

# Privatization process in the Republic of Kosovo as “*sui generis*”

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**Abstract.** *Among the most important events of the last century in the countries of the former socialist block and states which formed from the fall of that system is the process of transformation and transition of the entire socio-economic and political systems. This is especially worth for the world of socialist economies. These two processes were also introduced in Kosovo, where despite having similarities with other countries with a centralized and nondemocratic orientation, it also had its own specifics that differed from the other countries. The privatization process in Kosovo in the first phase was conducted through the Kosovo Trust Agency where the international mechanisms (UNMIK United Nation Interim Mission in Kosovo) had the dominant role, whilst PAK (Privatization Agency of Kosovo) took charge of this responsibility in the second phase, when the executive power was passed on to the local employees. The process of privatization of socially owned enterprises in Kosovo is still ongoing. As Kosovo's case for many reasons is sui generis. The process of privatization of the social property (although this process has not yet started for the public-state property) was adjusted to the after-war conditions in Kosovo, which were earlier unknown in the previous privatization processes in the rest of the countries where the process has been applied. The experimental nature of the process has had negative consequences in Kosovo (unemployment, corruption etc.), far more than the positive impact it may have had. The intention of this paper is to include all of what has happened and what is happening with the process of privatization. Nothing can be performed without any errors, and that is what encouraged us to do this work, looking for new solutions and ways to make the process more beneficial. The methods used in this paper are: the method of comparison, which will serve me for the comparison of the collected data about the course of events prior to privatization and after, the degree of effect on the livelihood and the success (or lack thereof) of the privatization process in Kosovo. Analytical method - used as factor analysis, PEST analysis, comparative, and so on.*

**Keywords:** *privatization; transition; social properties; Kosovo.*

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## Introduction

The fall of the Berlin wall, the transformation of property from public and socially owned to private, and the transition of political and economic system in Europe are the most celebrated events of the previous century. However, only in this century Kosovo has been part of these transformations.

After 1999, a military mission called KFOR was responsible to ensure security and protect Kosovo borders, whereas the economic and political life was administered by UNMIK (United Nation Mission in Kosovo). Whilst the presence of the KFOR was evident from the beginning, UNMIK on the other hand was being rather slow in organizing the civil life. The bureaucratic methods of UNMIK contributed to slow economic recovering of the country. UNMIK had chosen the method of transforming the social property of Kosovo as a way to transition the political system, which later would be one of the main elements and will serve to proclaim the independence of the Republic of Kosovo. More than three years had to pass before the first legal regulations regarding the transformation of property in Kosovo took place (*UNMIK Regulation no. 2002/12 of 13 June 2002*). This responsibility was given by UNMIK to the Kosovo Trust Agency, which was part of Pillar IV in accordance with 2002-12 regulation).

Kosovo is a “sui generis” case for many things. The privatization process and the methods to privatize the property were special as well. In this paper we highlight the challenges, the methods and the progress in the process of privatization in Kosovo. Attempts to exhibit the bright and the dark side of this process will be made, by making suggestions and recommendations for the future continuation of this process.

Before Kosovo could become part of these changes, there was one more obstacle. The process of transition should have been preceded by a process of transformation and to this process (by some logical order of processes) should have preceded a process of forming a state, which Kosovo lacked. However, the process from the very beginning was reversed. Namely the process of privatization of Public Enterprises preceded the forming of the country by UNMIK. The successful finalization of the privatization of the socially owned and public enterprises is a very important step towards

Kosovo's integration into the European family, as well as a way to political and economic stability.

### **The methods of the process of privatization in the Republic of Kosovo**

The process of the transformation of property and privatization firstly of the state owned property has its beginnings in the 50s in the United Kingdom. This process continues in many countries in present days. All the models applied after the process of privatization can be separated into two categories:

1. The model of fast privatization using the concept "shock therapy". The first model of privatization was characteristic in most transition countries, which had the support of the International Monetary Fund, whereby it came to quick results. This model was implemented in Poland, in Russia during the first stage of reforms (Gajdar reform), in the former Yugoslavia through the reforms of Ante Markovic, in Bulgaria, Romania, Albania etc.
2. The gradual model of privatization, known as "step by step". The gradual model, or "step by step", was conducted in a small number of countries in transition. Despite the shortcomings that this model had, considering the past course of privatization, we can say that this model was more successful than the first.

The first model (Bashota, 1998) proved to be quite successful. It was used in Poland, Russia, Former Yugoslavia (via the reforms of Ante Markovic), Bulgaria, Romania, Serbia, Macedonia, and Albania, among other countries. As a model for privatization, the methods it used included: a) The direct method of selling, b) Privatization through shares c) Privatization using the return of property. Despite the fast results, this model is risky in terms of Macroeconomics.

The second model, planned in phases, although fairly slow, turned out to be even more effective. The gradual privatization (step by step) in its analysis emphasizes the complexity of the privatization process primarily on the establishment of legal regulations, especially in countries that need to go through the transition process. The creation of effective institutions, according to this view, is a long process that involves much trial and error.

According to them, it means that the reforms must be evolutionary as well as a process of pragmatically and gradually adjusting the existing institutions to match the new needs as they arise, as happened for example in China.

Other known models are:

1. The internal model of privatization (recapitalization, extension of common property). The model of internal privatization represents a model where workers employ managers to buy the company, through internal shares with or without compensation. Significant examples of this model are the model of recapitalization, and the etatization model of social assets and property (in former Yugoslavia) as a prerequisite for the transformation process.
2. External model (public registration of stocks, private selling of stocks, selling the property of the common enterprise, loans and contracts with management, selling to the foreign investors, privatization of property through institutional investors). The model of external privatization uses several methods through which it conducts sales of shares or the distribution thereof to the entire population or specific population groups.

Suitable methods of privatization were used, depending on the current situation of the countries. Each of these methods had its advantages and disadvantages.

In Kosovo's case, the process of transformation of the property was a necessity, and turned out to be very complex. The lack of independence made impossible for Kosovo to find a solution for itself. Both the choices and the solution were imposed to Kosovo.

### **The organization of institutional life in Kosovo and the process of privatization through UNMIK**

After 1999 Kosovo was in a situation where almost everything had been destroyed. No cell of life was functioning normally. The United Nations had decided that UNMIK (The United Nations Interim Administration Mission in Kosovo) would be responsible to organize the civil life as well as

the governmental institutions. The situation in Kosovo is profiled also by the following documents. United Nations Security Council on 10 June 1999, adopted Resolution no. 1244, which placed Kosovo under international administration (UNMIK and KFOR). According to this resolution Kosovo is an autonomous region within Yugoslavia. By the United Nations Mission in Kosovo (UNMIK - United Nation Interim Administration Mission in Kosovo), bring the decree no. 2001/XX, dated 20 May 2001, signed by the Special Representative of the Secretary General of the United Nations (Hans Hakerup), as a “Constitutional Framework for Provisional Self-Government”. After the UN Security Council Resolution 12 441 and Military-Technical Agreement on Kosovo (in Kumanovo), KFOR and UNMIK exercise rule over Kosovo. In Belgrade, on 5 November 2001, it was signed a “Joint Document of UNMIK and the Federal Republic of Yugoslavia” (Covic - Hakerup).

The representatives of the special general secretary of UN had the right to govern Kosovo. UNMIK quickly started to organize the civil life in Kosovo through four Pillars, which served as ministries:

1. Pillar I - Police and Courts
2. Pillar II- Civil administration
3. Pillar III- Democratization and building institutions
4. Pillar IV- Rebuilding the Economy.

According to the 1244 UN resolution, these institutions were given temporary powers until the final solution of Kosovo’s status. UNMIK, through its fourth pillar (including trade and industry), according to the regulation 2002/12 of June 13, 2002 created the Kosovo Trust Agency as the only responsible institution to privatize the socially owned enterprises in Kosovo, and the Kosovo Chamber of Supreme Court, which would deal with legal issues. This regulation was updated in April 22, 2005 with the regulation No. 2005/18. The Kosovo Trust Agency was dominated by the international factors, who were serving as executive directors. The Committee was composed of eight directors, including four international directors and four residents of Kosovo who have been appointed to the Special Representative of the Secretary General of the United Nations. Three of the directors from Kosovo were also ministers in the self-governing institutions in Kosovo, one of which is of Serbian nationality,

while the fourth director was the president of the Union of Independent Syndicates of Trade of Kosovo. Decisions were made by simple majority of the quorum, where at least five members must have been present. The director and his two deputies determined the Board of the Kosovo Trust Agency.

One of the first problems for the officials of the Kosovo Trust Agency was that they didn't understand the term "social property". Social assets and social ownership, is a relatively new category of property rights and its analysis is relatively new. Because this category of property was introduced in the former Yugoslavia in the early 1950s, the theorists who have analyzed this aspect of ownership have pointed out that it cannot constitute a satisfactory theory as such, this type of property where there is a man deprived of ownership of the entire structure.

Regarding the definition of social ownership, there are various considerations. Some theorists believe social ownership as an ownership society of the wider community (not state), a community of all citizens. At present it is considered that all the citizens of the co-owners of property. This explains the great interest in its preservation, as much for its constantly increasing (Mulaj, 2006).

Social property was created as a successor of state ownership in the former Yugoslavia during the introduction of a system of unknown and unique in the world "socialist self-management." Historically, this type of property on the termination dates from the time of Yugoslavia's relations with Russia, whereby state ownership is replaced with the social. While public ownership still retains the character of the state, where the state owns, the social property owner remains undefined (Knudsen, 2008). Without ever taking into account the opinion of the local people, KTA determined the methods of privatization, unseen before. Privatizing the socially property in Kosovo was approached in two ways:

1. Selling the enterprise; selling what can be sold and using the money to pay the company's old debts.
2. Assets in the form of land given under lease for 99 years because of the difficulties that were ongoing in relation cadastral documentation, which was quite badly damaged or moved out of Kosovo.

The process of privatization used by the Kosovo Trust Agency had three methods:

1. The method of regular spin-off - Rules of Tender for the spin-off privatization (the circular closure, which involves only the sale of assets of enterprises, namely, within the existing company formed a new company that includes only the assets of the company, and shall remain in old company, which will later apply the process of liquidation, the funds from the sale go into a special fund under the control of the PAK and will be used to settle liabilities to creditors, owners and workers). The model of an old company can develop more new enterprises, while funds raised during the sale of share in a way that 20% goes to workers while 80% goes to fund the trust that will serve to cover obligations made during the operation of the old company. Apart from a small number of obligations (property taxes for the past 12 months, payment of public services for the last 3 months), the new owner of the company being acquitted of all other obligations that the company had previously.

2. The method of special spin-off: a part from the rules that are worth for a regular spin-off, special spin-off added to the model are still some limitations for the new owner of the company. In fact this model, the owner must complete the obligations that were in the process of tendering and to have: highest price offered in the tender; investments that will be the time period; continuing the existing contracts for the current employees, and generating new job positions. Privatizations through this model were not successful.

3. The method of liquidation: This is a method of selling the remaining assets of the enterprise from the previous process of privatization. Although proposed as a model for privatization of parts of companies or enterprises as a whole, during the existence of the KTA has partially implemented and as far as the liquidation process, it is not implemented. As a model could be implemented in a small number of firms that were small-scale or those that have already been plenty of earlier stopped working and who have been in bankruptcy proceedings.

Through Kosovo Trust Agency, until June 20, 2008, there have been 30 waves of privatization and 498 new enterprises have been created, this way raising 392 280 728 of euro, whilst the 397 selling contracts have been signed (PAK Annual Report, 2008).

The work of this agency terminated on June 30, 2008 and was substituted by the Privatization Agency of Kosovo (Law 03/L-067 of constitution of PAK).

***The beginning of the process of privatization of socially owned enterprises in Kosovo under the UNMIK administration***

Simultaneously with the entry of NATO forces in Kosovo with the formations known as KFOR, came to power and civilian mission in Kosovo known as UNMIK. KFOR forces had the primary task of securing peace and creating a climate of security throughout the entire territory of Kosovo. UNMIK has as its priority set to create the social structure of both political and economic plans (UNMIK Regulation no. 1999/01 of July 25, 1999).

On the basis of resolution 1244 (1999) United Nations Security Council (UN and WB), 10 June, which acted through the United Nations Interim Administration Mission (UNMIK) took over responsibility for Kosovo draw credible conclusions. Responsibilities of the Special Representative of the Secretary General (SRSG), who is also the highest authority in Kosovo, was considerable and included the legal and executive powers and passing of various laws in terms of regulations and other auxiliary instruments (UNMIK Regulation 2002/12)

Pillar IV and Department of Trade and Industry; have invested a lot of effort to create a legal basis for the transformation of social property. At the beginning of this process was accompanied by doubts and politicization (three of members of board of directors in PAK were in minister range ) No studies that measure the local or international institutions in Kosovo have taken to resolving issues of property rights would not be complete if it touches issues of privatization. Privatization of public and social enterprise is a complex, political charged process in Kosovo. It affects a large number of people in all communities and raises serious questions about past and present injustices related to waves of nationalization, expropriation and confiscation of property.

In addition to potential long-term effects on economic development, the way it is enforced by privatization in Kosovo proved to be controversial.



Concerns sparked, referring about abuse of authority of the relevant agencies with the issue and problematic provisions that could lead to discrimination. The mere fact that domestic factors in the preparation of legal and other regulations for the privatization process was out of reach, beginning of the transformation of social assets should be considered in three time periods.

1. The period from September 1999 to September 2000 - After quite of detailed research regarding the social forms of ownership (per cent of the international factor in this type of ownership was not very clear), Pillar IV UNMI, in the second half of 2000, coming up with a proposal known as "White Letter" Joly Dixon (Leader of the Pillar IV), which proposes and prioritizes the improvement of private sector in Kosovo and the beginning of the privatization process, which involves primarily:

- The creation of the Agency and the Privatization Fund, with the possibility of participation of workers 30-40%, as a complementary method, and;
- Commercialization For Lease Company for a period of 10 years.

The idea of privatization is not supported by the United Nations, and commercialization began and remained as an option, but with modest results. During the commercialization, DTI (Department of Trade and industries) offered contracts with long-term concessions (ten years) for the socially owned enterprises, selected through public tender (KIPRED-Kosovar Institute for Policy Research and Development, Prishtina).

The investor who has won this tender is the right use of natural resources and manpower companies and the right of management of companies. However, the investor has not acquired the right of property companies, which is also a difference between commercialization and privatization.

2. The period from November 2000-June 2001 - At the end of 2001 as Department of Trade and Industry giving a new proposal by the transformation of SOEs into joint stock companies, based on the "Law of Markovic-1989", according which the majority of shares went to employees (60-70%), while the other part would be enabled sales to foreign investors and of this fund would be created for privatization. This was considered

a reasonable solution for the United Nations and the foreign investors. However, even this solution for the United Nations was not any better than the previous one and was not accepted (Official Gazette SFRJ No. 51/94). The privatization was an option, but it is an incentive given to the provision that the earnings growth of employees may be paid only in shares. During 1990 reform, the privatization process included 1200 enterprises (Ante Markovic's economic program-Prime Minister of Yugoslavia). In the end of 1993, a large number of companies, using the absence of provisions on revaluation of debt for inflation, privatized completely.

During the June 2001-May 2002 period, UNMIK was committed to a completely different model of privatization that allowed privatization without regard to property, which remains to be resolved by special procedures. The process went towards a model of the "Spin-off" that meant some sort of amputation, which means that this model of a social enterprise might have to create more new businesses which also implies the creation of subsidiary companies of assets of company without regard to the existing company's property. All funds from the sale were held in a fund that was the "Trust" fund.

Its principal function was to "maintain or grow the value of the company" through the Kosovo Trust Agency. The main advantage of this model is that new enterprises do not inherit any of the previous debt.

### **The privatization process of the socially owned enterprises through the Privatization Agency of Kosovo (PAK)**

The Privatization Agency of Kosovo was established based on article 03/L-067 which came into power on 06.15.2008, in accordance with the Constitution of the Republic of Kosovo (Law 03/L-067 2008). PAK is an independent agency (according to article 142 of the Constitution of the Republic of Kosovo), which will do its duties and fill its responsibilities completely independently. The agency has juridical rights to independently sign contracts, to take, withhold or sell the property and has complete competence to finish the duties and use the authority given by the Law of Privatization Agency of Kosovo.

PAK has authority over the socially owned enterprises including rights to privatize and liquidate enterprises. PAK uses this authority in accordance with article 159 of the Constitution of the Republic of Kosovo.

Declaration of statehood and independence of the Republic of Kosovo, the Kosovo Trust Agency (KTA) has stopped working. After a short delay, 15 Jun 2008 years promulgated the Law on the Establishment of the Privatization Agency of Kosovo (PAK). The very beginning to drop was not very promising from the fact that it is not done regularly transfer, was even and positional disorder in the documentation, while one part of the documentation under mysterious circumstances had been burned. Data regarding to previous rounds were on the server, but lost and burned records creates many doubts and concerns. Soon PAK is reorganized and became operational.

There are 120 liquidation Commissions, which had already been established (all inherited from predecessor agencies (KTA). Any liquidation committee has international members, appointed by the International Civilian Representative (ICR) (9<sup>th</sup>chp. 2 Law on the Establishment of PAK). The initial members of the ICO are set at the beginning of the 20 liquidation Commission respective Regional Offices of PAK in 2009 in regard to preparation for the further sale of assets and liquidation of reviewing the appeals of various claimants. in 2010, all of the liquidation work in Certain liquidation committee, the regional Offices in the implementation process of liquidation of companies as quickly as possible.

During the mandate of its predecessor agencies (KTA) has not been uniform procedures and guidelines for the liquidation of which would help the liquidation commission in conducting their daily duties arising from laws that are applicable and operational policies of the Agency. For the above reasons, the Department of liquidation and experts from "Poll Consulting and Associates" (as support PAK has updated the liquidation of form (pattern) and create Instructions for liquidation of previous liquidation Commission.

Laws and regulations that govern the liquidation of the time-tested and are planned PAK abilities to meet all the necessary activities for the upcoming process of liquidation of SOEs. It is now apparent that while

the liquidation is going through all the planned steps and it is considered that the time period (planned) of 34 months is quite an optimal process to be completed in its entirety. However, until now it is noted that the dynamics of planned activities not consistent with reality and can expect significant improvements.

Delays in the process of liquidation of companies can be expected to create significant problems in all units operating within the PAK. One such unit is the unit for a transition that is responsible to manage resources related to the company transition period. Transition period the company is the period between closing of tenders, the company is preparing to submit a new customer and begin the process to dissolve the company. During 2009, the Unit for the transition is managed to process 397 signed contracts for providers of services (195 transitions and 202 in liquidation). These are agreements signed with former employees of SOEs in order to prepare the archive privatized SOEs and started work on preparing a list of employees to compensation for sale of company shares from 20% of which belongs to them under the Act, as well as other items pertaining to the transitional phase of privatization and liquidation.

All units within the PAK are closely related to one another and thus form a whole. It closed completely in the process of selling and liquidation of an enterprise has an important role of the Unit for the closure of tenders, whose duty is to prepare a draft contract for the sale conducted by the PAK method through spin-off and liquidation. Later, as the Steering Committee approves the sale and supply are fully paid, to close the tender unit begins with the preparation of draft contracts that include fixed assets, which was published in the tender, assets and liabilities and sent to the Legal department for legal review Liquidation Division is one of the two PAK pillars which deal with SOEs liquidation process. Liquidation process coordinates works and duties between HQ and Liquidation Department along with Heads of Liquidation Teams in PAK Regional Offices. After tender procedures and signing of contract dated 10 July 2012 PAK has hired consortium Deloitte and Tashko and Pustina for the project "Professional Service Provider for liquidation of portfolio of the Socially Owned Enterprises in Republic of Kosovo" a contract which is managed by Liquidation Department within Liquidation Division (PAK Annual report 2012).

One of the key assumptions, for the liquidation of SOEs and the process of compiling lists of workers who belong to the law 20% of the shares sold to the company. The very skills of workers who are subject to this list are a process of research data.

Based on the above-mentioned can be considered that one company is fully privatized when it is complete and the process of its liquidation, or when they cover all possible liabilities that had a Social Enterprise. Therefore, all the units together with the liquidation committees are required in the implementation of this process in order to fully privatizing the company.

The process of privatization of SOEs is quite complex in itself. In fact, there are cases where companies are not yet ready to initiate a process of privatization; it means that there is a time vacuum. On the basis of law PAK she is obliged to manage and social enterprises where there are no financial results or are damaged by any of the grounds to their privatization. This is called the direct administration of PAK to be approved by the Board of PAK.

During 2010 -2014 work continued with the same pace of privatization in an attempt to end it as soon as possible this process to be as soon as possible the process of liquidation of SOEs, which also require a lot of work and effort.

The beginning of PAK was not promising since there was no proper handover of the responsibilities, and due to other issues from rush or lack of knowledge. All this created real ground for suspicion. Through PAK there have been 30 waves of privatization, selling enterprises using the method of spin-off and 26 other enterprises were sold using the method of liquidation. It is estimated that over 630 million euro's have been acquired. The process of privatization itself and its consequent result, left their mark in economy, politics, social ethic and all other aspects of life sources.

## Conclusion

The wave of change that had been through the countries of the socialist block in the previous century also included the countries of former Yugoslavia. The flow of these changes could not have been predicted. Among eight units of former Yugoslavia, the changes came through bloody war in six of them.

The UNMIK (1999) started organizing the economical, political and social life as fast as they could, being restricted by the circumstances. Kosovo was asked to satisfy “standards” so that it can connect to the democratic world. One of the standards included transforming the socially owned property. UNMIK, through the Pillar four, attempted rebuilding the economy of the country. The department of trade was part of this Pillar too. Accordingly, the UNMIK formed the Kosovo Trust Agency, as the institution through which it would start transforming the property, privatizing the socially owned enterprises in Kosovo. Despite the internal and external pressure, Kosovo Trust Agency managed to finish the job they had started.

The public dissatisfaction appeared since the beginning of the process. The expectations were that this process will reduce the unemployment, and this did not happen. Few were those enterprises that started working after the privatization. Controversy was raised about the methods of privatization, transparency, the money raised through this process and up to the process of selling itself the announcement of the independence of Kosovo on 02.17.2008 did not make significant changes in the process of privatization. The parliament of the Republic of Kosovo established the Kosovo Privatization Agency as a subsequent of Kosovo Trust Agency. The privatization in Kosovo, although local people took charge, in essence remained the same. Some additional problems surfaced, among the most important ones was paying the 20% of the raised money to the workers, money that belonged to them by law.

Based on the overall past and current events, regarding the process of privatization in Kosovo, it can be said that so far the process of privatization has not ended for any of the socially owned enterprises. The transformation of the property through selling of the socially owned enterprises is characterized by transferring the property to those who buy it

for 99 years. Moreover, until the process of liquidation of these enterprises is not over, and until we are not able to answer the question what will happen to these properties after 99 years, the process of privatization shall not be considered complete.

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