction of the PAK, as it was registered as an SOE in 1989.⁵²

Based on reviewed documentation the following points were found regarding transformation of Jatex:

➤ CC registration indicates the registration of HC Jatex after the separation from Emin Duraku. Four units were merged and formed the Holding (Edicon, Edimoda, Editriko and Edijucon);⁵³

38 In 1989, the enterprise employed 5735 workers.

39 PAK Law, section 5.1(a)

40 PAK Law 03/L-067

41 Commercial Court Registration Fi. 4346/91, dated on 31.12.1991

42 Decision on Organizing Holding Company, dated on 19.08.1991

43 Ibid

44 Invitation to buy internal shares, dated on 19.08.1991

45 OG SFRJ no. 77/88 as amended by 40/89, 46/90 and 61/90

46 Law on Enterprises, article 94 and 100, OG 77/88; Law on social capital, article 1(zh), OG 46/90, Decision on emission of internal shares and sell of social capital;

47 Decision on emission and issuing internal shares, dated on 24.04.1991

48 Balance Sheets of enterprise from 1990 till 1998

49 Books of shares were prepared by management of enterprise and submitted to PAK

50 Samples of Certificates on realized shares issued by enterprises for each worker separately

51 Decision of Agency for evaluation of capital to declare the transformation NUL and Void

52 PAK Law, section 5.1(a).

53 CC registration Fi. 2917/91

- Transformation was done in accordance with the Law on Enterprises;⁵⁴
- Decision on transformation was taken by the Assembly of SOE, as a highest decision-making body of the SOE, which is in accordance with the law;
- Workers of enterprise were invited to purchase shares publicly;
- No interim measures were imposed in the enterprise and no discrimination;
- According to Books of Shares, transformation is concluded by 1992.

The transformation was conducted in accordance with Markovic Law. The decisions and acts regarding the transformation, including registration of the transformation in the commercial court seem to be in line with applicable laws. However, the process of implementation of it seems to be invalid since it could not be proven the real payment of the shares. Hence, the transformation into HC appears to be fictitious and not valid for the following discrepancies:

- There are no real evidence of payment of shares;
- No evidence that shares were paid in accordance with the Law on Enterprises;
- There is evidence that transformation was done retroactively. The salaries were increased and were registered as purchased shares on retroactive basis;⁵⁵
- Evaluation of capital (revalorization) was not done according to the law;
- Balance sheets do not show the normal flow of transformation, there are many discrepancies, and almost all of them are not stamped by SAS while showing 100% share capital;⁵⁶
- The only Balance Sheets which are stamped are those of "Trikotazha", referring to years 1997 and 1998, which indicate 100% social capital;⁵⁷
- The amount of shares to be paid by workers is equivalent (when multiply the monthly installment for 120 months) with the overall enterprise capital to be transformed. Hence, the transformation could not have been completed by the end of 1992 as presented in books of shares;
- No investments in the enterprise;

Deva

The entity is known by name as Socially Owned Enterprise "Deva" and JSC Holding "Deva" in Gjakova town. The Enterprise was registered as an SOE in 1989. The registration shows transformation of Working Organization into enterprise for Chrome Mines and Gas Industry "Deva" with unlimited liabilities, in Gjakova.⁵⁸

The Enterprise was registered and operated as an SOE in 1989 and therefore falls under the jurisdiction of the PAK.⁵⁹

The general findings of the review of documentation are summarized as following:

- All the documents, respectively decisions related to transformation are taken by the Workers Council (WC) of the enterprise, as a highest decision making body of the SOE;

➤ Transformation of the SOE "Deva" into JSC Holding Corporacy "Deva" with four JSCs was one following the decision of Workers' Council.⁶⁰

➤ Transformation of SOE "Deva" into JSC Holding Corporacy "Deva" comprising of four JSCs;⁶¹

➤ Decision on issuance of shares, internal shares and sale of capital, in accordance to which the issuance of shares will be provided from the means of personal incomes, respectively will be issued in amount of 100% by increasing monthly salaries to be commenced as of 01.10.1991. Hence, workers of enterprise were supposed to conclude payment of shares within 10 years.⁶²

➤ Invitation for purchasing of shares advertised in public border of the entity.⁶³

➤ Contracts for purchasing of internal shares signed individually with the employees of the enterprise enter into force on 01.06.1992, whilst employees started paying shares in January 1993 up to November 1993.⁶⁴

➤ There were no interim measures imposed in the enterprise and there were no evidence of discrimination, ethnically related lay-offs or/and removal of councils in the enterprise.⁶⁵

➤ In order to increase and sale its capital, the enterprise issued shares and internal shares; The 51% of the social capital is transformed directly to Holding Corporacy "Deva", while 49% should be purchased by JSCs.

➤ As of 01.10.1991 the wages of employees supposed to be increased up to 100% and registered as purchased shares. Deduction of 30 % of rated amount of the share plus 1% for each working year has been applied to each employee. The entire procedure of sale and payment of internal shares should be finalized in 10 years from the date of approving of the decision on issuance of shares.⁶⁶

➤ There is no Certificate issued by bank confirming the payment of shares. There is no evidence on re evaluation of social and share capital for each year. There are deficient finance documents that prove credibility of transformation process of social capital to the share capital. Therefore, can not be given abiding evaluation on precise percentage of payment of shares

Hence, based on general review and analysis of the case, and other information gained in this project, it may be concluded the following:

60 WC Decision nr.743, dated 16.05.1991

61 1. Commercial Court reg. Fi 2346/91, transformation of SOE "Deva" into "Seperacioni" JSC;

2. Commercial Court reg. Fi 2343/91, transformation of SOE "Deva" into "Deva-Transhped" JSC;

3. Commercial Court reg. Fi 2344/91, transformation of SOE "Deva" into "Deva Gas" JSC;

4. Commercial Court reg. Fi 2345/91, transformation of SOE "Deva" into "Deva Commerce" JSC

62 Workers' Council Decision on issuance of shares, internal shares and sale of capital nr.743/1 dated 16.05.1991

63 Invitation for purchasing of shares nr.743/2 dated 16.05.1991

64 Payslips for four units for 1990-1998

65 Statements given by the management of the enterprise, 2006

66 Contracts for buying internal shares, dated on 01.06.1992

54 OG SFRJ no. 77/88 as amended by 40/89, 46/90 and 61/90

55 Invitation to purchase shares, 16.08.1991.Jatex

56 Balance Sheets of enterprise from 1990 till 1998

57 Balance Sheet of 1997 and 1998 for unit "Trikotazha".

58 Commercial Court registration Fi 497/89, 30.12.1989.

59 PAK Law No 03/L-067, section 5.1(a).

- Transformation into Holding Company has been properly started in accordance with the applicable laws and the Statute of "Deva" enterprise of 1989;⁶⁷
- There are no valid evidence of payment of shares in cash through bank account; the pay stubs provided by the management show payments of shares by employees in 1993 in Social Accounting Service but they are not stamped;
- Transformed capital was conducted only in 1993 when the hyper inflation occurred, respectively the devaluation of par-value of shares was obvious; however the value of the transformed capital exceeds the par-value of the total capital of enterprise, which supposed to be transformed for 10 years as specified in the Decision on share issuance; in some cases a payment of one worker for one month is higher than the total amount of payment this worker was obliged to pay in 10 years. However payslips show that there were deductions from salaries for 1993 only;⁶⁸
- Shares allocated to employees were issued in an amount of 100% by increasing monthly salaries starting from 01.10.1991 even though there are no evidence proving that the capital of the enterprise has been increased at the value of sold shares;
- The enterprises should issue internal shares in one year after this law enters into force.⁶⁹ In the case of HC "Deva" it has to issue the internal shares on 01.10.1991 which means that few months of delay is a clear indication on legal discrepancy. Moreover, the contracts for sale of shares indicate their entrance into force on 01.06.1992, which is even in contradiction with the decision on issuance of shares, which reads that the shares will be issued starting from 01.10.1991. The employees started paying shares in 1993. It appears that the employees either continued to receive their regular payments, whilst the shares were registered on their name on the same value of their salaries, or due to 100% increase of their salaries and discount of certain percentage for shares some employees could have received shares without any real payment;
- There was no evaluation of the social / share capital conducted during the transformation process;
- There is no clear picture on the flow of transformation and value of the social / share capital. Available Balance Sheets do not indicate any share capital;⁷⁰
- In Pak Database there is no recorded any valid court decision confirming the property right of any claimant or any claim contesting jurisdiction of the PAK over the enterprise; There is no data on privatization of the enterprise by the Serbia Privatization Agency;
- There were no investments in the enterprise;⁷¹

Conclusion

Privatisation process in Kosovo is particular compare to privatization clusters in other transitional countries, due to

its economic and political specifics. SOEs of Kosovo were disintegrated for more than one decade by the interim measures. Kosovo suffered a lot during the war, and SOEs were no exemption to it. We should also bear in mind that the economy of Kosovo was conducted centrally by the previous regimes in former Yugoslavia and significant number of factories was built for a certain markets. It should be also noted that previous market was lost and current market is dominated by products of foreign countries. A numerous of SOEs, mainly Gjakova enterprises had initiated the transformation into Holding Companies and /or JSCs based on the then law on enterprises in early nineties. Such restructuring of SOEs was never shown to have been carried out / finalized successfully.

The purpose of research was to reveal the status of Socially Owned Enterprise's of Gjakova companies, which are claiming to have been fully transformed into private companies based on law on enterprises at that time. Hence, the results of research proved that Gjakova companies did not finalize the transformation initiated in early nineties and therefore must proceed with privatization of its assets. This way, hypothesis two is confirmed.

Nonetheless, it is concluded that the legal base for the initiation of transformation process in each of three cases exists and seems not to be discriminatory, since legal acts adhered to certain applicable laws. While implementation of transformation seems to be invalid since it could not be proven the real payment of shares. Shares were rather calculated retroactively based on 100% fictitious increase of salaries, which is in contradiction with certain rules stipulated by laws on which the transformation is based. The transformation process itself appears to be fictitious and not valid for technical mistakes, inconsistencies and discrepancies provided in this paper.

However, there are indications that a certain amount of capital could have been transformed into share capital. Consequently, potential claimants that consider possessing any other valid document keeps the right of requesting own paid shares using proper legal remedies.

⁶⁷ Law on enterprises which is known as Pack of Ante Markovic Laws

⁶⁸ Invoices for payment of shares by four units only for 1993

⁶⁹ The Law on Social Capital, OG SFRJ 46/90, art. 14, page 1347, 10 August 1990

⁷⁰ Balance Sheets for JSC "Deva Gaz" for 1992-1998

⁷¹ Statement of management of enterprise, 2006

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