PRIVATIZATION PROCESSES AND CORPORATE GOVERNANCE

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Abstract

The author presents the most important positions on the impact of privatization conducted on corporate governance in Macedonian conditions, based on 20-year study.

The chosen strategy of the Macedonian model of ownership transformation failed to avoid the expected risk of excessive infiltration of the state in the process. That meant slowing down, but also its formalistic realization (especially the process of transformation in the first stage which is the process of formally converting social capital into state ownerships: the shares issued on the basis of social capital were simply transferred to the Privatization Agency of the further sale on the Stock Exchange).

The strategy of privatization failed to avoid the second risk, as well – the process to be realized in a relatively unorganized way (in the initial period of operation without Stock Exchange), insufficiently controlled, irrational and unfair, which led to heavy spillover of the public resources in the hands of a few individuals and social groups. This is especially true for the so-called phase post-privatization, a term that is used nowhere in the law, but is often used by creators and implementers of privatization. The real meaning of this term is only to serve the blurring (justification) of another unnecessary process of selling shares because the first was unsuccessful.

The integrated system possibility for the state to distribute its ownership in the privatization process and simultaneously to become the owner of shares in the privatized enterprises created conditions for the functioning of some sort of two-party system, whose operation was established and perpetuated precisely by this role of the state. As never before, it was not so transparent as the parties presented their own interests (or the interests of groups or individuals) as interests of the state - a representative of the community. Each of the two political coalitions that were changing in government during the implementation of the privatization process launched its "oligarchs" and "management groups" as their counterparts in the companies.

Management structures during the process of privatization remained unchanged. Even when foreign capital entered in different ways and gained management rights, old socialist management teams remained to manage the enterprises.

The opportunistic attitude of the syndicate unions towards the privatization (from complete denial as unconstitutional to support for the management teams in which the employees were

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members, as well) facilitated the role of the state towards distributing the ownership based upon political criteria, and for the managers created conditions to reduce their activity solely to owner consolidation of the companies which was euphemism for concentration of the capital in certain groups of managers and for excuse about the bad results of operations of the companies' operations. The managers were oriented towards grabbing the capital, not to development of the companies in that period of privatization.

Keywords: Privatization, State, Democratization, Parties, Management

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1. The Results Of The Macedonian Privatization

Considering the final results from the process of privatization, it can be argued that the slowness with which the privatization took place (which also means inappropriate choice of model of paid privatization) has been the main reason for the relative failure of the transformation of the social property in Macedonia. The transformation of an enterprise, from preparation to transform up until the sales and the final five-year repayment installments lasted at least seven years.

The main error in the Macedonian privatization strategy was the realization that the real transformation of social ownership cannot be reduced to "the act of abolishing social capital by nominating the main title of ownership", since privatization is not situated within the process of establishing and developing the entrepreneurial ownership behavior. The relations of the private property can be established and developed only gradually and in phases, and not by a simple attack on the existing social capital.

Based on the above, the so-called velocity model of privatization, such as the voucher model or the combined model, have been rejected. Because the creators of the Macedonian privatization argued that: "If we want to access the voucher model, first we had to take a step back and to nationalize the companies, to transform them into state ownership, to put them under state restraints and then print the voucher and they can share of the population."[1]

The results show that what we wanted to avoid by the possible change of the voucher model ("state-ification") came with the realization of the model of paid privatization. The only difference is that with the act of issuing vouchers the state would have been "self-destructed" in the area of shareholder ownership, while with the paid privatization (even after the removal of Privatization Agency) the state is still self-maintaining.

This strategy proved to be disastrous for the privatization.

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[1] Nedkov, M. (1991), "Privatization of the social capital in Republic of Macedonia", Republic Development Fund, Skopje

The privatization process has been lasting long without adequate regulation and institutions of shareholding (up to 1996, there was no Company Law, no Macedonian Stock Exchange, no Central Depository, while the Securities and Exchange Commission operated under the former Law on Securities). Relying only on the time and its stretching could not bring substantial transformation of social property itself.

The first five years of implementation of the Law on Transformation and Privatization of the Social Capital ("ZTPOK") which were in the period between 1993-1998 actually passed in "transferring" of the shares and stocks of social capital that were not sold by any of the techniques of privatization applied by the Privatization Agency.

The whole first year of this period the Agency for privatization, as well as the enterprises conducted only preparation for privatization: constitution of the bodies of the Agency, the methodology for developing estimates of the value of enterprises adopting guidelines and other acts for implementation of privatization decisions, educating appraisers, control the transformation performed by JOC, organizing educational seminars etc.

Towards the end of 1995 a total of 604 enterprises have been transformed, and 396 enterprises were included in the in the process of transformation. By this time, according to the agency analyzes, approximately 200 enterprises have not initiated the process of transformation within the deadlines stipulated by law.

When analyzing the structure of transformed enterprises based on the number of enterprises, the most enterprises are those that have transformed according to the model *purchase by the employees*, then *the acknowledgment of foreign investment*, and less numerous were those in which the main model was the *conversion of debt to equity*. However, if the structure is analyzed in terms of number of employees, and more - the value of capital, then, obviously dominant model would be purchase by the employees and purchase by the management.

Until 31.12.1999, the period in which changes were made to the Law on privatization, a total transformation was conducted in 1488 enterprises.

The table below (see ***Table 1***) can show that the dominant technique of privatization has been purchase by employees and purchase by managers.

Table 1

Model	Until 31.12.1999		
	No. of companies	**Number of employees**	**Estimated value (DEM)**
Old law for transformation	66	11,522	144,471,007
Purchase by the employees	384	17,738	155,455,264
Sales of ideal part	67	15,812	364,062,157
Takeover of management	247	72,720	1,391,121,939
Rental by purchase	4	217	1,872,951
Additional investment	20	6,924	137,377,989
Passing ownership to the Agency	28	14,717	306,664,921
Conversion of creditor's receivables to equity	75	18,656	552,297,526
Foreign capital	156	1,933	52,629,791
Private capital	128	5,143	57,762,915
Liquidation	164	984	-
Purchase	149	49,585	1,004,682,596
TOTAL	**1,488**	**215,951**	**4,138,399,055**

Source: Agency for Privatization

In the period July-December 1999 (two amendments to the Act) due to the Constitutional Court decision for a temporary suspension of the application of the amendments to ZTPOK, the extension of procedures for privatization of over 150 companies was denied.

After 1999 actually began the process intensive selling the rest of the social capital that remained unsold after transformation through certain techniques.

To resolve the problem with the rest of the stock - shares of the portfolio of the Agency, and also to avoid drastic reduction of their value (minority shares - shares that are not acquired directly control package were at question), the Agency intended to establish Investment Fund, which would have been opened up opportunities and legislative amendments to ZTPOK. However, the Fund has not been established up until the end of the process of privatization and sale of the shares continued to slowly implement via the Macedonian Stock Exchange.

During this period, the Agency has a portfolio of minority shares - shares in total (nominal) value of 362 million Euros. The value of the portfolio changes (increases) depending on the termination of contracts for stock- purchased shares after the implementation of some of the techniques of privatization.

In the period 1999-2003, the Agency transformed only 200 enterprises using some of the techniques of privatization.

Until 31.12.2003 (actually the end of privatization), 1678 completed the privatization process, with a value of 2.3 billion Euros (see ***Table 2*** and the corresponding **Graph 1**).

Table 2

Sector	No. of privatized companies	No. of companies in process of privatization
Industry	495	24
Agriculture	429	15
Construction	123	5
Trading	354	21
Transport and traffic	52	1
Finance and services	116	9
Craftsmanship	55	1
Tourism	63	3
TOTAL	**1,687**	**79**

Source: Agency for Privatization

Graph 1

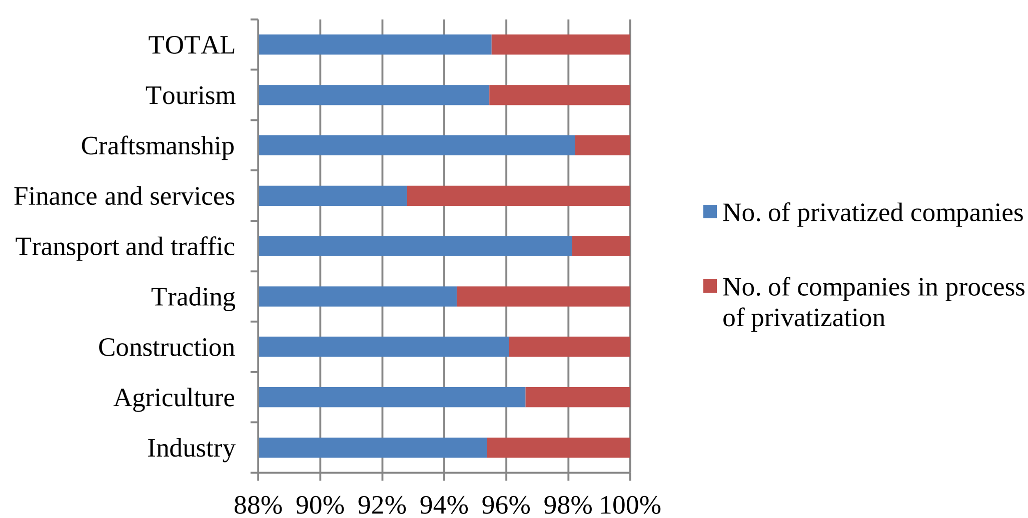
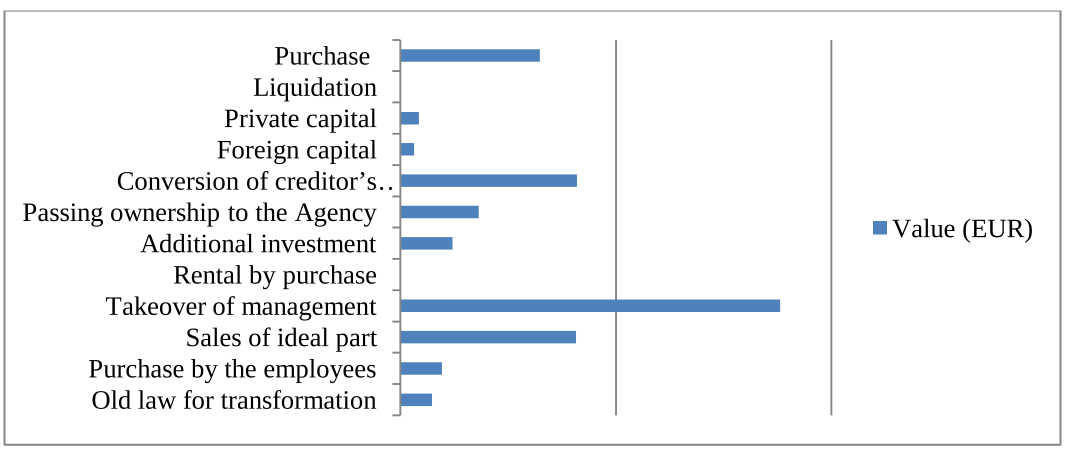


Table 3

Model	Value (EUR)
Old law for transformation	58,528,096
Purchase by the employees	76,965,175
Sales of ideal part	326,129,029
Takeover of management	704,681,194
Rental by purchase	595,839
Additional investment	96,739,753
Passing ownership to the	145,654,379
Conversion of creditor's	327,847,697
Foreign capital	25,257,846
Private capital	34,428,177
Liquidation	58,138
Purchase	258,780,428
TOTAL	**2,325,665,752**

Source: Agency for Privatization

Graph 2 – Value of the privatized companies according to the model of privatization



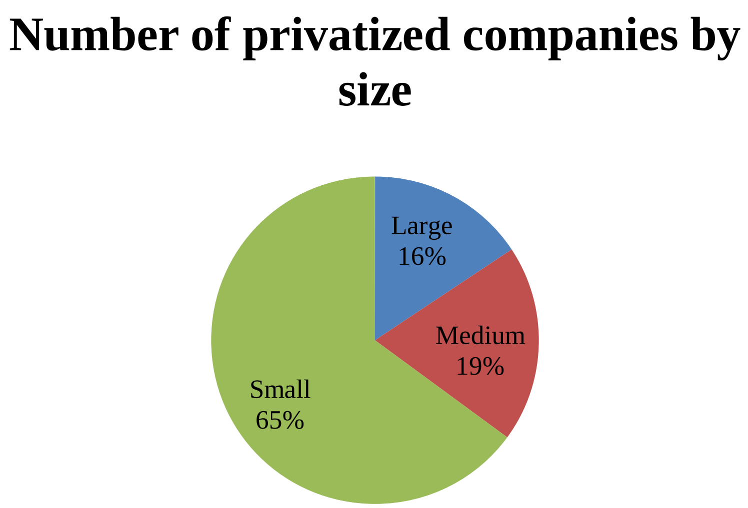
The number of privatized enterprises is largest according to the model purchase by the employees and management. A number of 627 enterprises have been privatized according to these models, with a total value of 780 million Euros which is almost one third of Macedonia's privatization. Together with the part of 327 million Euros conversion by the state, participation of workers and managers is about one-half of the total privatization (see ***Table 4*** and the corresponding **Graph 3**). This shows the actual result of the transformation of social property in Macedonia and reveals the real boss in the management of enterprises in the transformation.

Table 4 – Number of privatized companies according to their value and side

Size	Number of	Value (EUR)
Large	264	1,629,167,887
Medium	328	467,923,511
Small	1,095	227,980,354
TOTAL	**1,687**	**2,325,665,752**

Source: Agency for Privatization

Graph 3



2. SOME OBSERVATIONS

The process of transformation of social ownership is a fundamental process in the transition of the social system of the Republic of Macedonia to the democratic nature of the system based on pluralism of property types, market and political pluralism of public resources in the hands of a few individuals and social groups.

A typical example that reveals the atmosphere and the logic of privatization is the sale of shares of JSC Agroplod - Resen. In this case, in one single place we can see the direct pressures of managers on employees - shareholders and hidden support of senior officials from the government given to the managers to buy stock at lower prices. Employees are intimidated and blackmailed by dismissed from work if they do not sell their shares to the managers at a price lowered by nearly triple from the nominal.

Contradictory position of the state in the process of privatization was obvious and in terms of implementation of the restitution process.

First, the process of privatization started and performed without being made restitution (Restitution Act was enacted only in 1999, six years after the launch of the privatization process).

Second, after the initial successful restitution of property (shares) to the former owners and their heirs a period of "second nationalization" of the state or property not returned or revoked for private interests.

There is no political will to implement the law on restitution. "The obvious cases where there should be restitution given compensation unrealistic in terms of the value of the property to be returned."

It was an obvious error and the Law on Transformation of Enterprises with large losses that firstly they will restructure under state control, and then they will be privatized (sold) under good circumstances. For that purposes, there was not enough money, not enough professional teams would have been able to revitalize those companies. If they have succeeded, a unique world phenomenon would have been proved – the state can be a good manager. In fact, in this case the profitable companies should not have been sold.

The privatization of large enterprises showed that from 20,000 workers who have lost their jobs in the restructuring of 26 companies (end of 2004), only 5,600 returned to work process.

Management structures during the process of privatization remained unchanged. Even when foreign capital entered in different ways and gained management rights, senior management teams remain to manage the company. Such is the case with almost all major companies transformed the model - management buyout.

The strategy through privatization techniques has not provided differentiation of functions of management of management functions.

Managers, through formal agreements for management of the companies or by real appropriation of company’s shares, became their “own owners”.

Although numerous, the Macedonian shareholders were uninformed about their rights shares. It happened to meet shareholders who do not even know they can sell their shares. This just means that to start the actual application of the principles of corporate governance takes a lot more time.

Of course, the choice of strategy is not the only culprit for the failed privatization actually. The overall neither transition setting nor fully formed, nor was what existed functioning the right way. Thus the privatization process had lost right prerequisite for success even at the beginning.

The bad effects of the privatization process contributed inefficiency of the judicial system, lack of coordination of regulations and laws, as well as problems with the implementation of the Law on Restitution, which refuses and leaves the investors unprotected, which further reduces the level of new investment.

Macedonia in the reference period is burdened with a large bureaucracy related to registering property. According to the World Bank analysis, in Macedonia for registration of ownership is required 74 days and it costs 3.7% of the property value. In Eastern Europe, those costs are under 2.5%, and the registration of property, for example in Bulgaria, takes only 19 days.

On the other hand, in respect to the level of investor's protection, Macedonia has scaled four on a scale of one to ten, compared to Bulgaria, which has seven indexes.[2]

Quality of management companies is a direct obstacle to doing business in the state, which cannot attract foreign investment.[3]

Transparency of the process and suspected cases of privatization expanded climate of mistrust between producers and excommunication which is seen as a fundamental problem of the Macedonian economy. This suspends the basic conditions of entrepreneurship which is the "norm of a healthy economy" but which are increasingly becoming a type of behavior, "because an entrepreneur is one who changes, slurries and disorganizes". (Schumpeter).

Privatization was politically controlled process, while the suspension of the powers of the Attorney General of the Republic of Macedonia that protecting people's property and companies in the privatization process. "Dirty work" in the privatization of party served only as an occasion to attack and weapons of competitive party as the holder of the irregularities in the process. Announcements and promises of controls and cancellation of privatizations carried out ended up the first chance you get to control a profitable company package. In this way, the parties appear as direct participants and beneficiaries of privatization.

The process of privatization was implemented on the basis of imprecise, vague and stretch regulations, given the significant erosion of morale resulted in various irregularities and illegalities of procedural and material character. Damage of social capital through voluntary estimates and "hiding" of social capital in different ways, and abuse of procedures for public

[2] "World Bank: Bureaucracy stops the business", Analysis from Dnevnik, 15.09.2004, p.7
[3] "Strategy of EBRD for Macedonia", Analysis from "Utrinski vesnik", 23.08.2003

sales (even the Macedonian Stock Exchange) as if it had support in a general "transitional philosophy": social property can be transformed using the voucher system (free to divide the citizens) and in that case the state gets nothing. Now in circumstances where something still is gained from the social capital (even if damaged) could be regarded as gain. The one who stole the capital, and it is not smart – will lose it, and whoever stole and is a smart, it will increase it wisely. The state and the society lose nothing, but on the contrary – the only gain.

The privatization process in Macedonia implemented slowly and insufficiently transparent was one of the foundations of the development of crime and corruption. Only by the control of transactions of shares performed by the Agency between 01.01.2001 - 05.31.2001 was found out that the majority of them are not respecting the provisions on transparency in terms of Article 95 of ZTPOK. The law in such cases determined invalidity of contracts for such transactions. The agency initiated proceedings before the courts for determination of invalidity of the sale of a few sales with 70 - 90% discount.

It is important to realize that at this period in Macedonia is the world's top level of corruption. In 2003 Macedonia, according to Transparency International, ranked 106 place anti-corruption rating, and in 1999 at 63 place out of 133 countries in the world.

Therefore, it is not groundless the notion that "Macedonia is certain only that steal without pardon, systematically at all levels."

The Companies Act 1996 - new economic constitution, although it was supposed to establish "new rules" that only adjust the dispersion of workers' actions and their decisions (agreements to transfer the management rights of the shares) was only unsuccessful attempt to repair or ignore the bad results of privatization (contracting concentration of shares).

The transfer of stocks and shares as a remnant of social capital that is not sold to the state, practically meant restoring conditions than fifty years, since the state appointed its representatives and trustees of the state capital like in the old times commanded enterprises. In this period the state was acting as “headquarters of the national economy”. In the absence of adequate staff, for example, the agency has named a man as representative of social capital in more than 30 boards of directors and shareholders meetings. This condition was confirmation of some forecasts, even given its beginning; the government is trying by law to usurp the right of the owner of the entire property. That means there will be changes in management teams and the government introduced its own government administration actually the law of “state-ification”.

This dominance of state ownership in the capital structure of the companies was on the formal functioning of corporate management in them, such as state - party influence was the substitution of self- organizations of associated labor.

The integrated, systematic ability to distribute state ownership in the privatization process and simultaneously becomes the owner of shares of privatized enterprises create conditions for the functioning of a kind of two-party system, whose operation was established and perpetuated precisely this role of the state. As never before, it was so transparent as their party interests (or the interests of groups or individuals) representing the interests of the state - a representative of the community. Each of the two political coalitions that have been changing the government in the implementation of the privatization process launched its "oligarchs" and "management groups" as their counterparts in the companies.

Opportunistic terms of union to privatization (from completely unconstitutional denial to support the management teams in which the employees have also been entering) facilitated the role of the state to share ownership based on the political criteria and for the managers, It created conditions for their activity to be reduced solely to owner consolidation of firms that was a euphemism for concentration of capital in certain groups and managers' excuse for bad results of operations of the companies. Managers were oriented towards grabbing the capital, not to enterprise development in the period of privatization.

Notwithstanding the failure of the Macedonian privatization strategy, it can be concluded, however, that share ownership has got its place as a social institution regulatory replacing public property as non-owner category. The adoption of the basic and other legislation and building appropriate institutions and their functioning adequately, should provide, first, correct the distortions of shareholding during privatization, but its further development according to international trends.

The realized transformation and the new ownership structure in the transformed enterprises was basis for their organization in companies, and thus the basis for establishing realistic opportunities and development of corporate governance based on the principles that apply in developed market economies.

3. CONCLUSION

The Macedonian concept of privatization has been called *paid privatization*. Payment of shares issued to companies with public capital and were bought during the privatization was carried out on the basis of their estimated (nominal) value. Given the serious weaknesses in assessing social capital and payment methods that reflected the possible damage to social capital, it is necessary to perform a final review of the transformation of enterprises with social capital. It is required to pass legislation in order to revise the privatization that will determine the establishment of parliamentary government revisions commission to confirm privatizations conducted case by case and that will determine the possibility of possible illegal privatizations carried that the competent institutions to initiate litigation the final determination of legality.

It is important to determine this law to determine a period after which proceedings for legality of privatization cannot be initiated. This will avoid spiraling demand and repeating of the procedure for determining the legality of a particular privatization according to the change of power in the state and change of certain party, or even inter-party structures.

This in itself means the introduction and strict adherence to the rule of law in the acquisition and disposition of property as a fundamental social institution regulatory.

During the changing forms of ownership the overall accumulated experience contained in the institution of individual property need to considered, in the form of its technical benefits, to decide to what extent future regulation may waive these benefits, and to what extent is able to preserve and adapt to new situations.

The further privatization process (including the state capital: Electric Powerplant Macedonia, Macedonian Railways, Macedonian Post Office, public health and other public enterprises) must be secured by transparency of the privatization procedures and sales, and to avoid the so-called direct negotiations. If the agreements provide immediate entry of interesting foreign capital (significant international corporations bring serious capital, technology and management) their conversion to be done in a transparent manner.

Significant issue is also the payment of social and the state capital under privatization, but also within the Macedonian Stock Exchange, as well as the sale of items at public auction to provide functioning of the rule of origin of the money.

Area which especially needed strengthening are the institutions for supporting the shareholder ownership, primarily the Depository for Securities, Real Estate Cadastre Commission Securities, Attorney General, Ombudsman and the courts. The emphasis here is on the process of ensuring the independence of these institutions of real political power peaks, which should be in the interest of shareholders and their rights. This should be an integral part of the reforms that Macedonia them for inclusion in the current global democratic processes for its joining the Euro-Atlantic integrations.

The social and democratic nature of share ownership has to find the real corporate governance as an effective method of synthesis of various individual interests that appear in the companies and the community (general) interest. We do not need to be pre-determined for a known (proven) system of corporate governance, but to build a system that will work and be effective in our conditions. It means accepting efficient solutions worldwide experience, but embed custom solutions. Here in particular, should be made operative the labor management in terms of new legal solution. Thus, in our conditions, we would differentiate the management of employees as shareholders of their participation in the management based on labor. The state also should be clearly defined as "shareholder" and as a power from aspect of the functioning of the companies.

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