

HOW THE CONSTITUTION SHAPES ECONOMIC GOVERNANCE: BALANCING LAW AND ECONOMICS IN POST-WAR COUNTRIES

Zahir Çerkini *, Neshat Podvorica **

* Faculty of Law, University "Isa Boletini", Mitrovica, Republic of Kosovo

** Corresponding author, Faculty of Economics, University of Pristina "Hasan Prishtina", Prishtina, Republic of Kosovo

Contact details: Faculty of Economics, University of Pristina "Hasan Prishtina", Str. "George Bush", 10000 Prishtina, Republic of Kosovo



Abstract

How to cite this paper: Çerkini, Z., & Podvorica, N. (2024). How the constitution shapes economic governance: Balancing law and economics in post-war countries. *Corporate Law & Governance Review*, 6(2), 83–92. <https://doi.org/10.22495/clgrv6i2p8>

Copyright © 2024 The Authors

This work is licensed under a Creative Commons Attribution 4.0 International License (CC BY 4.0). <https://creativecommons.org/licenses/by/4.0>

ISSN Online: 2664-1542
ISSN Print: 2707-1111

Received: 24.11.2023
Accepted: 08.07.2024

JEL Classification: D02, E02, K00, K10, K19
DOI: 10.22495/clgrv6i2p8

The Constitution of Kosovo establishes the basis of the country's political system, the fundamental rights, and the functioning of the economy. Laws in post-communist societies are crucial for creating a reliable legal environment for economic development. This paper explores the role of the Constitution in regulating economic governance and its impact on public-owned enterprises. Also, the aim of this paper is to highlight, through this case resulting from the approach to the economy, the administration of the economy through legal norms. To present such a relationship, the case of Trepça JSC has been examined, analyzing the legal and constitutional regulations within the context of economic development. For a more comprehensive perspective, this case has been analyzed within the context of history, and politics, but not only. It can be concluded that strong state regulation is required to ensure stability, emphasizing the intricate nature of state intervention in the economy within the constitutional framework, as evidenced by constitutional and legal provisions governing public enterprises such as Trepça, with the suggestion of amendments to address regulatory gaps. The paper serves as a foundation for further research into the constitutional and legal regulation of public enterprises and their relationship with the economy. Additionally, it provides a comparative basis for future studies in this field.

Keywords: Constitution of Kosovo, Law, Economic Governance, Public Enterprises, Trepça JSC

Authors' individual contribution: Conceptualization — Z.Ç. and N.P.; Methodology — Z.Ç. and N.P.; Data Curation — Z.Ç. and N.P.; Writing — Original Draft — Z.Ç. and N.P.; Writing — Review & Editing — Z.Ç. and N.P.

Declaration of conflicting interests: The Authors declare that there is no conflict of interest.

1. INTRODUCTION

The history of Kosovo's economic policy, under a democratic order, is similar to the historical characteristics of the economies of post-communist countries that chose Western orientation in politics, governance, and economy. In this context, Kosovo's history in governing the economy has been directly linked to the philosophy of former Yugoslavia, as a people-oriented economy, a socialist concept with

Yugoslav features (Horvat, 1982). This period lasted until 1999 for Kosovo. The transition from a centrally planned economy to a free-market one was a condition for every communist country to complete the mosaic of embarking on a major transition.

In 1989, Serbia forcefully revoked the autonomy of Kosovo, which it had within the framework of Yugoslavia under the Yugoslav Constitution of 1974. This action involved stripping

Kosovo of its autonomous status, institutional structures, and control over the government, institutions, and enterprises. As a measure against Kosovo, Serbia removed the majority of Albanian workers from public-owned enterprises and effectively ended the system of self-governance in Kosovo. According to Kosovar experts and an International Labour Organization (ILO) report, approximately 145,000 workers, including managerial staff in enterprises, teachers, and university professors, were dismissed from their jobs (Hoti, 2003). In the decade that followed, Kosovo's economy suffered significantly due to a lack of investments, a shortage of qualified workers, and overall mismanagement (Gashi et al., 2020). Kosovo underwent the post-communist transition through an armed conflict, with tens of thousands of casualties and extensive destruction. Many state-owned enterprises were abandoned, tens of thousands of family economies were completely destroyed, and immovable property, residences, and other assets were alienated.

The establishment of the United Nations Mission in Kosovo, recognized as UNMIK, as an international force that would administer and maintain peace in Kosovo through a mandate granted by the United Nations Security Council (Resolution 1244), had to operate in a terrain as polarized as it was fragile in the political, cultural, social, and economic dimensions (Weller, 2011). As part of building the entire institutional structure and policies that would enable a safer transition, UNMIK actively engaged in various dimensions within the country (Gashi et al., 2020). The administration of UNMIK for economic issues was carried out through the so-called fourth pillar, which, as its most famous and crucial activity, involved the privatization of public-owned enterprises, which will be discussed. The UNMIK considered issues of property and economic rights, initiating a process for regulating these matters, especially those related to what was termed social property. It issued regulations that had the force of law at the time (Regulation No. 1999/1 of 25 July 1999). For socialist countries, the clear determination of property rights was a crucial argument for the privatization process (Stiglitz, 1995). This situation persisted until 2008 when Kosovo declared its independence and adopted the country's constitution.

The role of the Constitution and the law in the governance of the economy in post-communist societies is an important and, and pretty much complex topic. Kosovo, like many other countries, faced the dilemma of trying to build a new, applicable, and sustainable economic system after the period of communism. This undoubtedly went through a rather unconventional process, such as the case of the international administration of UNMIK and the initiation and leadership of privatization through this organization. In such societies, including Kosovo, there has been a legacy of state-controlled enterprises. The role of the state in the post-communist economy is a matter of debate. Some argue that the state should play an active role in the economy through public enterprises responsible for vital sectors such as infrastructure, energy, and healthcare. However, the state's involvement in the economy through

public enterprises has not escaped harsh criticism. Some criticize that public enterprises may be unsuccessful and prone to corruption. They advocate that the private sector influences competition, allowing the market to play a larger role in the economy. Nevertheless, the role of the Constitution and laws is crucial in building sustainable economies in post-communist societies. Managing the economy through public enterprises is a complex issue and should be examined in the context of the specific needs and circumstances of each society. Discussions and policy reforms should help find the right balance between state and private sector interests to enhance economic development and the well-being of citizens.

In Kosovo, the Constitution has been used to adopt the fundamental principles of the economy, property rights, and governance system developed from the end of the war to the declaration of independence, laying the foundations for the functioning of the economy in the future. In this state effort, legislation is the instrument used to implement constitutional economic principles.

Issues of economy and well-being are addressed in the Constitution of Kosovo in several categories: as principles, as human rights with economic and social origins, and as a separate chapter of the regulation of economic relations. The Constitution emphasizes that "a market economy with free competition is the basis of the economic regulation of the Republic of Kosovo" (Constitution of the Republic of Kosovo, 2008, Article 10).

This article defines the fundamental principles of the Kosovo economy, which are proclaimed as the market economy and free market. These two principles demonstrate the economic model that Kosovo has chosen, similar to other post-communist countries in the Western Balkans and beyond, guaranteeing the market economy and the free market, pluralism of property, and equality of economic actors intersecting with the liberal political system and constitutional democracy (Hasani & Cukalovic, 2013). Although Kosovo is oriented towards a free market economy, there are still state-owned enterprises, laws that enable their administration, and even very specific legal solutions for certain enterprises. The Constitution declares the principles of economic governance, aiming to ensure a free market and economic development. It describes the public enterprise sector and sets forth the legal principles governing it. The law on public enterprises is designed to regulate the development of public enterprises. The constitution of a country can define and protect the economic rights and freedoms of citizens, specifying the role of the state in guaranteeing these rights and establishing limitations and responsibilities for state actions, and Kosovo has done so as well.

The primary aim of this study is to provide a clear overview of the path through the Constitution and Law that Kosovo has chosen for guiding its economy. Simultaneously, it aims to acquaint the reader with the specifics of legal regulation and how the orientation towards a free market economy and the positioning of the state in public enterprises have been implemented in practice. Such cases for comparative theory present

an interesting model of how a transitioning country navigates its economy in parallel between the private sector and public enterprises. Consequently, there is a lack of research in this field.

This paper predominantly utilizes historical, analytical, case study, and descriptive methods, grounded in a specific case study of the Trepça mine in Kosovo. Through historical analysis, the paper traces the evolution of legal phenomena and institutions, while analytical methods delve into literature processing to explore constitutional and economic developments. The absence of research exploring the specific legal and economic framework of Kosovo, particularly concerning the governance of public enterprises within the country's context, represents a gap in the literature in this field. The conceptual framework applied in this paper encompasses historical, analytical, case study, and descriptive methods, aiming to investigate constitutional and legal phenomena and their connection to the economy, with a specific focus on the case study of the Trepça mine in Kosovo.

This paper is a starting point for future research to explore and address regulatory gaps, potentially through investigating the operational dynamics of public enterprises within Kosovo or conducting comparative analyses with countries with the same characteristics, aiming to elucidate legal deficiencies and promote the establishment of an optimal economic environment.

The structure of the study reflects a brief introduction with an initial view of the problem, as well as a gradual orientation towards it, along with the aim of the study in Section 1. Section 2 provides the literature review including the primary analysis of legal moments and events that have occurred in Kosovo, with a focus on the field of economic regulation. This is followed by Section 3 which presents the methodology of the study and explains how it has been utilized. Section 4 presents the results and discussions that will address the findings and effects on the Kosovar economy. Section 5 concludes the paper.

2. LITERATURE REVIEW

2.1. The privatization of socially/public-owned enterprises: The transitional phase before the independence

The transition from a non-market economy, which Kosovo also had within the framework of former Yugoslavia, to a free one, took over a decade, and went through social upheavals, a significant economic decline, and ultimately a war. Although the transition to a market economy and multiparty democracy in the Western Balkan (WB) region started in the late 1980s (Uvalic & Cvijanović, 2018). The transition in former Yugoslavia differs from other countries due to the specific type of socialism that existed. Self-management became a cornerstone of the regime in 1950, a very unique form of socialism. This was also influenced by its geopolitical position, as a non-aligned country during the Cold War (Rubinstein, 2015).

Transition in Kosovo must be seen in the context of general developments in the region but also in Europe. Kosovo did not have a dilemma

regarding the economic system based on a free economy, but only the form of such a transformation was discussed. In this regard, the EU took a liberal and market-oriented approach towards economic reconstruction, focusing on privatization and fostering a sound economic investment culture for Kosovo (Lemay-Hébert & Murshed, 2016). The process of economic transformation is seen as a solution to the problems of inefficiency created by the socialist system (Obradović, 2007). Post-war countries, like Kosovo, witnessed a shift from public enterprises, experiencing declining productivity over the years, towards the private sector. However, the private sector does not necessarily drive economic development (Estrin & Pelletier, 2018).

The UNMIK, to administer public enterprises and initiate and lead the privatization process in Kosovo, issued its regulation in June 2002 to establish the Kosovo Trust Agency, KTA (Regulation No. 2002/12 on the Establishment of the Kosovo Trust Agency, 2002). This regulation, along with other accompanying regulations, has facilitated and enabled direct sales of social enterprises through regular spin-off procedures and special spin-offs (Privatization Agency of Kosovo [PAK], n.d.). Through regular spin-offs, enterprises, and their assets are privatized based on the highest accepted offer in a round, without additional conditions, while special spin-offs include, in addition to the highest price, other conditions such as employment commitments and investments (Ibraimi, 2022).

One of the interesting definitions of the privatization process is by Feigenbaum and Hening (1994), where they state that privatization is an intensely political phenomenon and should be analyzed as such. During the KTA administration, there was no decision on resolving the issue of the remaining assets after employee payments and meeting obligations to creditors. According to the law at the time, the remaining funds would be transferred to the state budget to support development projects (Gashi et al., 2020). The KTA had approved a privatization method that involved direct sales to the highest bidder through a closed-bid auction. In Kosovo, the majority of enterprises had already been destroyed or workers had been laid off earlier, making the sale to employees difficult to achieve, and their financial opportunities were limited. The choice of the auction method was based on speed, simplicity, and lower potential for corruption. Another consideration was that, despite generally low incomes, low asset prices and remittance transfers ensured that a large number of citizens could participate in this process (Gashi et al., 2020). This method, at the time and very effective for transitioning societies, was seen as a better way to transform the economy than massive privatization (Estrin et al., 2009).

The privatization process led by the KTA has been viewed with skepticism by many parties. Firstly, it is seen as a possibility process will reemploy those who were previously laid off, a concern that has arisen in the past. Secondly, the shift in the scope of business activities has reduced the number of existing workers. Moreover, even the founders, in the establishment process of the KTA and the procedure, had approved the privatization process under the condition that

the KTA was established as a separate entity from UNMIK, with the right to manage privatization revenues to meet the requirements of the owners and creditors of social enterprises. Furthermore, considering the weakness of the judicial system, the United Nations has requested that decisions regarding privatization be reviewed by a court composed of international judges, aiming to ensure independence and impartiality (Ibrahimi, 2022).

The KTA managed the privatization until the establishment of the Privatization Agency of Kosovo (PAK) in 2008. The PAK became a state organ of Kosovo to carry on the work left by the KTA. The processes then continued under the constitutional guarantees and principles proclaimed by the Constitution for the economic sector, and the PAK was assigned the role required in this process (Judgment in Case No. KI 25/10, 2010). However, even though Kosovo was declared independent, it was still a major international presence. Therefore, “as put by the Constitutional Court of the Republic of Kosovo (CCK), eulex judges working on privatization matters, simply continued to ignore the existence of Kosovo as an independent State and its legislation emanating from its Assembly. The CCK stated this after eulex judges working on privatization matters had refused to respect Kosovo laws and institutions subsequent to the 2008 Kosovo Declaration of Independence” (Istrefi, 2020, p. 432).

In general, the process has always been viewed with skepticism, even when led by the PAK itself. Scholars emphasize that despite limited evidence for Kosovo, literature on transition economies indicates that the success of privatization depends on the policy framework and institutional development of the country (Estrin & Pelletier, 2018). Although there has generally been economic growth in Kosovo following the end of the war, according to Bajra et al. (2022), the privatization process does not appear to have had significant effects on economic growth.

The PAK has not faced the typical restrictions of the institutional environment in Kosovo. The lack of human and technical resources has been evident. For many years, cooperation with other institutions was almost undesirable. It has also worked under various pressures. There is data indicating that the Agency has failed to resist specific interest groups, making it vulnerable to corruption and rent-seeking demands (Gashi et al., 2020). The privatization process in Kosovo stems from the lack of connection between the need for privatization, the challenges of economic development in Kosovo, and the creation of conditions and suitable circumstances to ensure the success of the privatization process (Ibraimi, 2022).

Privatization as a process for such transformation is not at all popular. It has been criticized for the radical change in society and the fact that it has distributed state property in a way that creates a new wealthy elite, while the majority of the population has not benefited from this process. This has caused significant dissatisfaction and social division. Moreover, the presence of international organizations in the privatization process has not been viewed optimistically.

2.2. Economic regulation according to the Constitution of Kosovo

In transitional societies, constitutions manifest the nature of the society for which they are designed and the envisaged role of the state in that society (Ewing, 2012). It is important to emphasize the idea that any transition from an established economic and political system that has been in place for decades will inevitably involve substantial transitional costs (Bjørnskov, 2015). These changes in transition begin with the necessary constitutional amendments. Surprisingly, social scientists have only recently started addressing the impact of constitutions on economic policy and performance.

According to Persson and Tabellini (2005), constitutional changes must be accompanied by the necessary legislation to fulfill constitutional objectives and establish institutions. Following this logic, Bacezorcvi (2002) argues that the post-communist transition is not just a transformation of the political and economic system but also involves social dimensions and the creation of new institutions. However, Metelska-Szaniawska (2009) suggests in her work that there is a significant relationship between constitutional rules and the economic reform process in post-socialist countries.

The analysis and treatment of the impacts of constitutional changes on economic activity cannot be interpreted solely through economic parameters. According to Sachs et al. (2000) one of the three dilemmas of constitutional changes is that the long-term effects of changes in constitutional rules on economic performance are not always consistent with their short-term effects. On the other hand, Kornai (2000) shows that there are several historical examples in which the voices and interests of capitalist markets seem to have helped bring about democratic transformation, including in southern Europe.

One of the types of constitutions is also the constitution of the state and social welfare. These constitutions have turned the Charter of Human Rights and the state's orientation towards the citizen into a guarantee of economic and social rights, with a pronounced presence of the state as a direct regulator and intervener in the economy (Grimm, 2012). However, this is not the case with Kosovo. Kosovo, in its economic orientation, resembles other former communist countries (Hasani & Cukalovic, 2013), and although it has embraced a Western liberal market economy system, it has not followed the typical American model, as many other states were reluctant to do so (Ewing, 2012).

Countries like Kosovo have tried to find a middle way, between the American and former communist model, always aiming to ensure economic relations based on the principles of Western liberal constitutionalism. The role of the state as a regulator in the economic sphere, including in countries with an American system, is seen as necessary in certain situations (Rose-Ackerman, 2012). Furthermore, in terms of guaranteeing certain rights and the state's role as a regulator in the economy, despite its efforts, it has not been able to remain silent, as seen in American practices. The U.S. Supreme Court has issued several

decisions interpreting the role of the state as a regulator in the economy and guarantor of economic rights (Tushnet, 2009).

The economic system in the Republic of Kosovo is based on two fundamental principles: market economy and the free market. Although the Constitution has remained silent, these principles at first glance are very general and vague. In this regard, the Constitutional Court of Kosovo in one of its cases in 2013 emphasized that among these principles, the freedom of enterprise, support for economic entities for themselves, equality of private property, and all other forms of property should be included (Judgment in Case No. K097/12, 2012). The first principles are guaranteed by Article 10 of the Constitution, and this article cannot be interpreted or stand-alone without Article 119, namely the chapter on economic relations (Constitution of the Republic of Kosovo, 2008). On the other hand, the Constitution does not explicitly define other principles, nor does it guarantee the right to entrepreneurship (Hasani et al., 2023), but this right derived from the reading and editing of the constitutional text, as a right stemming from Chapter IX of the Constitution.

The liberties and economic rights are guaranteed by the constitution in the chapter on human rights, but they cannot be directly implemented. Their application requires the enactment of specific laws that enable their enforcement. In Article 22 of the Constitution, Kosovo has listed several international instruments that are directly applicable in the country without the need for their ratification (Constitution of the Republic of Kosovo 2008). However, the Covenant on Economic, Social, and Cultural Rights is not included in these instruments, an omission that hinders the country from becoming an economy in which the state will have a visible role, and on the other hand, the economic inability of the state to fulfill this role. The social sphere of the state in transitional countries like Kosovo is usually maintained through social schemes for the vulnerable layers of society and a presence in some public enterprises.

The role of the Constitution in economic orientation has been discussed for a long time, and primarily, the Constitution has deviated from its classical understanding, evolving into an economic judgment, primarily through the guarantee of economic rights and the inclusion of economic relations in them. It is indisputable that the Constitution always remains the highest legal act, regulating the key areas of society, including economic relations. These latter cannot be read and understood as independent from the rest of the Constitution (Hasani & Cukalovic, 2013).

In the context of political economy, this is related to the role and importance of law in the development of political-constitutional order. From this perspective, starting from the time of Adam Smith, the Constitution has a broader significance and is presented as a fundamental framework for the relationship between the state and the market. This phenomenon has taken on the epithet of “governance economy”, implying that regulatory institutions of the economy should be part of the constitution (Zumbansen, 2012). This approach is also supported by the Constitution of

Kosovo, and its constitutional interpretation regarding the economic aspects it guarantees follows this line (Hasani & Cukalovic, 2013; Judgment in Case No. K0131/12, 2012). Apart from the fact that they are subject to internal jurisdictions, although some rights are universal, there are many circumstances such as the country’s economy, economic crises, and the structure of the judiciary that influence the interpretation, affecting the understanding of an economic right or a constitutional norm (Contiades & Fotiadou, 2012).

Article 119 demonstrates the role of the state as a guarantor and regulator of economic relations. In this context, state institutions are obliged to establish the necessary institutional and legal mechanisms to ensure an open market in Kosovo. Furthermore, the constitution addresses the principle of formal equality in opportunities, chances, treatment, and evaluation of economic operators through free competition.

The equality that the Constitution seeks to establish is not only formal but also substantive. The constitution itself foresees the possibility of constitutional control of norms and actions of public bodies that may infringe on the rights of economic operators. Additionally, in continuation of these provisions, there is also the elimination of any kind of administrative barriers to prevent free competition among economic operators.

3. RESEARCH METHODOLOGY

Finding an appropriate method in legal sciences poses a challenging task (Van Gestel et al., 2012), as it was not an easy endeavor in this study. However, aiming to provide answers to the presented dilemmas, the treatment of this paper primarily relied on historical, analytical, case study method, and descriptive methods. This paper is grounded in a particular case study. The use of historical methods facilitated the highlighting of the evolution of definitions, phenomena, and institutions within the country, particularly the development over the years of the Trepça mine, enabling easier access to it. Simultaneously, it shed light on the temporal progression of post-war economic administration and its particular development in labor protection. Through the analytical method, and literature processing, various articles, theories, and ideas concerning the developments and significant notions of the constitutional system and the economy were undertaken. Significant articles and works that have generated notions and defined theories regarding transition issues and the functioning of public institutions during various transformations in the country were analyzed. This method enabled a systematic approach to the discussed problems. Description in scholarly work is present, as some notions and institutions remain unchanged; hence, their approach is descriptive, aiming to highlight what has been discussed for a long time and has managed to withstand changes.

Through these methods, initially, the Constitution of Kosovo and its economic principles were analyzed. The characteristics of how Kosovo, as a post-communist country, differs significantly from others were scrutinized. The selection of the Trepça mining complex for

treatment was made considering its size and natural resources, while its geographic position lends it political dimensions; therefore, addressing aspects and legal regulations might delve into nuances of legal norms. Besides the legal aspect of the Trepça state-owned enterprise, its development over the years was also addressed. To understand the logic of its establishment, its position after the 2000s with a focus on post-independence emphasis was then established. Furthermore, the dynamism of constitutional and legal changes in the country and how Kosovo manifests its uniqueness in the constitutional and legal regulation of the economy through this case was discussed.

In the examination of such a topic, alternative methods such as comparative analysis, interviews, surveys, and quantitative analysis are also under consideration. Each of these methods offers unique advantages in addressing various aspects of research questions and objectives. Aligned with the specific orientation and purpose of the study, the authors of the paper have concentrated on the aforementioned methods. Other researchers may employ alternative methods to compare the constitutional framework of Kosovo with those of post-communist countries. They can engage with primary stakeholders through interviews and surveys to investigate the practical implementation of regulations. Furthermore, the qualitative findings of the study, coupled with quantitative data analysis, furnish empirical evidence to substantiate the qualitative analysis.

4. RESULTS AND DISCUSSION

The Constitution of Kosovo, in Article 119, stipulates that “the Republic of Kosovo exercises the right of ownership over any enterprise it controls in accordance with the public interest, aiming to maximize the long-term value of the enterprise”. Subsequently, Article 122 of the Constitution delineates the conditions under which the people of the Republic of Kosovo may access its natural resources. Furthermore, it establishes legal provisions for the protection and regulation of natural resources deemed crucial for the Republic’s interests, including restrictions on exploitation rights and provisions for compensation, as outlined by law.

Constitutionality has been crucial for the natural wealth of the country, primarily focused on coal and other minerals concentrated in mines, with the most important being that of Trepça. To enable this, Kosovo has chosen to administer some of these resources through law, the administration of which is precisely carried out by certain state enterprises. State enterprises manage coal, minerals extracted from the underground, including those administered in the former Yugoslavia by Trepça, water resources, especially drinking water, railways, and other parts historically administered by the state. State enterprises managing these industries were social property and have not undergone the privatization process to this day. After the approval of the constitution, these were turned into state enterprises through the law. We appreciate that considering the importance and sensitivity of these sectors, it is good that such a situation has remained in the same manner.

The state continues to be an active employer and a significant economic actor in the country. Another aspect reflecting this is the influence of the public sector on the economy, carrying with it the budgetary burden imposed on the state in case of underperformance of public enterprises. This is best described by Kornai (1986, p. 3) as a “soft budget constraint”, where the state must intervene and assist these enterprises in case of failure, allowing them to remain inefficient. Kosovo has experienced this situation, as evidenced in recent years in public enterprises at the national level, where the government has to provide financial support (Decision of Government of the Republic of Kosovo No. 01/168 of 23 October 2023).

The administration of public enterprises is made possible, initially, through Law No. 03/L-087 on Publicly Owned Enterprises of 2008. This law applies to both central and local-level public enterprises. The law establishes the legal structure for the ownership of Public Enterprises and their corporate governance. The regulations of other laws of Kosovo related to joint-stock companies, directors, management, and shareholders, as well as their rights and obligations, will apply in full to public enterprises, directors, management, and their shareholders. With this regulation, the law makes it clear that public enterprises are subject to competition in the free market and cannot have privileges as economic operators but must respect the economic laws of the free market economy. The law defines “public enterprises” as a general term that includes all enterprises specified in the lists attached to the law (see Annex of Law No. 03/L-087 on Publicly Owned Enterprises, 2008).

Kosovo has an important sector of its natural wealth, even draped in nostalgia and emotion. It is about the mines that are administered by the enterprise Trepça. The modern exploration of the Trepça area began in 1927 when the joint-stock company Trepça Mine Ltd. was established in London with a 50-year exploitation right (Shala et al., 2014). During this period, the structure of today’s Trepça begins to take shape. Regular production in it started in 1930, and soon this mine became the main industrial support of Kosovo’s economy. In 1940, regular operations of the lead smelter began, although in a primitive manner. In 1950, the first furnace in lead metallurgy, also known as furnace “C”, was built. Investments increased in 1964 when the foundry was built, and two more furnaces were added (<https://trepcasha.com/profile>). The majority of investments made in Kosovo were focused on industry and vehicles, wherein between 1952 and 1980, investments in industry and vehicles represented an average of 46.8% of the total investments made in Kosovo (Verli, 2000).

In the years 1980-1981, factories began regularly manufacturing products in the majority of Kosovo’s centers. In the 1990s, production plummeted as a result of violent measures taken by Serbia, which unlawfully installed leadership in all enterprises and institutions of Kosovo. This happened after Kosovo’s autonomy was revoked. For this reason, Albanian workers from Trepça were dismissed from their jobs and replaced by workers of Serbian, Montenegrin, and Roma. This period is known as the deindustrialization period of Kosovo, as Trepça’s mines were exploited without respecting

necessary standards, without proper investment, and to irrationally exploit Trepça's mineral resources. After Kosovo's independence, the Trepça enterprise came under the administration of the Kosovo Privatization Agency, although its status remains unclear (<https://trepcasha.com/profile>). Although studies indicate that the opening of trade in the mining sector has a positive impact (Choga & Mufandaedza, 2022), in Kosovo, the entire production is destined for the international market; however, in recent years, positive effects have not been observed. In addition to problems with internal factors before and during the war, Trepça also faced other issues, as mentioned by Shala et al. (2014). They assess that external factors also affect performance. This is because economic, technological, and political changes, etc., have altered and increased the dynamics of the development of this sector. The transformation process of the Trepça complex is crucial for taking strides in modern development, especially as environmental protection criteria have recently intensified, bolstering international legislation in this regard (Smith, 2018). The mining industry encounters challenges in the development or adoption of new technology (Qi, 2020), as well as issues related to climate change (Jang & Topal, 2020). This problem is more pronounced in developing countries, as demonstrated by the case of Trepça, which, in addition to these difficulties, also grapples with legal changes.

In November 2016, the Kosovo Assembly saved Trepça from liquidation by approving the Law on Trepça, through which it transformed Trepça into a joint-stock company (Law No. 05/I-120 on Trepça, 2016). In this shareholding structure, 80% of the shares belonged to the government of the Republic of Kosovo, while the remaining 20% were owned by Trepça's employees. During this process of transformation and restructuring, aimed at creating conditions for the development of Trepça, the law granted shareholders the right to create attractive opportunities for local and foreign private investors in the near future. This could be done through the use of public-private partnership formats, private direct investments, joint investments, as well as the issuance and sale of shares. The administration of this enterprise through a special law is a very unique case. The distinctiveness of the Trepça issue is evident in the high number of votes the law received for approval (79 votes in favor), where both the positions of the opposition and the opposition came together (Konushevci, 2016). The fact that the law received votes against it, including from Serbian community MPs, highlights how crucial Trepça is not only economically but also politically. Immediately after the law was passed, leaders of the business unit of Trepça in Leposavić, who are Serbian, declared that they did not accept the law, jurisdiction, and management resulting from this process ("Menaxhmenti Serb Në Veri, Nuk e Pranon Ligjin Për Trepçën", 2016). Besides its importance for stability in the enterprise sense, this law also had significant political importance.

The law stipulates two main shareholders, the government of Kosovo with 80% and the workers of this enterprise with 20%. The law aims to establish a legal framework to encourage sustainable economic development. This will be achieved by

opening the door to investments, increasing the value of assets, and advancing technological and technical capital, as a prerequisite for the recovery of Trepça, which is a special and vital enterprise for the social well-being of employees and the general public interest (Law No. 05/I-120 on Trepça, 2016). According to the law, Trepça JSC will have three business units: Trepça Flotation Mines — Stan Terg; Kishnica and Artana Flotation Mines; Kopaonik — Leposavić Flotation Mines. Additionally, the law foresaw that based on the feasibility and economic and financial viability study, the following business units will also be formed within Trepça JSC: lead metallurgy; zinc metallurgy; chemical industry.

The feasibility study has not been conducted up to the time this paper has been written, and, in addition, according to the statute of Trepça JSC, seven other business units were added to this enterprise (Statute Trepça JSC, Article 6, paragraph 4). Trepça JSC, according to the law and the statute, is managed by two main bodies: the Supervisory Board and the Management Board. It is interesting that the law itself, in some cases, refers to the implementation of other laws, implying the Law on Commercial Companies as well as the Law on Public Enterprises. What is highly debatable is the fate of the workers' shares. The current law on Trepça does not regulate this issue, in which case the provisions of the law on commercial companies will be applied. This situation creates a lot of ambiguity and can be problematic, especially regarding the inheritance of shares. Additionally, the hiring of employees in the enterprise, retirement, or death are not regulated in relation to the shares. We believe that Law No. 05/I-120 on Trepça of 2016 should be supplemented with these aspects of share management, especially workers' shares. This law should serve as a special norm and prevail over any other law, including the law on commercial companies, according to the principle *lexis specialis derogat lexis generalis*.

The case of Trepça JSC best illustrates the constitutional and legal framework chosen by the country to administer, with a portion of economic operators that may have national interests for the state. This case exemplifies that the state has gone to the extent of protecting a public enterprise, which, as emphasized, carries not only economic but also historical, political, and cultural heritage.

5. CONCLUSION

Concluding the role of state intervention in the economy and the constitution that establishes it as a regulator of the economy is a complex task, varying based on many factors, including the historical, political, economic, and cultural context of a country. Such complexity also applies to Kosovo, being the last country to gain independence from the disintegration of the former Yugoslavia. It is concluded that countries in transition, which have shifted from planned systems toward market economies, need a strong regulator to prevent chaos and ensure a sustainable and fair transition.

Kosovo has taken on this positive obligation through its Constitution, enacting laws that establish regulatory bodies for the country's economy. It is observed that state institutions in Kosovo can be involved in the economy to supervise

and regulate the market to prevent abuses, and monopolies, and ensure equal conditions for all market actors, as a condition for realizing the principles of a free market economy. According to the Constitution, the role of the state also includes the construction and maintenance of infrastructure, distributing resources to strategic sectors, and creating favorable conditions for economic development.

Kosovo has demonstrated, especially through the law on public enterprises and particularly the law on Trepça, that can be involved in regulating sensitive and strategic sectors to prevent economic crises, especially in the crucial industries to ensure stability and security in the supply of products.

The privatization process in Kosovo has often been viewed with reluctance, as in many countries. Also, has impacted the destruction of some strategic sectors of the economy, causing concerns about national security and dependence on foreign investors. The risk and panic that the state might lose control over the country's most vital natural assets have led some sectors to avoid undergoing this process. Such is the case with Trepça JSC, where the country has enacted special legislation to protect and ensure this enterprise, representing the administrator of the key mines and minerals in the country. This has been a strategic decision, but the Law on Trepça needs to be amended in some segments to avoid conflict with other laws and to avoid violating market economy principles.

The management structure of Trepça JSC faces legal and organizational challenges, compounded by the absence of a feasibility study. In some instances, the Law on Trepça refers to the implementation of other laws, complicating legal interpretation. Particularly, legal provisions regarding employment,

pensions, and inheritance of shares are not reflected in Trepça's law. We recommend supplementing the Law, especially concerning the management of employee shares, making it a special norm that prevails over corporate law.

The paper sheds light on the constitutional organization of the economy and the legal regulation of public enterprises, specifically Trepça, paving the way for new analyses of the functioning of other public enterprises in the country, aiming for a more successful transition. The findings underscore the intricate nature of determining the role of state intervention in the economy, particularly within the constitutional framework. The implications of the results underscore the intricacies of state intervention in Kosovo's economy, highlighting the need for nuanced regulation in specific areas. While the Constitution and laws provide regulatory frameworks, challenges persist, especially in the governance process of public enterprises, exemplified by Trepça JSC.

The limitations of the research include the narrow focus on Trepça and the absence of a broader study to address legal gaps, potentially restricting the generalizability of the findings. The treatments in this paper regarding Trepça reflect a very specific dimension of the Kosovar economy and may serve as a starting point for future scholars to delve deeper into these specific areas and propose solutions for regulatory gaps. Future research endeavors could delve into the operational dynamics of additional public enterprises within Kosovo or incorporate comparative analysis with other nations. Such investigations aim to elucidate legal deficiencies and foster the establishment of an optimal economic environment.

REFERENCES

- Bajra, U. Q., Krasniqi, A., & Podvorica, A. (2022). Privatisation of socially owned enterprises, the methods used and the impact on economic growth: Empirical evidence from Kosovo. *Economic Research-Ekonomika Istraživanja*, 35(1), 325-342. <https://doi.org/10.1080/1331677X.2021.1893201>
- Balcerowicz, L. (2002). *Post-communist transition: Some lessons* (IEA Occasional Paper 127). The Institute of Economics Affairs. <https://iea.org.uk/wp-content/uploads/2016/07/upldbook148pdf.pdf>
- Bjørnskov, C. (2015). Constitutional property rights protection and economic growth: Evidence from the post-communist transition. *Constitutional Political Economy*, 26, 247-280. <https://doi.org/10.1007/s10602-015-9189-z>
- Choga, I., & Mufandaedza, S. M. (2022). The impact of trade liberalisation on mining sector total factor productivity: Evidence from developing countries [Special issue]. *Journal of Governance & Regulation*, 11(1), 211-222. <https://doi.org/10.22495/jgrv11i1siart2>
- Constitution of the Republic of Kosovo. (2008). <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>
- Contiades, X., & Fotiadou, A. (2012). Social rights in the age of proportionality: Global economic crisis and constitutional litigation. *International Journal of Constitutional Law*, 10(3), 660-686. <https://doi.org/10.1093/icon/mor080>
- Decision of Government of the Republic of Kosovo No. 01/168 of 23 October 2023. *Official Gazette*. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=83401>
- Estrin, S., & Pelletier, A. (2018). Privatization in developing countries: What are the lessons of recent experience? *The World Bank Research Observer*, 33(1), 65-102. <https://doi.org/10.1093/wbro/lkx007>
- Estrin, S., Hanousek, J., Kočenda, E., & Svejnar, J. (2009). The effects of privatization and ownership in transition economies. *Journal of Economic Literature*, 47(3), 699-728. <https://doi.org/10.1257/jel.47.3.699>
- Ewing, K. D. (2012). Economic rights. In M. Rosenfeld & A. Sajo (Eds.), *The Oxford handbook of comparative constitutional law* (pp. 1036-1054). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199578610.013.0052>
- Feigenbaum, H. B., & Henig, J. R. (1994). The political underpinnings of privatization: A typology. *World Politics*, 46(2), 185-208. <https://doi.org/10.2307/2950672>
- Gashi, P., Hashi, I., & Pugh, G. (2020). Privatization by auction: Determinants of asset prices in Kosovo. *Eastern European Economics*, 58(4), 327-359. <https://doi.org/10.1080/00128775.2020.1754858>
- Grimm, D. (2012). Types of constitutions. In M. Rosenfeld & A. Sajo (Eds.), *The Oxford handbook of comparative constitutional law* (pp. 98-132). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199578610.013.0006>

- Hasani, E., & Cukalovic, I. (2013). *Komentari i Kushtetutes se Republikes se Kosoves* [Commentary on the Constitution of the Republic of Kosovo]. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH http://jus.igjk.rks-gov.net/487/1/Komentari_Kushtetuta_11_Shqip.pdf
- Hasani, E., Gruda, P., & Çerkini, Z. (2023). *E drejta kushtetuese* [Constitutional law]. University of Prishtina "Hasan Prishtina".
- Horvat, B. (1982). The political economy of socialism. In M. C. Howard & J. E. King (Eds.), *A history of Marxian economics: Volume II: 1929–1990*. (pp. 356–386). Red Globe Press London.
- Hoti, A. (2003, October). *Human capital and unemployment in transition economies: The case of Kosova* [Paper presentation]. International Conference of The Faculty of Economics Sarajevo "From Transition to Development: Globalization and the Political Economy of Development in Transition Economies", Sarajevo, Bosnia and Herzegovina.
- Ibraimi, X. (2022). Privatization in post-war Kosovo: Legal review. *Journal of Governance and Regulation*, 11(1), 112–124. <https://doi.org/10.22495/jgrv11i1art11>
- Istrefi, K. (2020). Contestation of Kosovo's statehood from within: EULEX judges adjudicating privatization matters through 'Status Neutrality'. *Review of Central and East European Law*, 45(4), 432–443. <https://doi.org/10.1163/15730352-BJA10036>
- Jang, H., & Topal, E. (2020). Transformation of the Australian mining industry and future prospects. *Mining Technology*, 129(3), 120–134. <https://doi.org/10.1080/25726668.2020.1786298>
- Judgment in Case No. K097/12 Applicant People's Advocate Evaluation of the constitutionality of articles: 90, 95 (1.6), 110, 111 and 116, of the Law on Banks, Microfinance Institutions and Non-Banking Financial Institutions, No. 04/L-093, dated April 12, 2012. https://gjk-ks.org/wp-content/uploads/vendimet/gjkk_ko_97_12_shq_.pdf
- Judgment in Case No. K0131/12. Applicant Dr. Shaip Muja and 11 Deputies of the Assembly of the Republic of Kosovo. Constitutional Review of Articles 18, 19, 41 and 60 of the Law on Health, No. 04/L-125, adopted by the Assembly on 13 December 2012. The Constitutional Court of the Republic of Kosovo. https://gjk-ks.org/wp-content/uploads/vendimet/K0131_12_Judgment_ANG.pdf
- Judgment in Case No. KI 25/10. Applicant Kosovo Privatization Agency. Constitutional Review of the Decision of the Special Chamber of the Supreme Court of Kosovo, ASC-09-089, dated 4 February 2010. The Constitutional Court of the Republic of Kosovo. https://gjk-ks.org/wp-content/uploads/vendimet/ki_25_10_ag_ang.pdf
- Konushevci, A. (2016, October 7). *Miratohet Ligji per Trepçen* [The Law on Trepça is approved]. Radio Free Europe. <https://www.evropaelire.org/a/28038336.html>
- Kornai, J. (1986). The soft budget constraint. *Kyklos*, 39(1), 3–30. <https://doi.org/10.1111/j.1467-6435.1986.tb01252.x>
- Kornai, J. (2000). What the change of system from socialism to capitalism does and does not mean. *Journal of Economic Perspectives*, 14(1), 27–42. <https://doi.org/10.1257/jep.14.1.27>
- Lavigne, M. (1999). *The economics of transition: From socialist economy to market economy* (2nd ed.). Bloomsbury Publishing. <https://doi.org/10.1007/978-1-349-27313-3>
- Law No. 03/l-087 on Publicly Owned Enterprises. (2008). Assembly of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2547>
- Law No. 04/l-034 on the Privatization Agency of Kosovo. (2011). Assembly of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2773>
- Law No. 05/l-120 on Trepça. (2016). Assembly of the Republic of Kosovo. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12988>
- Lemay-Hébert, N., & Murshed, S. M. (2016). Rentier statebuilding in a post-conflict economy: The case of Kosovo. *Development and Change*, 47(3), 517–541. <https://doi.org/10.1111/dech.12230>
- Menaxhmenti serb në veri, nuk e pranon ligjin për trepçën [The Serbian management in the North does not accept the law on Trepça]. (2016, October 8). Radio Free Europe. <https://www.evropaelire.org/a/28039959.html>
- Metelska-Szaniawska, K. (2009). Constitutions and economic reforms in transition: An empirical study. *Constitutional Political Economy*, 20, 1–41. <https://doi.org/10.1007/s10602-008-9049-1>
- Obradović, M. (2007). Privatisation and the break-up of Yugoslavia. *SEER-South-East Europe Review for Labour and Social Affairs*, (2), 33–55. <https://doi.org/10.5771/1435-2869-2007-2-33>
- Persson, T., & Tabellini, G. (2005). *The economic effects of constitutions*. MIT Press.
- Privatization Agency of Kosovo (PAK). (n.d.). *Privatization*. <https://www.pak-ks.org/page.aspx?id=2,16>
- Qi, C.-C. (2020). Big data management in the mining industry. *International Journal of Minerals, Metallurgy and Materials*, 27(2), 131–139. <https://doi.org/10.1007/s12613-019-1937-z>
- Regulation No. 1999/1 of 25 July 1999 on The Authority of the Interim Administration in Kosovo. UNMIK. https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_01.htm
- Rose-Ackerman, S. (2012). The regulatory state. In M. Rosenfeld & A. Sajo (Eds.), *The Oxford handbook of comparative constitutional law* (pp. 671–686). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199578610.013.0033>
- Rubinstein, A. Z. (2015). *Yugoslavia and the nonaligned world*. Princeton University Press. <https://doi.org/10.1515/9781400870950>
- Rregullore Nr. 2002/12 Mbi Themelimin E Agjencisë Së Mirëbesimit Të Kosovës [Regulation No. 2002/12 On the Establishment of the Kosovo Trust Agency]. (2002). https://unmik.unmissions.org/sites/default/files/regulations/03albanian/A2002regs/RA2002_12.pdf
- Sachs, J. D., Woo, W. T., & Yang, X. (2000). *Economic reforms and constitutional transition*. <https://doi.org/10.2139/ssrn.254110>
- Smith, D. C. (2018). Environmental courts and tribunals: Changing environmental and natural resources law around the globe. *Journal of Energy & Natural Resources Law*, 36(2), 137–140. <https://doi.org/10.1080/02646811.2018.1446404>
- Stiglitz, J. E. (1995). *Whither socialism?* MIT Press.
- Shala, F., Berisha-Shala, S., Mucaj, B. (2014). *Trepça, ristrukturimi, sfidat dhe perspektiva* [Trepça, restructuring, challenges and perspectives]. Atlantis.
- Trepça JSC. (n.d.). *Projekt-Statuti* [Draft Statute]. <https://trepcasha.com/status/Projekt%20Status.pdf>

- Tushnet, M. (2009). *Weak courts, strong rights: Judicial review and social welfare rights in comparative constitutional law*. Princeton University Press. <https://doi.org/10.1515/9781400828159>
- United Nations Security Council. (1999). *Resolution 1244*. https://peacemaker.un.org/sites/peacemaker.un.org/files/990610_SCR1244%281999%29.pdf
- Uvalić, M., & Cvijanović, V. (2018). *Towards a sustainable economic growth and development in the Western Balkans*. Friedrich-Ebert-Stiftung. <https://library.fes.de/pdf-files/bueros/kroatien/14688.pdf>
- Van Gestel, R., Micklitz, H.-W., Maduro, P. P., & Miguel, L. (2012). *Methodology in the new legal world* (EUI LAW Working Paper, 2012/13). <https://cadmus.eui.eu/handle/1814/22016>
- Verli, M. (2000). *Ekonomia e Kosovës në vargonjtë e politikës jugosllave: 1945–1990* [Kosovo's economy in the wake of Yugoslav politics: 1945–1990]. Shtëpia Botuese “Mëshonjëtorja e Parë”.
- Weller, M. (2011). *Shtetësia e kontestuar* [Contested citizenship]. Koha.
- Zumbansen, P. (2012). Carving out typologies and accounting for differences across systems: towards a methodology of transnational constitutionalism. In M. Rosenfeld & A. Sajo (Eds.), *The Oxford handbook of comparative constitutional law* (pp. 75–97). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199578610.013.0005>