

# PRIVATIZATION IN POST-WAR KOSOVO: LEGAL REVIEW

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## Abstract

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The main purpose of this paper is to analyze privatization in Kosovo as a complex legal process of redistribution of social wealth to private individuals or certain enterprises. The privatization process in Kosovo cannot be compared with the privatizations of countries in the region due to its economic and political specifics, as a country with economies in transition and high levels of corruption (Borošak, 2018). To study this phenomenon, we will analyze the data published by the complaints received from the Kosovo Trust Agency (KTA) the decisions of the Special Chamber as well as the judgments of the Special Chamber for human rights. Data analysis concludes on descriptive statistics, analysis of domestic laws, and regulations of the United Nations Interim Administration Mission in Kosovo (UNMIK), reports from the World Bank, processed cases, and Special Chamber court decisions on privatizations. The study concludes that the process of privatization of socially owned property has caused conflicts between the descendants as property owners before their confiscation, privatization has further destroyed the country's economic development rather than improving the well-being and lives of its citizens. This paper is of great importance for policy makers, officials, scholars as the processing, publication of data, and sanctioning will enable this phenomenon that has become a new way of enrichment to be stopped and the state to be built for society and to belong to society.

**Keywords:** Privatization, Socially Owned Enterprises, Kosovo Privatization Agency, Special Chamber, Legislation, Regulations, UNMIK

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## 1. INTRODUCTION

The main issue to be addressed in this paper is the rule of law in the process of privatizing socially owned property in Kosovo. The United Nations-led international community established and continues to influence new post-war institutions in Kosovo, even though Kosovo declared independence in 2008. United Nations Interim Administration Mission in Kosovo's (UNMIK) main goal was the rule of law and the creation and development of legal institutions and frameworks (United Nations, 1999).

The rule of law in Kosovo after the declaration of independence despite the international presence

and the funds given to it to support the building of the state and institutions is weak, where accusations of corruption by local government officials abusing power for private gain (Pozsgai-Alvarez, 2019) and nepotism in state institutions are common, despite international assistance given to Kosovo since 1999. Although Kosovo, after the end of the 1999 conflict, received from the international community 50 times more peacekeepers and 25 times more funds than Afghanistan after the 2001 war. Only the EU after the end of the armed conflict with the former Yugoslavia in Kosovo donated more than 4 billion euros, which is the largest aid to a country that is not a member of the EU (Capussela, 2015).

These two aspects are particularly important from an economic point of view as the protection of the right to private property and the proper implementation of the privatization process are essential in raising the level of economic development (Daniels & Trebilcock, 2004).

The process of privatization of socially owned enterprises (SOEs) in Kosovo is one of the most complex and difficult processes of the United Nations in terms of the peacekeeping mission, which process was initiated and implemented by the UN known as "UNMIK" (United Nations, 1999) under Chapter 7 of the UN Charter, where the exclusive power to administer the enterprises and property of Kosovo is entrusted to the Special Representative of the Secretary-General of the United Nations. Past seizures, nationalizations, and socializations complicate privatization because there is uncertainty about these properties. It is possible that some people are entitled to restitution of property or material compensation because they previously owned property that was illegally expropriated by the state for social purposes and now belongs to a socially owned enterprise (Record of the Special Chamber, 2 August 2007, No. SCC-7-0030)<sup>1</sup>.

Since 1999, UNMIK has focused on the issue of property rights in Kosovo, including socially owned property or the privatization of socially owned property (Regulation No. 1999/1 of 25 July 1999, "On the Authorizations of the Interim Administration in Kosovo" amended by UNMIK Regulation No. 2000/54, Article 6)<sup>2</sup>. The Constitutional Framework for Provisional Self-Government in Kosovo ensures that certain competencies are not included in the competencies of the provisional institutions of Kosovo, but remain exclusively in the hands of the Special Representative of the Secretary-General<sup>3</sup>. Among these components is the authority for the administration of the public, state, and social property; regulation of public and state-owned enterprises as well as the definition of jurisdiction and component for resolving economic property disputes (Regulation No. 2001/9, Article 8.1 (q), (r), and (u)).

Socially owned enterprises in Kosovo covering all local business (mining, dust, agriculture) (Knudsen, 2013) were under the mandate of UNMIK, which, according to UN Security Council Resolution 1244, aimed to provide an interim administration for Kosovo and enable state and institution building, on the one hand, and ensure the country's economic development, on the other.

Resolution 1244 caused great controversy as all legislative and executive authority for Kosovo and privatize socially owned property was given to UNMIK (Everly, 2007). Despite the authority granted, UNMIK had difficulty in gaining authority until 2000, when war-recruited individuals took control of enterprises and socially owned property and appropriated them for personal gain and gain. A detailed critique of the most commonly used indicators of abuse has been provided by Chabova (2017). The UNMIK report (OSCE, 2008) described socially owned enterprises as properties over which some persons as warlords had absolute control over the social wealth of society, the people, and the income of those enterprises was addressed to them for personal gain. Insecurity of socially owned property, legal uncertainty about UNMIK authority, Serbia's insistence on looking at its sovereignty over Kosovo, and control of socially owned enterprises by various factions of Kosovo Albanians characterize the political and legal environment in which The United Nations began the privatization process. The organizational structure of UNMIK consists of four pillars. Pillar IV was administered and staffed by the EU, responsible for economic reconstruction, including privatization (Knudsen, 2013). However, under EU authority, the Pillar IV Legal Department was staffed by the United States Agency for International Development (USAID), which promoted a neoliberal approach to economic development, emphasizing privatization as a key instrument needed to implement economic reform. While Knudsen (2013) claimed that, in addition to the various actors involved in the process, the deployment of UNMIK was not conducive to long-term policy planning. His term lasted one year and was subject to extension on an annual basis, and UNMIK staff worked on short-term contracts and consisted of international bureaucrats with little sense of responsibility for UNMIK's mandate (Knudsen, 2013). Most of the Pillar IV budget was spent on salaries for international staff (Knudsen, 2013).

The structure of this paper is as follows. Section 2 reviews the relevant literature. Section 3 analyzes the methodology that has been used to conduct an empirical analysis on the presence of corruption in certain bodies by certain actions. Section 4 presents the data and results. Section 5 presents the discussion and Section 6 presents the conclusion of the study.

## 2. LITERATURE REVIEW

The rule of law is a necessary institution for economic development, strengthening and enabling the rule of law ("Discretion", n.d.), while its lack hinders economic development (Krever, 2011). Although Kosovo has achieved development in the functioning of its legal system, again, from the point of view of the rule of law, it also encounters great difficulties in the judicial system. Weaknesses in law enforcement cause irregular functioning of state institutions that are manifested in their activity which are not based on provisions and principles but on the subjective preference (unconscious) of officials who with their illegal decisions and actions seriously violate the public interest and purpose.

<sup>1</sup> The question of whether previous ownership will be recognized depends on several factors, such as: under which law the property was acquired, whether it was acquired in accordance with that law, and whether the law provided a time limit for opposing the acquisition (see Minutes of the Special Chamber during the Review Session of August 2, 2007, SCC-07-0030).

<sup>2</sup> UNMIK Regulation No. 1999/1 of 25 July 1999, "On the Authorizations of the Interim Administration in Kosovo" as amended by UNMIK Regulation No. 2000/54 ([https://unmik.unmissions.org/sites/default/files/regulations/03\\_albanian/A2000regs/RA2000\\_54.htm](https://unmik.unmissions.org/sites/default/files/regulations/03_albanian/A2000regs/RA2000_54.htm)), in Article 6, provides:

6.1. "UNMIK shall administer movable or immovable property in the territory of Kosovo ... When UNMIK has reasonable and objective grounds to conclude that such property is: 1) property or property registered in the name of the Federal Republic of Yugoslavia or the Republic of Serbia or any of their bodies; or 2) social property"

6.2. "The administration by UNMIK of property in accordance with section 6.1 above shall be without prejudice to the rights of any person or entity to protect property or other property-related rights in the competent courts of Kosovo or in judicial mechanisms established by regulation". UNMIK Regulation 1999.1 is deemed to have entered into force on 10 June 1999, the date of adoption of UN Security Council Resolution 1244 (1999, <https://unmik.unmissions.org/sq/rezoluta-1244-e-kombeve-t%C3%AB-bashkuara>) (see Article 7).

<sup>3</sup> UNMIK Regulation No. 2001/9 "On the Constitutional Framework for Provisional Self-Government in Kosovo" dated 15 May 2001.

Institutions necessary for the rule of law can be defined as formal rules (constitution, laws) and informal (customs, traditions, practices), which influence behavior and social relations (Groenenwegen, Spithoven, & van den Berg, 2010). For the economic development of a country to be successful, the institutions must be comprehensive, which will be characterized and will ensure secure private property, a system where the law will be and will treat everyone equally, creating conditions for citizens where they will be able to contract and exchange freely, as well as public services (Acemoglu & Robinson, 2012). Acemoglu and Robinson's (2012) explanation of the relationship between institutions and economic development implies that institutions are the product of rational decision-making designed to extract income and wealth from one group to another, and all this is possible if political power is widely distributed in society and subject to legal restrictions. These reforms will enable the improvement of accountability which in turn can improve the trust of the citizens and in the long run improve the relations between the citizens and the state (Bilous & Tyshchuk, 2019).

The rule of law and the role that the state plays in economic development is also explained by the World Bank (2017), according to which, the rule of law requires government officials and citizens to act in accordance with legal provisions (Beshi & Kaur, 2019), as local governments elected to manage public goods have a major impact on the daily lives of citizens and only in that way is good governance ensured to achieve full social and economic potential. Weaknesses in law enforcement and misuse of the law is an attempt to bring to light the situations that are present in the decision-making which is a complex process that always involves illegal elements, while control by various institutions can be a step to end this phenomenon that has invaded all state institutions and bodies (Pečarič, 2018).

Since the rule of law is a very broad concept, while misuse through the effect of a chain reaction, creates a whole range of other systemic problems such as threats to the rule of law and the stability of democratic processes, thus undermining the foundations of the state (Gerasymenko, Splavinska, & Pavliv, 2018), and largely reflecting problems at the national level and economic development (Schöberlein, 2019), as misuse reduces the efficiency of government in the equal, balanced and efficient delivery of public goods (Cooray & Schneider, 2018).

The research is based on two important aspects as well: the right to property and the right to privatization.

Privatization is a process that is conceived in different ways by different authors. In academic writing, the privatization process is seen as an attempt to replace the hierarchical decisions of the command economy with the sole purpose of increasing the owners' profit (Harvylyshyn & McGettigan, 1999). Privatisation can be described as the "act of reducing the government role or increasing the role of the private institution of society in satisfying people's needs" (Savas, 2000, p. 132). There are various types of privatisation strategies, as suggested by Eaton (1989). The role of the state in this process determines the status of economic reform.

However, the presence of misuse of the law is the main indicator of bad governance, economic stagnation, and social injustice, the effects of which severely damage the country's economy (Ullah, 2020).

Misuse of law and weaknesses in law enforcement are intended to bring to light situations that are present in the decision-making process which is a complex process that always involves illegal elements, while control by various institutions can be a step towards putting an end to this phenomenon that has invaded all state institutions and bodies (Pečarič, 2020).

Others considered privatization to be the transfer of socially owned property to workers for use and management for eternity (Pešelj, 1963). There were others who saw privatization as a right under public law rather than a property right (Coronna, 1985).

The paper aims to conduct the comparative analysis of the contribution of different forms of privatization in different social enterprises. The main purpose of this study is to analyze the efficiency and impact that the competent authorities have in the proper implementation of the privatization process until their processing and sanctioning by the competent courts.

Research questions in this study include:

*RQ1: How much did the privatization affect the growth of the economic development of the country, in the distribution of social property, did the citizens, the employees of social enterprises also participate?*

*RQ2: Are the revenues from the sale of socially owned enterprises (SOEs) assets invested in the country's economic development?*

The hypotheses of this study are:

*H1: Privatization was characterized by institutional dualism, property problems, inefficient privatization methods, negative impact on employment, and very low value of sales of SOEs.*

Corruption, underestimation of agricultural land, non-use of funds privatization and exclusion of citizens from the privatization process, ended as a failed corrupt and mismanaged process which had destroyed the economic base of Kosovo, which had left more than 70,000 employees of socially owned enterprises unemployed and had enabled 40% of the Kosovar people to live in poverty.

*H2: Privatization as one of the most hopeful and complex processes brought nothing to Kosovo but an enrichment of a clandestine rather than a whole economic development.*

The function of revenues from the sale of SOE assets and their economic use has remained one of the most discussed issues of the privatization process in Kosovo. The total value of income that has been accumulated through the privatization process is blocked in bank accounts, they are removed from economic activities, from the payment of workers, therefore, they have a negative effect on economic development. This is the political price that Kosovars had to pay from the process of property privatization that was built and created by the Kosovar people but was not distributed to the Kosovar people.

*H3: The citizens of Kosovo believe that only with the influence of the international factor Kosovo will be built as a state of law and the rule of law.*

The confirmation of the hypotheses is done by analyzing the various reports of national and international bodies, the decisions of the courts after the conclusion of the court proceedings initiated on the basis of the criminal charges of the prosecution, the data published by the complaints received from the trust agency, the decisions of the Special Chamber as well as the judgments of the Special Chamber for human rights.

Megginson, Nash, and Van Randebourg (1994) view privatization as a political, social, and economic activity involving the deliberate sale by a government of socially owned enterprises or its assets to private economic entities. However, Megginson, Nash, Netter, and Poulsen (2004) state that most frequently governments choose between three approaches: 1) the asset sales method, where the government sells company assets (typically through an auction) to a small group of investors; 2) through a share issue, in which equity shares are sold on public stock markets; 3) through vouchers, which represent part ownership of former state-owned firms, which are distributed free to all citizens. The other compelling theories about privatization are the “agency theory” and the “signaling theory”. The agency may also explain capital structure decisions following privatizations (Borisova & Megginson, 2011) found that fully privatized versus partially privatized firms may exhibit different credit spreads, which may derive from a bondholder-shareholder conflict. Sheshinski and López-Calva (2003) also suggest that agency issues in SOE may flow differently following privatisations, especially for full privatisations. Regarding the signaling theory, literature has focused on issues such as the residual state ownership in partially privatized firms (Chang & Boontham, 2017). The processes of expropriations, nationalizations, privatizations, and transformations that took place during the period of Yugoslavia after 1945 significantly complicate the privatization processes in Kosovo<sup>4</sup> (Tondini, 2003). After the end of World War II, Yugoslav authorities confiscate private property, the government later nationalizes agricultural land exceeding the size allowed under private property law (Official Gazette of the Peoples Federal Republic of Yugoslavia, 64/1945). The main feature of the socially owned property was that private holders of socially-owned property did not acquire ownership, but the right to use an asset qualified as socially owned property (Critical Outline of the Current Privatization Process in Kosovo, the UN Mission in Kosovo and the Privatization of Socially Owned Property, 2005). The enterprises were socially owned enterprises<sup>5</sup> (Regulations of UNMIK, 2005/18, Article 3) and social enterprises

exploited social assets. The supreme holder of the social property was society.

The Republic of Serbia during 1989–1999 changed the management of SOEs and replaced them all with ethnic Serbs through interim measures and the formation of new management (Misajlovski, 1958). A form of privatization at this time occurred in the form of transactions which are referred to as transformations (Law of conditions and procedure for the transformation of socially owned property and other forms of property, 48/91, 75/91, 51/94). Through transformations, some Serbian Serbs from present-day Serbia and Kosovo Serbs often have acquired private property rights in socially owned enterprises under the law in force at the time.

The expropriation of Serbian property acquired by the Serbian authorities during the Serbian government was carried out through the privatization process, which was designed by the international community and regulated by UNMIK regulations (KIPRED, 2005).

UNMIK Regulation sets out the conditions and criteria under which such expropriations will be recognized (Regulation of UNMIK, 2005/18, Article 5.3 (b)).

Since 1999, UNMIK has focused on the issue of property rights in Kosovo, including socially owned properties (Regulations of UNMIK, 1999/1 of 25 July 1999 changed with Regulation of UNMIK No. 2000/5, Article 5)<sup>6</sup>.

In order to institutionalize the privatization process in Kosovo, the Constitutional Framework for Provisional Self-Government of Kosovo consisted of Regulation No. 2001/9:

- Regulation on Governance and KTA operations;
- Regulation on Land Use Governance;
- Regulation on the Special Chamber at the Supreme Court;
- Tendering rules and procedures.

This legislation has enabled and facilitated direct sales of enterprises through regular spin-off procedures and special spin-offs. With regular spin-offs, enterprises and their assets are privatized based on the highest price offered in a round, without any other conditions, while the special spin-off has included in addition to the highest price also conditions such as employment commitments and investment commitments.

In practice, a distinction is made between regular spin-offs and special spin-offs.

There is a difference between the two forms of sale of shares: the one with the method of special spin-offs are large privatized enterprises with the largest number of employees and the number of employees to be over 150 with a turnover of 10 million euros, to offer employment guarantee

<sup>4</sup> Laws that regulated the privatization processes during the period of Serbian rule are: Law on Construction Land, Articles 38/39; Company Law Articles 75/79 Official Gazette 77/78; Yugoslav Law on Liquidation, Compulsory Agreements and Bankruptcy Article 135 Official Gazette 84/89.

<sup>5</sup> Section 3 of UNMIK Regulation SOE — socially owned enterprise — is defined as “(i) a legal person (other than a publicly owned enterprise), which at the time of incorporation was provided for in paragraphs 1 or 2 of Article 2 of the Law on Enterprises or (ii) a legal person (a) which at the time of incorporation was provided for in paragraph 3 of Article 2 of the Law on Enterprises and (b) where most of its assets are socially owned or where the majority capital includes social capital.” The old Yugoslav law on enterprises says: 1. Socially owned are: limited liability joint stock companies, public and socially owned enterprises, 2. Owned by cooperatives are: Joint stock companies, joint ventures and unlimited liability companies, 3. Owned with mixed capital are: parts: joint stock companies, limited liability companies, limited partnerships, citizens’ property, cooperative property, property of legal civil persons.

<sup>6</sup> UNMIK Regulation No. 1999/1 of 25 July 1999, “On the Authorizations of the Interim Administration in Kosovo” as amended by UNMIK Regulation No. 2006/1. 2000/54, in Article 6 provides:

6.1. “UNMIK shall administer movable or immovable property in the territory of Kosovo ... When UNMIK has reasonable and objective grounds to conclude that such property is: i) property or property registered in the name of the Federal Republic of Yugoslavia or the Republic of Serbia or any of their bodies; or ii) social property”.

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25%, investment guarantee 25%, bid price 50%, while with regular spin-offs are the privatized enterprises that during the bidding have offered the highest price (Official Newspaper of Kosovo, 2012).

### 3. METHODOLOGY

This scientific research is based on the analysis of domestic laws, the World Bank reports, the analysis of UNMIK regulations, the empirical analysis of the reports of the relevant state institutions competent for the implementation and realization of the privatization process until their prosecution before the judicial institutions and accountability.

The revised literature is of international level by numerous indexed platforms.

To analyze the privatization process in the system of governance of Kosovo institutions and how much this process has affected the economic development of the country, we have analyzed the data obtained from the reports of the KTA of privatization, the receipt of complaints, and further processing of complaints by the Trust Agency, the data obtained from the reports of the State Prosecution of Kosovo, the data obtained from the reports of the Court on Criminal Charges by the prosecution which were accepted as grounded by the Court, the decisions of the Chamber, in particular, the judgments of the European Court of Human Rights.

### 4. DATA ANALYSIS AND RESULTS

#### 4.1. Legal framework on the Kosovo Trust Agency

Cook (1986) defines privatisation as the purposeful sale of state-owned enterprises by a government to private proprietors. Under privatisation policy, state-owned enterprises are required to be sold regardless of their relative. The process of privatization of socially owned enterprises in Kosovo is carried out based on Law No. 03/L-067 "On the Establishment of the PAK", dated 21 May 2008, which was amended and supplemented by Law No. 04/L-34, as well as amended by Law No. 080 of 24 December 2015. The Privatization Agency of Kosovo (PAK) is the successor of the Kosovo Trust Agency (KTA). Hence, it is based on the Founding Act of the PAK<sup>7</sup>.

Other legal regulations include:

- Annex to Law No. 04/L-0349 "On liquidation procedures of SOEs".
- Regulation No. 2003/13 "On the Transformation of the Right to Use Real Estate into Socially Owned Property".
- Guide for Revenue Distribution Procedure from 20%.
- PAK Operational Policies and its Annexes
  - 1) Sale Procedures and General Tender Rules
  - 2) Liquidated Tender Rules, and
  - 3) Rules of Procedure of the Commission for Reviewing Complaints against Employee Lists.
- Liquidation Guide with its Annexes.
- Rules of Procedure of the Commission for reviewing the initial lists of employees.
- Sale Procedures and General Tender Rules.

- Regulation on Procedures of the Control and Supervision Unit during the Monitoring of Privatized Enterprises with Special Spin-Off and Conditions.

- Regulation No. 01/2012 "On Maintaining the Integrity of the PAK".

- Rules of Procedure for the Sale of Apartments to SOEs.

- Rules of Procedure of the Commission for illegal constructions on the properties of SOEs.

- Regulation on leasing the assets of Socially Owned Enterprises.

- Regulation on monitoring of Trepça.

- Regulation of Sale of Trepça Enterprise in PAK Administration.

The main document governing the establishment of the KTA and defining its competencies to administer public enterprises and socially owned enterprises is UNMIK Regulation No. 2005/18.

The establishment of the KTA was initially opposed by the UN due to concerns over UNMIK responsibilities. Despite concerns and opposition from the UN, the US and the EU representatives within UNMIK called for the privatization of Kosovo's socially owned property. The UN concern was that the permanent change of property rights as a result of privatization would go beyond the mandate of the interim administration set out in Resolution 1244 (Zaum, 2007). UN concerns were related to possible liability claims that could arise from lawsuits by owners or creditors of socially owned enterprises that had been privatized in the 1990s (Zaum, 2007). The UN hoped that the KTA would be an auxiliary body of the Security Council and that the UN would be responsible under international law for the Agency's actions.

The notion of the Kosovo Trust Agency is an adaptation of the German *Treuhandanstalt* which was responsible for the privatization of German social enterprises after the unification of Germany. The Deputy Director of Pillar IV used *Treuhandanstalt* as a model that would be based on privatization in Kosovo.

As a result of negotiations between representatives of the UN, EU, US, UNMIK, the UN approved conditional privatization that the KTA be established as a separate entity by UNMIK with the right to manage privatization proceeds to meet the requirements of owners and creditors of socially-owned enterprises. As the judicial system was weak, the UN demanded that privatization-related decisions be reviewed by a court composed of international judges, which would guarantee independence and impartiality. The legislation that established the KTA shows that the main concern of the UN was to protect itself and its international officials from the legal responsibility of selling direct socially owned enterprises in Kosovo (Knudsen, 2013). The EU asked the UN to grant international board members sent by the EU itself immunities and privileges, which the UN categorically denied. As a result, international board members refused to make decisions, suspending the privatization process for two years. Following these misunderstandings, UNMIK amended legislation allowing the KTA to begin the privatization process,

<sup>7</sup> <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2773>

meaning that international officials used legal regulations as a mechanism to protect them from prosecution (Knudsen, 2013).

After 2008, when Kosovo declared independence and UNMIK ended its mandate to privatize socially owned enterprises, privatization was perceived as a failed, corrupt, and mismanaged process that had destroyed Kosovo's economic base, leaving more than 70,000 unemployed socially owned workers and enabling 40% of the Kosovar people to live in poverty (Knudsen, 2013).

Kosovo Trust Agency, established under UNMIK Regulation No. 2005/18 Article 1<sup>8</sup>, is an independent body with full legal subjectivity. The KTA headquarters are in Pristina, while there are five regional offices, one in Pristina, Prizren, Mitrovica, Peja, and Gjilan. The KTA has a total (right) share of the capital of €10,000,000 of which €1,000,000 (UNMIK Regulation No. 2005/18 Article 17) are paid from the Kosovo Consolidated Budget. Funds accumulated from the sale of SOE assets amount to over 383 million euros. However, these funds are still frozen in the KTA Trust Fund withdrawn from economic activity and function (OSCE, 2008). The board of the KTA consists of 4 external directors and 4 international directors<sup>9</sup>. The agency has 245 employees, of which 44 employees are international foreigners, 201 domestic workers, and 6 international advisors. Out of the total number of employees, 12 international foreign workers and 5 Kosovar lawyers work with SOEs.

The KTA since 2007 manages about 650 SOEs. The most important and necessary social enterprises for economic development and which have had minor technical complications such as cadastral ones have been privatized through liquidation. Since 2007, the KTA has privatized a total of 320 SOEs while 110 SOEs have been placed in liquidation proceedings, while the rest of the SOEs without technical barriers will be privatized, others with catastrophic technical barriers will be liquidated.

The KTA processes complaints against the Agency and the SOE, as during the liquidation process the creditors initiate property lawsuits which are reviewed by the commission formed at the Special Chamber (Administrative Order of Regulation of UNMIK, No. 2008/4, No. 2006/17, Article 55, 4.1 (i)).

The KTA has the right to transform the assets of the SOE into subsidiaries, while the shares of the subsidiaries have the right to sell and administer the proceeds that will be collected from the sale of such shares (UNMIK Regulation No. 2005/18 Article 6.1 (o), 6.2, Article 8). The KTA keeps the proceeds from the sale of shares of subsidiaries and enterprises for the benefit of creditors and owners of SOEs. After the sale of the subsidiary(s), the new

owner is not responsible for the employees, and in this case, the KTA will liquidate such SOEs<sup>10</sup>. If the KTA deems that the assets of a SOE do not form a viable business, it will not establish subsidiaries but will liquidate them. Procedures for the sale of shares in a subsidiary where a part of the SOEs has been transferred is provided by the Tender Regulation for the Privatization of the Trust Agency<sup>11</sup>.

The procedure for the sale of shares in a subsidiary is regulated by the Tender Regulation for the Spin-off Privatization of the Trust Agency, which stipulates that the shares in the subsidiary will be sold at public auction. While buyers have responsibilities to investigate the affiliate and its assets (Report of the Office of the Auditor General of Kosovo). The selection of tenders is done in such a way that the tenderer with the highest bid will buy the subsidiary with the highest bid price. Buyers cannot change their offers to buy shares, but for justified reasons have the right to request a postponement or cancellation of the tender. If the bidder with the second-highest bid does not continue the procedure, then the bidder with the highest bid will buy the subsidiary with the highest bid price (Law of Administrative Procedure No. 02/L-28, 2006/33)<sup>12</sup>. According to UNMIK Regulation No. 2005/18, the KTA after the sale of assets of socially owned enterprises is obliged to determine the ownership status. If a socially owned enterprise is unable to fulfill the obligations to the employees for more than 6 months then the KTA decides that the SOEs can continue their activity in a reorganized form in order to protect the assets of the socially owned enterprise from creditors. The Special Chamber will order reorganization procedures if certain conditions are met (UNMIK Regulation No. 2005/48, Articles 3-4).

The Special Chamber appoints one or more administrators of socially owned enterprises who must be independent and have certain decision-making powers. He sets the voted plans at the Special Chamber which sets up a review session and decides on the plans. The administrator convenes a session at the Special Chamber and decides on the approval of plans for the reformulation and reorganization of socially owned enterprises. It submits the final list of lawsuits to the Special Chamber which may order

<sup>10</sup> <http://www.kta-kosovo.org/> (see also UNMIK Regulation No. 2006/12, 2005/18, Article 9).

<sup>11</sup> <https://www.pak-ks.org/desk/inc/media/4D569384-1DE3-4FA1-AF0B-EAE2EA63DF3A.pdf>

<sup>12</sup> The following cases show this evolution of legal interpretation:

- In the judgment of persons (Osman Mecinaj and Others v. KTA, SCC-03-0002), the Special Chamber found that the Rules of Tender enable the KTA to cancel the tender if the requirements set out in the Regulation are met.

- In the judgment of 10 October 2006 ("Grand Group Partnership", JSC v. KTA, SCC-06-0176), the Special Chamber decided that the Trust Agency should act in accordance with the law and the Rules of Tender and treat the parties equally as through the tender the parties do not establish a contractual relationship, but an obligation that must be fulfilled by both entities.

- In the judgment of 16 May 2007 (Private Company Doni v. KTA, SCC-06-0436), Chamber found that the Law on Administrative Procedure is applicable to the Trust Agency under UNMIK Regulation No. 2006/12, 1999/24: "The Chamber has no doubt that the Trust Agency falls under the definition of an administrative body... The Trust Agency decided to disqualify the bidder from the tender-offer without any prior verification. This action is contrary to the provisions of Article 135 (1) of the [Law on Administrative Procedure]".

The Special Chamber found that the Trust Agency as an administrative body during decision-making in recent years has had legal violations in terms of violation of law, public interest, transparency and fundamental human rights, while the Trust Agency is obliged to be issued in accordance with legal provisions and based on reasonable argument.

<sup>8</sup> Initially the KTA was established through UNMIK Regulation No. 2002/15 which was amended and replaced by Regulation No. 2005/18. The new law governing the KTA, which will replace UNMIK Regulation No. 2006/12, 2002/12, 2005/18 must be approved by the Assembly of Kosovo.

<sup>9</sup> Kosovo directors are appointed by the Special Representative of the Secretary-General, of whom three Kosovo directors are ministers of the Government of Kosovo, one of whom is a Serbian minister. The fourth Kosovar minister is the President of the Federation of Independent Trade Unions of Kosovo. The International Directors are the Deputy Special Representative of the Secretary-General for Economic Reconstruction, the Deputy Special Representative of the Secretary-General for Civil Administration, and the Managing Director of the Trust Agency. Directors other than the chairperson and deputy chairperson have the right to be reappointed for a two-year term.

the closure of reorganization proceedings (UNMIK Regulation No. 2005/45, Article 39). And then all debts of the SOE are extinguished according to law and any action to collect those extinguished debts will be prohibited, unless otherwise ordered by the Special Chamber, where the SOE is considered financially restored and may continue to operate without restrictive measures. An example would be the case of reorganization by the Special Chamber of the company Trepça initiated by a submission by the KTA which if it finds that the remaining assets of a socially-owned enterprise cannot be returned to a business, it initiates liquidation of the socially owned enterprise (UNMIK Regulation & Administrative Order No. 2002/13, Article 4.2, No. 2006/17, Article 17)<sup>13</sup>.

Liquidation initiated by the KTA does not exclude by law the claims of creditors against the SOE or its creditors. To exclude lawsuits against SOE, the KTA must file a claim with the court in which the proceedings against SOE were initiated. Under the same amendment, creditors who do not submit evidence of their report to the Liquidation Commission within two months of being notified of the liquidation will not be able to benefit from the liquidation distribution (Administrative Order of UNMIK Regulation No. 2008/4, 2006/17, Article 55, 4.1 (i))<sup>14</sup>.

If the creditor submits sufficient reasoning for initiating the lawsuit after the time limit then the Liquidation Commission must accept the lawsuit filed even after the expiration of the time limit (Administrative Order No. 2006/17, Article 14.2)<sup>15</sup>. When liquidating SOE, the KTA may request that the Special Chamber cancel all SOE transactions. For any liquidation, the KTA appoints the Liquidation Commission which is responsible only to the competent board of the KTA or to collect the property, sell or rent assets and hire or fire employees from the SOE, and have no liability to third parties for losses incurred by any creditor. All potential creditors must file their claims with the Liquidation Commission, which treats the registration or submission of claims to the Trust Agency as a suspension of the extension of the limitation period from the date the claim was filed or filed with the KTA. The Liquidation Commission then informs each creditor in case of withdrawal or reduction of the lawsuit. The affected creditor can apply to the KTA for review of the decision which establishes an internal Review Committee, independent of the Liquidation Committee to review the decisions and actions of

the Liquidation Committees that are challenged by a dissatisfied party. Decisions of the KTA are based on the recommendations of the Review Committee and are subject to be reviewed by the Special Chamber.

The Liquidation Commission, prior to payment, submits the final list of requests for approval to the board of the KTA. Creditors' claims will be dealt with according to their classification (UNMIK Regulation No. 2005/48).

Upon completion of the liquidation proceedings, the Special Chamber closes the liquidation if it finds that all the assets of the SOE have been liquidated and all the funds raised have been paid in large amounts and then the SOE is considered legally dissolved and non-existent (Monitoring Department/Legal system monitoring section, No. 5/2008).

#### **4.2. Privatization is the cause of an illegal expropriation**

After the 1999 conflict, Kosovo and its legal system faced problems of various natures, with legislation consisting of socialist elements that were transferred from the former Yugoslav system. International actors contributed to the construction of the new Kosovo state and legislation, which was to be cleansed of Yugoslav socialist legislation, and they tried to instill their tradition and legal elements in the Kosovo legal system, especially in the field of property rights, i.e., the legislation of Kosovo in accordance with the international norm which created more legal confusion and contradictory legislation (Roccia, 2015). Over the past three decades, international aid agency-directed privatisation has been the topic of widespread research (Adam, Cavendish, & Mistry, 1992). Major international aid agencies, such as the World Bank (2006) and IMF see privatisation as a way to increase investment and efficiency and decrease government expenditure in developing countries (Brune, Garrett, & Kogut, 2004). However, Stiglitz (2003) criticised IMF's SAPs in which rapid privatisation was applied in developing countries, and argued that the subsequent readjustments led to a deteriorating economic situation, increased poverty, and social unrest.

The specific conditions of privatization in Kosovo were the following. In a country devastated by the war, privatization was one of the fundamental needs for the development of the market economy, SOEs in Kosovo were in a miserable financial situation where their situation was deteriorating day by day, therefore privatization was more than necessary to stop this situation, the improvement of the conditions of SOEs was impossible with their internal resources and external investments were more than necessary for their transformation and restructuring, KTA rules were adopted by UNMIK, the Special Representative of the UN Secretary-General in Kosovo (SRSG) and the UN Legal Office. After much debate, all of these rules were designed to reflect the specific conditions of SOEs in Kosovo (Hashi, 2004).

According to OSCE (2008) estimates, if the assets in a SOE arise from an illegal expropriation (for example, an illegal confiscation by the Yugoslav

<sup>13</sup> The Trust Agency if it deems that the liquidation is in the interest of the creditors or the owners of the SOEs will act in this way (Regulation No. 2006/12, 2005/18, Article 9.1). The Trust Agency liquidates the companies (UNMIK Regulation No. 2005/18, Section 9.1, No. 2001/6), and the Regulation on the Reorganization and Liquidation of Enterprises (UNMIK Regulation No. 2005/48, Article 43.4). In addition, UNMIK Regulation No. 2005/48, Section 43.1 carries out the liquidation ordered by the Special Chamber. In such liquidation proceedings ordered by the court, the functions of administrator shall be exercised by a Liquidation Commission, appointed by the Board of the Trust Agency and accountable only to it (see UNMIK Regulation No. 2005/48, Section 43.3 and Administrative Direction 2007/1, Sections 3 and 4). As far as the OSCE is notified, there has been no liquidation ordered by the courts.

<sup>14</sup> Section 43.3 (d) (ii) which provides that creditors who do not submit their claims within two months will not benefit from the distribution of shares from the liquidation proceedings.

<sup>15</sup> This provision (creating an obligation) UNMIK Regulation No. 2006/12, 2005/48, Article 43.1, according to which the Liquidation Commission "may at its discretion" accept a lawsuit filed after two months, even if the creditor justifies the submission initiated after the expiration of the prescribed time limit.



authorities after World War II)<sup>16</sup>, the privatization of such a SOE by the KTA would also be an illegal expropriation. This is because privatization laws (such as UNMIK Regulation No. 2005/18 and No. 2002/13) do not meet the conditions for expropriation on the basis of international human rights criteria applicable in Kosovo, in particular, Article 1 of Protocol No. 1 to the Convention. Interpreting it (European Court of Human Rights Convention, Article 1, Protocol 1)<sup>17</sup>, expropriation must meet the following requirements:

1. Before the expropriation authority carries out the expropriation, it is obliged to present that the expropriation is done in the public interest, that the expropriation was carried out without any reasonable basis (Judgments of the European Court of Human Rights)<sup>18</sup>. For example, if the expropriation is carried out for the purpose of transferring property from one private person to another private person (Indictment of the European Court of Human Rights, Application No. 8793/79, para. 46, 9006/80, 8262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, para. 122, No. 25701/94, para. 87, No. 31443/96, para. 149).

2. There must be reconciliation between the public interest and the protection of the rights of the person (Judgments No. 7151/75, 7152/75, P. 69, No. 46720, 72203, 72552, P. 93).

The important factors by which it is ascertained whether reconciliation has been reached are:

a. Has the person whose property has been expropriated received compensation for the property as much as the real value of the property in the market as this does not always happen in all cases? The European Court of Human Rights has accepted exceptions to this rule. In some cases, the European Court of Human Rights has considered that small amounts are sufficient (Judgments No. 9006/81, 9262/81, 9265/81, 9266/81, 9313/81, 9405/81, para. 121, No. 13092/87, 13984/88, para. 70–71). Larger amounts of compensation are required if the person has an overload (Judgments of the European Court of Human Rights, Application No. 46720, 72203, 72522, para. 116–117). In that case (for example, in the case of “an individual and excessive burden” on the owner), the lack of compensation is justified (Judgments of the European Court of Human Rights, Application No. 13616/88, para. 43–49)<sup>19</sup>.

b. The personal circumstances of the parties involved are:

– has the competent authority acted within the stipulated time limit (Judgments No. 31443/96, para. 151)<sup>20</sup>;

– has the individual accepted the receipt, (Judgments No. 10842/84, para. 61)<sup>21</sup>;

– whether the main trial was possible (Judgments No. 13616/88, P. 49)<sup>22</sup>.

c. However, the European Court of Human Rights in one case has stated that when there is a large number of the same complaints, general criteria are accepted (Judgments No. 8793/79, para. 68, 9006/80, 9262/81, 9265/81, 9266/81, 9313/81, 9405/81, para. 121–122)<sup>23</sup>.

3. The expropriation will be carried out in accordance with the provisions of the law in force and the general principles of international law.

As far as domestic law is concerned, the European Court of Human Rights is not dealing with the question of whether domestic law has been properly applied or not, it is seeking compliance with accessible and consistent local legal provisions (Judgments No. 9006/80, 9262/81, 9265/81, 9266/81, 9313/81, 9405/81, para. 110, No. 13616/88, para. 42)<sup>24</sup>. Therefore, it is necessary to ensure protection from arbitrariness.

Principles of international law have determined compensation for damage in cases of property nationalizations.

Following the amendment of the previous UNMIK Regulation No. 2002/12<sup>25</sup>, pursuant to Sections 5.3 and 5.4 of Regulation No. 2005/18, the KTA is obliged to determine whether such entity has been validly transformed and whether this transformation has been implemented in a non-discriminatory manner after privatizing or liquidating a SOE. Thus, after privatization, the KTA does not return the funds to the owners, but instead, the owners share their share of the sales revenue, but only after deducting the administrative expenses. This new regulation has given the KTA clear jurisdiction over any enterprise that has been socially owned in the manner described in Section 5, notwithstanding the transformation. The KTA under applicable law to sell private property. UNMIK

<sup>16</sup> Sections 3.2 (b) and 3.3 of UNMIK Regulation No. 2001/9 on the Constitutional Framework for Provisional Self-Government in Kosovo and UNMIK Regulation No. 2001/9, 1999/24 on the Applicable Law in Kosovo as amended by Regulation No. 2000/29 Section 1.3: “all persons holding public office or holding public office in Kosovo are obliged to respect the international human rights standards set forth in Article 1 of Protocol 1 to the Convention on Human Rights. Although UNMIK Regulation No. 1999/24 does not explicitly define the supremacy of international human rights standards, but it applies to judges and they have no right to apply any domestic paragraph that is not in line with international human rights norms.

<sup>17</sup> Article 1 of Protocol 1 to the Convention states: “Every natural or legal person has the right to own property. No one shall be deprived of his private property except in the public interest and subject to the conditions provided for by international law”.

<sup>18</sup> Judgments of the European Court of Human Rights, *James and others v. The Kingdom of United*, 21 February 1986, Application No. 8793/79, para. 46; *Lithgoë et al. v. The United Kingdom*, 8 July 1986, Application No. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81, 9405/81, para. 122; *Pressos Compania Naviera S. A. and others v. Belgium*, 20 November 1995, Application No. 17849/91, para. 37; *Former King of Greece and Others v. Greece*, 23 November 2000, Application No. 25701/94, para. 87; *Broënioski v. Poland*, 22 June 2004, Application No. 31443/96, para. 149.

<sup>19</sup> Judgment of the European Court of Human Rights, *Hentrich v. France*, 22 September 1994, Application No. 13616/88, paragraphs 43–49.

<sup>20</sup> Judgment of the European Court of Human Rights, *Broniowski v. Poland*, 22 June 2004, Application No. 31443/96 paragraph 151.

<sup>21</sup> Judgment of the European Court of Human Rights, *Allan Jacobsson v. Sweden*, 25 October 1989, Application No. 10842/84, paragraph 61.

<sup>22</sup> Judgment of the European Court of Human Rights, *Hentrich v. France*, 22 September 1994, Application No. 13616/88, paragraph 49.

<sup>23</sup> The European Court of Human Rights has ruled that: “ambiguity, judgment, costs and delays that will inevitably be caused... according to the scheme of elaboration of each of the thousands of cases” can be implied that “the system itself cannot be devalued as irrational and inappropriate”. Judgment of the European Court of Human Rights, *James and Others v. The United Kingdom*, 21 February 1986, Application No. 8793/79, paragraph 68. See also Judgment of the European Court of Human Rights, *Lithgow v. The United Kingdom*, 8 July 1986, Application No. 9006/80, 9262/81, 9265/81, 9266/81, 9313/81, 9405/81, paragraphs 121 and 122.

<sup>24</sup> Judgments of the European Court of Human Rights, *Lithgow v. The United Kingdom*, 8 July 1986, Application No. 9006/80, 9262/81, 9265/81, 9266/81, 9313/81, 9405/81, paragraph 110; *Hentrich v. France*, 22 September 1994, Application No. 13616/88, paragraph 42.

<sup>25</sup> UNMIK Regulation No. 2002/12 was amended in 2003, when the Director of the Board of the KTA suspended the privatization process due to concerns that UNMIK Regulation No. 2002/12 contained vulnerabilities that would make future privatization transactions sensitive to legal challenges. UNMIK Regulation No. 2002/12 authorized the KTA to privatize a SOE. The authority of the KTA was unclear. It was not yet clear whether the privatization process was also within the agency’s remit. On 17 August 2004, Kai Eide, the UN Secretary-General’s Special Envoy, concluded in his Report to the UN Secretary-General that privatization had become a sign of unfulfilled promises, and thus recommended that the privatization process move forward smoothly and effectively.



Regulation No. 2005/18 allows the KTA to sell assets without prior notice of ownership of those assets and protects parties who have purchased the property from the KTA. Consequently, privatization may result in expropriation. However, as a violation of Article 1 of Protocol No. 1 to the Convention, Regulation No. 2005/18, Article 5.3, does not include the necessary procedural protection of the parties. First, the question arises as to whether these expropriations are in the public interest. The European Court of Human Rights has ruled that national authorities are in the best position to determine the public interest.

UNMIK Regulation No. 2005/18 does not specify under what circumstances expropriation can take place. Sections 5.3 and 5.4 of UNMIK Regulation No. 2006/12 and 2005/18 provide that public authorities have the right to take property from natural persons if it is required by the public interest. The Law on Expropriation contains four articles on “determination of the common interest”, five articles on “preparatory activities for expropriation”, and, it is worth mentioning, thirty articles on “compensation for expropriation of immovable property” (For the expropriation of immovable property, Law No. 03/L-139). Second, the removal of the property must be proportionate. The KTA reviews property lawsuits. Only those plaintiffs who can prove that they are the owners of that property are entitled to the restitution of the property. Therefore, the OSCE considers that the expropriation of private property without prior assessment of lawsuits is disproportionate and unreasonable. Therefore, in the absence of repatriation legislation, no court in Kosovo, including the Special Chamber, has jurisdiction to review expropriation claims that were established as socially-owned property in accordance with the law of the time. The KTA is entitled to material compensation, instead of returning the property to the rightful owner. Thus, an owner who loses his property in privatization, cannot seek cancellation of the transaction and gain the return. He is only entitled to compensation. Exclusion of cancellation lawsuits and cancellation of contracts signed by the KTA may violate Article 6 of the Convention, which establishes the right to a fair trial.

More specifically, according to the case-law of the European Court of Human Rights, Article 6 includes the right of access to a court to exercise legal rights. Sections 5.3 and 5.4 of UNMIK Regulation No. 2006/12 and 2005/18, in conjunction with Section 10.5 of Regulation No. 2002/13, states that prior to sale at public auction or liquidation, restitution may be sought. A person who acquires ownership of a SOE or an asset held by the SOE may acquire his property by filing a claim for ownership. If the KTA does not return the asset to the owner, the person must file a property claim with the Special Chamber. If the sale is immediate the plaintiff must seek an interim measure that will temporarily block the sale.

In order to accept the interim measure and postpone the sale of the property<sup>26</sup> (Administrative Order, No. 2006/17, Article 14.2), the plaintiff must provide credible evidence proving irreversible damage to the plaintiff, and the request for the interim measure must be submitted along with

<sup>26</sup> Pursuant to Article 277 of the Law on Contested Procedure, the party must be given the opportunity to present arguments for his claims.

a “preliminary” lawsuit to the Special Chamber (Decisions of the Special Chamber, SCC-7-0012, SCC-05-0453)<sup>27</sup>.

The Special Chamber decides on all lawsuits initiated against the KTA (UNMIK Regulation No. 2005/18). Parties must file lawsuits against the KTA with the Special Chamber (UNMIK Regulation No. 2005/18)<sup>28</sup>.

The Special Chamber is competent and decides:

- appeals against decisions of the KTA<sup>29</sup>;
- on lawsuits initiated against decisions of the KTA for financial loss;
- on lawsuits of SOEs, which are initiated during the administration of the KTA;
- as well as various other cases provided in Section 4.1 of UNMIK Regulation No. 2002/13;

The Special Chamber also has the power to decide:

- on the withdrawal of lawsuits that are under the jurisdiction of the Special Chamber or of the regular courts<sup>30</sup>;
- on complaints initiated by legal staff<sup>31</sup>;
- against judgments on reorganizations and liquidations;
- on the basis of the appeal initiated against the judgments of the regular courts (Administrative Order of UNMIK Regulation No. 2008/4, No. 2006/17, Article 55, 4.1 (i))

Decisions issued by the Special Chamber must be based on these elements:

- the status of the parties and the amount (UNMIK Regulation and Administrative Order No. 2002/13, Article 4.2, No. 2006/17, Article 17).

The Special Chamber cannot decide on matters for which it has no subject matter jurisdiction, such as for lists of employees in liquidation processes<sup>32</sup>. Decisions issued by the Special Chamber on the basis of an appeal against the decisions of the KTA are final and binding (UNMIK Regulation No. 2002/13, Article 9.7). The decisions of the Special Chamber are final and enforceable which excludes the right to appeal. The Special Chamber decides on appeals initiated against regular court decisions. The Special Chamber in most cases refers the lawsuits to the regular courts, while in its referral decisions for special cases it reserves the right to appeal to another court or to the Special Chamber.

<sup>27</sup> We will present some decisions of the Special Chamber: Judgment No. SCC-7-0012 of 14 February 2007 of *Muharrem Zenel Shabanaj v. Rugova, the Agricultural Cooperative and the KTA*; Decision No. SCC-05-0453 of 20 September 2005 *Ismajli v. KTA and Hotel Turist Kosova*.

<sup>28</sup> The Special Chamber shall accept claims against the KTA only when the Chairman of the Board of the KTA has been notified in advance, UNMIK Regulation No. 2006/12, 2006/12, 2005/18, Article 30.2.

<sup>29</sup> If a party requests the cancellation of a transaction by the KTA then it has no right to use any remedy under UNMIK Regulation No. 2006/12, 2006/12, 2002/12 (2005/18), even in cases where the property has been sold by the KTA through privatization or liquidation, UNMIK Regulation No. 2006/12, 2002/13, Article 10.5.

<sup>30</sup> UNMIK Regulation No. 2002/13, Articles 4.2 and 4.5. determine the competence of the Special Chamber to withdraw cases from another court if in the appeal the party has initiated such a thing (Administrative Direction No. 2006/17, Article 18.3; see also Section 4.6 of UNMIK Regulation No. 2006/12, 2006/12, 2008/4).

<sup>31</sup> Administrative Direction No. 2006/17, Article 64.4 (see also Section 4.1 (e) of UNMIK Regulation No. 2006/12, 2008/4).

<sup>32</sup> The Special Chamber generally decides on appeals initiated from employee lists, decides on liquidation cases where the injured party initiates an objection, decides on creditors “claims and workers” claims for unpaid wages. However, the Special Chamber does not decide on claims involving large sums of money or large numbers of employees. According to a written statement from the OSCE Special Chamber, the initial purpose of the decision was to combat the lack of human and material resources, but later the Special Chamber forced the regular courts to rule on cases they had not previously addressed account, and has the right to oversee and review the decisions of regular courts.

In many cases of the Special Chamber under UNMIK Regulation No. 2002/13 have no right of appeal. Article 6.1 of the Convention<sup>33</sup> does not expressly establish a right of appeal in civil matters (Judgments of the European Court of Human Rights, Application No. 9006/81, 9262/81, 9265/81, 9266/81, 9313/81, 9405/81, P. 121, No. 13092/87, 13984/88, P. 70-71). Article 2 of the Protocol to the Convention and Article 14.5 of the International Covenant on Civil and Political Rights provide that the parties have the right to initiate an appeal only in matters relating to the criminal field. But in most states that are party to the Convention, it is permissible to initiate an appeal against civil court decisions to provide the parties with legal protection. Thus, the OSCE welcomes the initiation of the right of appeal against the judgments of the Special Chamber under the new UNMIK Regulation No. 2006/12, 2008/4.

## 5. DISCUSSION

The privatization process in Kosovo, as well as the decisions of the relevant institutions, is a result of the lack of connection between the need to privatize, the challenges of economic development in Kosovo, and the creation of necessary and appropriate circumstances to guarantee the success of the privatization process.

The privatization process in Kosovo differs greatly from the privatizations of other countries in the region due to its economic and political specifics and can be characterized as one of the most challenging processes of all other countries.

This process was characterized by institutional dualism, property problems, inefficient privatization methods, negative impact on employment, very low value of sales of SOEs, corruption, the underestimation of agricultural land, the freezing of assets, the realization of privatization by excluding citizens from participating and sharing of public goods, enabled privatization to end as a failed and increasingly corrupt process which had destroyed the economic base of Kosovo, and had more than 70,000 employees of socially owned enterprises unemployed and had enabled 40% of the Kosovar people to live in poverty.

Privatization as one of the most hopeful and complex processes brought nothing to Kosovo but an enrichment of a clandestine rather than a whole economic development. The function of revenues from the sale of SOE assets and their economic use has remained one of the most discussed issues of the privatization process in Kosovo. The total value of income that has been accumulated through the privatization process is blocked in bank accounts, they are removed from economic activities, from the payment of workers, therefore they have a negative effect on economic development. This is the political price that Kosovars had to pay from the process of

property privatization that was built and created by the Kosovar people but was not distributed to the Kosovar people.

## 6. CONCLUSION

The privatization of socially owned enterprises in Kosovo is unique in that the United Nations and the European Union are directly involved at the legislative and executive levels.

The privatization process in Kosovo allowed by the UN in Resolution 1244, Chapter 7, and conditional on the establishment of legal measures, including the establishment of an international court, i.e., the Special Chambers, indicate the rule of law standards that may be considered necessary by the United Nations for any territorial administration where property rights may be affected. However, accepting privatization to be included in the UNMIK mandate was not a decision based on principle, but the result of negotiations between the United Nations and the European Union.

Considering that the role of the Kosovo authorities throughout the design phase was in the role of observer and receiving a service provided by UNMIK, as many international actors and factors with different preferences participated in the construction of the state of Kosovo and the creation of the rule of law, promoting their legal models as ready-made solutions to current problems without giving their contribution Kosovo governments, true democratic legitimacy and local ownership of the privatization process has never been a guiding principle for UNMIK.

Kosovo and its legal legislation again remained more with gaps than with concrete solutions. Therefore, the state and the law were created by international actors practicing their legal models and not the needs of the citizens. Therefore, it is not surprising that after the declaration of independence in two decades, Kosovo has a fragile and weak system of rule of law where corruption prevails more than law and economic development.

The privatization process in Kosovo is also a unique example of the development of parallel legal systems, which claim exclusive legitimacy under international law. The privatization process was and still is the battleground between these two legal systems and this war will continue until Resolution 1244 remains in force. United Nations Resolution 1244 is still in force and a valid rule that gives it exclusive executive and legislative authority over Kosovo, while the Republic of Kosovo which claims exclusive legitimacy and jurisdiction over Kosovo as an original subject of international law cannot achieve it. this without amending UN Resolution 1244.

Privatization as one of the most hopeful and complex processes brought nothing to Kosovo but an enrichment of a clandestine rather than a whole economic development. The function of revenues from the sale of SOE assets and their economic use has remained one of the most discussed issues of the privatization process in Kosovo. The total value of income that has been accumulated through the privatization process is blocked in bank accounts, they are removed from economic activities, from the payment of workers, therefore they have a negative effect on economic development. This is

<sup>33</sup> Article 6 (right to a fair trial), paragraph 1, of the Convention provides: "Everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Established by law, which will decide both on disputes regarding his rights and obligations of a civil nature, as well as on the basis of any accusation of a criminal nature addressed to him. The decision must be given publicly, but the presence in the courtroom may be denied to the press and the public throughout the process or part of it, in the interests of morality, public order or national security in a democratic society, when required. From the interests of minors or the protection of the private life of the parties to the proceedings, or to the extent deemed extremely necessary by the court, when in special circumstances the nature of publicity would harm the interests of justice".

the political price that Kosovars had to pay from the process of property privatization that was built and created by the Kosovar people but was not distributed to the Kosovar people.

Legislation governing the privatization process such as regulations and administrative directions implemented by the KTA and the Special Chamber should be simplified, as the lack of standards for the level of legal protection for those international officials who were involved in the administration of the privatization process led to satisfactory solutions for the United Nations and the European Union in terms of protection from eventual liability, but these solutions were reached at the expense of reduced legal protection for those individuals whose property rights were directly affected by the privatization process, conflicts with other Kosovo laws should be eliminated, such as evidence required in discrimination cases and time periods for it lodge appeals against judgments, publish and make available court decisions in hard copy and electronic copies.

All these will affect the consolidation and construction of the rule of law in accordance with the current need and the international norm as the public interest from the privatization program in Kosovo is to facilitate the transition of the unproductive and inefficient economy to an effective economy, competitive and that will employ hundreds of thousands of unemployed people in Kosovo, by offering suitable conditions for foreign investors who with their investments in different segments of the economy will alleviate unemployment, poverty and thus will enable the growth of the domestic economy.

The significance of this study is focused on identification of shortcomings of legal provisions,

good governance strategy and decision-making by the administrative court.

The recommendations for further research are to identify alternative legislation, strategies to cope with such judicial review as a form of good governance that will enable the conclusion of conflicting privatization processes, and the precise definition of the Special Chamber for privatization cases.

This study can serve as a theory based on future research, as it provides data on the assets of the sale of public enterprises which are kept blocked and not intended to promote economic development.

However, this study has its limitations.

These study constraints consist of the executive legal framework in improving state economic policies to make them more suitable for foreign investment.

These study limitations consist of the legal framework of judicial control of administrative decisions, as the complexity of legal issues and the specifics of relations between different international and domestic parties involved in the privatization process really give the privatization process in Kosovo the attributes of a "sui generis" which sheds light on the real legal difficulties and finding the resolution of unresolved legal disputes, in providing a meaningful temporary administration of a territory.

As a result, this study provides a starting point for lawmakers, judges, lawyers, and legal academics who want to understand shortcomings in the functioning of the legal system, decision-making system and identify areas where further studies are required.

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