

Constitutional and Legal Aspects of the Processes of (De)nationalisation and Privatisation of land and of state-owned enterprises – Macedonian examples of controversial politicisation and elitisation²

Abstract

The process of transition from former socialist to democratic systems brought to surface numerous questions about the political, legal, economic, social and cultural transformation in the societies in which these systems existed. With the fall of the Berlin wall and the so-called Iron Curtain, the former socialist states faced numerous challenges in dealing with the unfair nationalisation of citizens' private property, dilemmas on how to apply a denationalisation process that will be fair and just, and which model of privatisation of state-owned capital to apply, having in mind the experience of the more advanced western democracies. The key issues in this context were: which type of market economy to choose, how fast should the transition be implemented and through which methods; the answers to these questions differed from country to country, because the transition, just as in a game of chess, does not have a winning formula, but offers merely a limited set of general rules of behaviour. The quest for an intellectually perfect concept of transition that would cover all possible scenarios and details would mean indefinite delay in its application. However, the lack of a coherent and clear strategy also generates serious social and economic problems. This is what the transfer from a planned and politically monolithic economy to a pluralistic and market-oriented economy has done in the

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countries of Central, Eastern and Southeast Europe, leaving behind a number of open issues and dilemmas.

On the other hand, certain governments which captured the state institutions and did not set any boundaries between the party (personal) interests and the state interests, caused additional political turbulence. Partisan domination in the public/state administration had a strong effect on the ongoing privatisation processes, because business and the party in power were always on the same side of the coin. The high degree of political control over state resources created fertile ground for the emergence of political elites which entirely usurped the national economic potential of the given countries.

Unlike the Central and East European countries, which successfully completed their denationalisation processes, the number of incomplete denationalisation cases in Macedonia is devastating. This paper will focus on the Macedonian transition under the influence of the transition processes in the region and will reveal a number of specific features of the Macedonian model. It will show the connection between the captured state and the privatisation of state capital. This connection results in a strong influx of private capital in the hands of the political elite through dubious processes of state capital privatisation, thus generating sources of corruption, clientelism, elitism, technocraticism and other similar processes that reflect the political power in a captured state.

Keywords: nationalisation, denationalisation, privatisation, state capital, captured state, democratisation

1. Nationalisation processes in Macedonia – relics from the former socialist system

The nationalisation of private property in Macedonia is closely tied to Macedonian politics in the former socialist system when the country was part of the Yugoslav federation. The changes in the ownership structure of the properties in Yugoslavia started as early as during WWII, when the first cases of confiscation of property of the so-called enemies of the state was carried out. Their confiscated land was given to the people's collectives, in accordance with the decision of the national liberation boards. One of the first decisions of the new post-war government in Macedonia was to organise so-called "kangaroo court trials" of private property owners and to confiscate their entire private property. Through these processes, in just a few months, the new government gained control over all major properties in Macedonia. The goal of this operation was to implement the doctrine of the revolutionary movement to confiscate and control all major economic means in the country.³

3 | Property Restitution in Central and Eastern Europe: The State of Affairs for American Claimants, Hearing before the Commission on Security and Cooperation in Europe, 16 July 2002, <https://2001-2009.state.gov/p/eur/rls/rm/2002/11944.htm>. (Accessed 5 February 2024).

This resulted in major changes in land ownership relations through the agricultural reform in Yugoslavia immediately after WWII, which came before the formal nationalisation and expropriation of the land, in accordance with the Act on agricultural reform and colonisation from 1945.⁴

Namely, the first agricultural fund and the first changes in land ownership relations took place after the confiscation of the land from the enemies of the National Struggle, the anti-fascist movement in Yugoslavia.⁵

The first aspects of the nationalisation process can already be witnessed in the first constitution of the People's Republic of Macedonia from December of 1946,⁶ when the first five-year plan for the nationalisation process in the state economy was outlined.

The nationalisation and colonisation of private property was the ultimate goal of the government of the time, aiming to create a strong, monolithic, economically and politically centralised structure that would control all processes in the country.

The centralisation of all resources, capacities and policies first on the federal level, and subsequently on the level of the republics, resulted in the formation of the one-party system dominated by the Communist Party of Yugoslavia, i.e. the Communist Party of Macedonia as a republic within the federation. The policy of the CPY/CPM was to fully alter the ownership relations by creating a strong state-owned sector that would actually feed the party's social power and wealth.

Before the denationalisation was put into effect in 1946, the production process was mainly supported with funds from the fines levied on the "enemies of the state", according to the Criminal code of the time and later according to the Act on Nationalisation and the Act on Agricultural Reform.⁷

In this period, private property in Macedonia mainly consisted of the property of small producers and businessmen, who were later labelled as manipulators, enemies of the people, collaborators with the enemy, etc. Apart from constitutional provisions, a set of other laws and directives were adopted in this period by the Communist Party, which also served as a recruitment centre for all members of the government and the state bodies.

4 | L. Lazarov (1975), Adoption of Nationalization law and other measures and efforts by the social-political organizations in their implementation, Publication "Pravna misla", no. 6, Skopje, p. 46.

5 | Violeta Achkovska, MA (1993), Agriculture and countryside in Macedonia 1945-1955, Faculty of Philosophy, UKIM, Skopje, p. 41, PhD dissertation <https://repository.ukim.mk/bitstream/20.500.12188/2519/1/vachkoska1993.pdf>. (Accessed 5 February 2024).

6 | Constitution of People's Republic of Macedonia adopted by the Presidium of the Constitutional Founding Assembly on 31 December 1946, ("Official Gazette of the People's Republic of Macedonia", January 1947).

7 | See more details in: Violeta Achkovska (2004), Social-economic development of contemporary Macedonian state 1944-2004, Periodica, Faculty of Philosophy, Skopje, <http://periodica.fzf.ukim.edu.mk> (Accessed 7 February 2024).

With the Nationalisation Law, forty-two economic branches were entirely nationalised and became state property. Pursuant to Article 4 of the Act on the Nationalisation of Private Businesses, the nationalisation covered all movable and immovable property, as well as the industrial property rights that belonged to these companies, such as patents, licences, work permits, samples etc.⁸

According to the industrial census carried out between March and December 1945, Macedonia had 140 factories, 163 enterprises, 8,873 positions and 3,391 employees. From the total number of industrial capacities in Yugoslavia, 3.95% were in Macedonia, and the number of jobs in this sector represented 2.57%, which speaks to the inferiority of the Macedonian economy compared with other republics.⁹

In 1947, the “partisan state” took control of all major economic sectors and monopolised the entire state capital. According to the Act on Agricultural Reform and Colonisation¹⁰, in order to establish a sufficiently large agricultural fund, the state had to confiscate the property of private owners and transfer it into the hands of the state. With the nationalisation, over 25 hectares of farmable land and a total of 45 hectares of land became state property. The nationalisation included land that was in possession of banks, private companies, stock companies and other private legal persons, with the exception of the owners. In the case of the land of these owners, a decision was passed by the people’s government on a proposal from the regional people’s boards.

According to Article 4 of the Nationalisation Law, the former owners of the nationalised land received no compensation for their former property.¹¹

In 1953, the Act on the Agricultural Fund was adopted which defined the distribution of land to agricultural organisations, with a maximum of 10 hectares per organisation. In this period, the compulsory buyout of agricultural products was instituted as a measure, which provided major support for the national economy.

The expropriation and nationalisation of industrial capacities and the planned economy in Macedonia was organised in accordance with the dominant Soviet

8 | Understanding a Shared Past - MK Chapter 2, Economical Life. <https://www.euroclio.eu/wp-content/uploads/2019/10/Understanding-a-Shared-Past-MK.-Chapter-2.-Economical-Life.pdf>. (Accessed 7 February 2024).

9 | Branko Petranović (1969), *Politička i ekonomska osnova narodne vlasti u Jugoslaviji za vreme obnove*, Institut za savremenu istoriju, Beograd, p. 309, <https://www.econbiz.de/Record/politi%C4%8Dka-i-ekonomska-osnova-narodne-vlasti-u-jugoslaviji-za-vreme-obnove-petranovi%C4%87-branko/10000575502>. (Accessed 10 February 2024).

10 | <http://www.slvesnik.com.mk/Issues/99CFDDB7614A4C5289E2735DA8E25E88.pdf>. (Accessed 11 February 2024). In accordance with the Agricultural Reform Law, in 1946, the Minister of agriculture and forestry adopted a Rulebook for the implementation of the Agricultural Reform Law and Internal Colonisation on the territory of the Federal Republic of Macedonia.

11 | Agricultural Reform Law and Colonisation on the territory of the Federal Republic of Macedonia, Official Gazette, No. 25, 5 December 1945, Skopje, <http://www.slvesnik.com.mk/Issues/E91BCEE2F9F74519BE741EC4624B3DD1.pdf>. (Accessed 1 February 2024).

model, which instead of modernising production led to inefficiency and collapse of the socialist economy. In addition, the state property was declared social property, but in reality it was treated as “everyone’s and no one’s”.

The concept of social property proved to be a system in which property rights were vague and mainly insufficiently defined. According to the 1974 Constitution of the Socialist Republic of Macedonia, ownership in the production sector belonged to society as a whole. Neither the enterprises, nor their employees were owners of any stock. This situation favoured the ruling party which strengthened its political influence. However, conflicts about what belongs to whom were present in all aspects of life at the time.

Instead of having vast modern production, Macedonia became home to numerous non-profitable and unsustainable factories, in which it became evident that social benefit cannot replace the motive provided by profit.

Regarding nationalisation, the first in line to receive state land were the farmers with little or no land who were active fighters in WWII, war invalids, children of killed fighters, members of their families, as well as the families of people killed by the fascists.

The following aspects were taken into consideration regarding the priority of the distribution of land:

- | If two farmers were without land, one of whom was partisan, they would always be given priority,
- | If two partisans applied for land, priority was given to the one with a bigger family,
- | If two or more partisans applied, advantage was given to the one with more years of service during the war,
- | If the partisans who applied for land had identical years of service during the war, advantage was given to the one with a bigger family.¹²

In 1965, a new economic reform entered into force in Macedonia which proved to be a failure after a few years due to the lack of strength of radical interventions within the system. The economic changes remained only partial.

2. Political transition and denationalisation in Macedonia – key democratic processes in the country

With the fall of the Berlin Wall in 1989 and the growing political transition process towards democracy in Eastern, South Eastern and Central Europe, the issue of the transformation of state capital into private capital came to the forefront, just as

12 | Article 12 of the Rulebook, *ibid.*

the need for the denationalisation of citizens' property confiscated by the former socialist authorities of these very same countries.

The political transition towards democracy paved the road for economic transition to economic pluralism, entrepreneurship, and market-oriented economies. The political transition took place thanks to the introduction of free democratic and transparent elections, while the economic transition introduced the market economy and privatisation.

It is worth mentioning that in this speedy transition process many things were done well, while others were complete failures. For example, free elections are one of the pillars of democracy, however functional democracies require much more than that.

The legal protection of the rights for private property, just as the free market and entrepreneurship, are guaranteed in Macedonia, in its first Constitution from 1991. Article 30 guarantees the property and inheritance rights of citizens, while Article 55 guarantees the free market and entrepreneurship in the country. The Constitution provides protection for citizens' property by defining their rights to private property. In this context, the Constitution provides protection for two fundamental principles:

- | It prohibits the violation of private property rights, by promoting the social aspects of private property,
- | The right to private property cannot be denied to anyone, nor can anyone restrict the rights to private property of the citizens, except in cases regulated by law when it protects public interests.

When the expropriation or restriction of property rights is applied in the name of public interests, the Constitution grants the right to compensation which cannot be lower than the market value of the property in question. Article 55 guarantees the free market and entrepreneurship by securing the equality of all legal entities on the market. In this context, the Constitution also contains an antimonopoly clause that defines the measures against monopolies and monopolistic behaviour of companies on the market. The freedom of the market and entrepreneurship can be restricted only in cases when national interests, environment and public health are protected.

The land is defined as a natural resource and part of national public wealth, and as such is protected in Article 56, paragraph 1 of the Constitution. The Constitution also specifies the manner and conditions for granting the right to use public goods.

Article 8 refers to environmental protection and defines it as a fundamental value, and Article 57 stipulates that the State must urge national economic development, balanced regional development and enhanced economic development in underdeveloped regions. These are the constitutional provisions that directly regulate the property rights of the physical and legal persons in Macedonia.

The denationalisation processes, i.e. the restitution of forcefully confiscated properties from former owners was one of the key processes in the democratic development of Macedonian society in the context of rectifying the injustice caused by the previous governments and by returning these properties to their rightful owners. The denationalisation law aimed at enabling former owners to gain the right to confiscated property based on Article 30 of the Constitution.

In Macedonia, the denationalisation process took place much later compared to other former socialist countries. On the other hand, unlike the other countries in which the denationalisation was carried out successfully and efficiently, this is hardly the case in Macedonia.¹³

According to available data¹⁴, the denationalisation process in Macedonia was unreasonably long. One of the reasons that led to this lengthy process is the lack of political will on behalf of the authorities to execute this process swiftly and successfully.¹⁵

13 | "The main reasons for the insufficient success of the process are the following: 1. Lack of political will in the government to implement this process swiftly and successfully, 2. Inefficiency from the first instance commissions, who did not act on the indications from the second instance commission within the deadlines set by the law. It is evident that the denationalisation bodies, in some cases failed to act in accordance with the decisions of the Supreme Court, yet no accountability was manifested. 3. The authorities in charge of the denationalisation process (with some exceptions) are incompetent and unprofessional. There are cases of lack of commitment, lack of professionalism, and illegality in their work...and the fundamental lack of knowledge of legislation among the people responsible to apply". Apart from these main reasons there are also subjective reasons, such as: persons who worked in these commissions received regular payments for their work, and therefore they had no motive to close the cases swiftly. There was non-application by the second instance commission of merit-based case resolving, in accordance with the Law of Administrative Procedure, which delayed the compensation procedure.

The State Attorney's office, which was also part of the procedure, played a major role in the stagnation of the process by submitting complaints or by initiating administrative disputes in cases when the denationalisation commissions made positive decisions on denationalisation applications. With this attitude the State Attorney's office caused serious doubts that instead of respecting the law this body is governed based on the government policy to preserve budget funds. The entire process is suspicious of corruption. Slow and inefficient restitution process, numerous obstructions that the applicants had to deal with, cases of sold denationalisation property, or other activities aimed at negating restitution, leads to serious doubts of corruption.

There are numerous complaints submitted to the State Commission for Prevention of Corruption and to the Ombudsman which indicate "strong ties between the bodies who decided on a property rights-subject of denationalisation, in order to satisfy certain business interests". See: Vanja Mihajlova (2010), Process of Denationalization – from declaration to reality, Legal Dialogue, no. 1. <https://www.ihr.org.mk>. (Accessed 19 December 2023).

14 | Sami Mehmeti (2016), The Process of Denationalisation in the Republic of Macedonia following its independence, II. Türk Hukuku Tarihi Kongresi Bildirileri, CDN Istanbul University, https://cdn.istanbul.edu.tr/FileHandler2.ashx?f=the-process-of-denationalization-in-the-republic-of-macedonia-after-its-independence_sami-mehmeti.pdf. (Accessed 10 January 2024)

15 | Despite the official completion of the denationalisation process in 2012, restitution cases mainly for agricultural lands are still stuck in the judicial labyrinths. According to the data of the Association "Mandra" from 2014, over 7,000 denationalization cases were still unsolved, most of them in the judicial processes between the first and the second instance commissions. In the same year, the Ombudsman office reported approx. 7,334 unresolved denationalisation cases. This paradox

The denationalisation process in Macedonia also faced numerous institutional barriers and bureaucratic procedures.¹⁶ The Macedonian judiciary system showed many weaknesses and slowness in completing the court denationalisation cases, which obstructed the citizens' legal certainty and their faith in the judiciary.¹⁷

is unimaginable in a democratic country. The denationalisation law is part of the legal order in the Republic of Macedonia and as such, part of the democratic processes," said Ljubica Gjeorgjieva, leader of "Mandra". According to her, denationalisation is a problem of Macedonian governments and not the law on denationalisation.

The Ministry of Finance successfully built a judicial labyrinth between the first and the second instance commission, which constantly sent the cases back and forth. This has been going on for 15 years. Some of the applicants filed their cases in front of the Administrative Court, but this court sent the cases back to the first and second instance commissions – according to Ljubica Gjeorgjieva. Most of the cases which are still not resolved are cases about farmlands, and lands in the mountain areas in the eastern part of the country. She says that the property of her parents that was confiscated in 1945 consisted of farmland, pasture, forest, etc.

"The legal battle started in September 2000, when the law on denationalisation entered into force. We won the case in court, but the entire problem was caused by the Ministry of Finance. Each time we reached the second instance commission, they would reject our application saying that there was no trace of confiscation. The fact alone that the property was taken by force and no documents on the confiscation were issued points to the need of special evidence, which is in our possession," said Kiraca Kuzmanovska, one of the people whose restitution case is still not resolved. She points out that the main reasons for the rejection of these cases are old property documents, the land serving in the interests of the state, etc.

The Ministry of Finance claims that the denationalisation commissions operates in accordance with the law, and to support this claim they point to the denationalisation bonds that were being issued every year.

Officially, the Ministry of Finance closed the last denationalisation case in first instance in March 2002. A total of 30,744 cases were closed which enabled restitution or compensation to 500,000 citizens.

In the period between 2007 and 2012, a total of 15,000 cases were closed and those that were most complex were the last to be resolved as they required expertise and vast documentation. According to the available data, at the moment when the denationalisation process was declared completed, 3,000 cases were still ongoing before the second instance commission or before the Administrative Court. See: <https://kanal5.com.mk/denacionalizacijata-oficijalno-zavrshena-za-zaglavlenite-predmeti-sebara-reshenie/a312629>. (Accessed 5 January 2024).

16 | Most of the complaints brought before the State Attorney's office in 2014, 2015, and 2016 concerned property relations and were submitted by citizens who felt manipulated in their denationalisation cases, i.e. people who were harassed by the Ministry of Finance and the Administrative Court for 16 years, disabling them from any right to compensation. Some of these cases were stuck in the bureaucratic labyrinth, in the denationalisation commissions established by the Ministry of Finance, in the administrative or in the higher administrative court, or in the State Commission which decided in the second instance. The administrative judges instead of deciding on the meritory basis continuously sent the cases back to the commissions.

17 | In its most critical report about Macedonia in the last few years, the US State Department, in the section focused on the protection of human rights, referenced the "Gradishte" case, one of the major denationalisation cases with a judicial history of 25 years. Namely, the members of 36 families from Ohrid organised protests in April 2022, claiming that the authorities did not provide them with adequate compensation for the land nationalised in 1957. The State Attorney's office found major difficulties and procedural flaws in the denationalisation cases and points to the poor work of the denationalisation commission under the Ministry of Finance, as well as to the inefficient cooperation with the Administrative Court and other government agencies. The denationalisation law from 2000 defines the denationalisation procedure as urgent – stated the US State Department in its report.

The denationalisation law, which was adopted on 7 May 1998 (published in the “Official Gazette of the Republic of Macedonia” no. 20/1998), defined the procedure and conditions for restitution of private properties in the country, as well as the procedure and conditions for compensation of property confiscated by the state. With this law, the former owners and their successors were given the right to restitution of property and the right to compensation.

The law saw numerous amendments (“Official Gazette of the Republic of Macedonia” no. 31/2000, 42/2003, 44/2007, 72/2010 and 104/2015), and the Assembly of the Republic of Macedonia issued an authoritative opinion on two legal provisions: Article 3, item 3, (“Official Gazette of the Republic of Macedonia” no. 14/2009) and Article 64 of the Denationalisation law (“Official Gazette of the Republic of Macedonia” no. 20/2009).¹⁸

By June 2005, a total of 22,809 applications for denationalisation were submitted to the Administrative Court. In 2007, the government decided to extend the deadline for applications due to great public interest. By December of 2007, an additional 7,935 applications were submitted.

A total of 30,744 restitution cases were completed by 2012 when the denationalisation process was formally declared complete. Since then (2012-2023) an additional 2,000 cases were closed in which the property was returned to the rightful owners. However, there are still 5,044 denationalisation cases stuck in the judicial procedure, most of them before the Supreme Court.

According to these figures, and taking into consideration the assumed number of owners who never initiated a denationalisation procedure due to lack of property documents, lack of information, or absence of successors, the total number of unresolved denationalisation cases reaches 10,000, which indicates approximately of 50,000 properties nationalised between 1945-1960, predominantly agricultural land, apartment buildings, factories, industrial facilities, and even two hospitals, one in Bitola, and one in Gostivar.

The denationalisation cases make up the bulk of applications from Macedonia before the European Court for Human Rights in Strasbourg, based on

See: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/north-macedonia/> (Accessed 18 January 2024).

18 | In accordance with the denationalisation law, several by-laws were adopted, such as: Regulation on implementation of the denationalisation procedure (“Official Gazette of the Republic of Macedonia” no.43/2000), Regulation on a procedure for determining the value of de-nationalised property (“Official Gazette of the Republic of Macedonia” no. 43/2000), Manual on keeping separate denationalisation records, regulation on a criteria for determining the market price of state-owned apartments (“Official Gazette of the Republic of Macedonia” no. 68/92), Methodology on assessing the value of state-owned business premises as reference for determining lease (“Official Gazette of the Republic of Macedonia” no.29/99), Methodology for assessing the value of state-owned companies (“Official Gazette of the Republic of Macedonia” no.74/93 and 25/95).

violations of Article 2 and Article 6, and in combination with Article 10 of the ECHR on attempts for silencing the rightful owners.¹⁹

3. Privatisation experiences in several European countries – laws, strategies, privatisation policies

Laws and other formal rules on privatisation vary considerably across jurisdictions. Some countries have one unifying privatisation law while others have a mosaic of laws.²⁰

Some countries apply a more “public finance approach”, according to which the conversion of corporate assets into financial assets is mostly a question of value-for-money which does not require legal measures. Relatively few countries have a formalised, recurrent review procedure to establish whether individual SOEs should be privatised.

In the Czech Republic, the 2005 Act on Abrogation of the National Property Fund of the Czech Republic and on Competences of the Ministry of Finance in the Privatisation of Assets basically ushered in the post-transition era by terminating the country’s privatisation agency and transferring its powers to the Ministry of Finance. The ministry conducts periodic assessments of the suitability of its SOE portfolio and issues reports on this topic to parliament and the general public.²¹

In Denmark, the rules on privatisation draws largely on EU regulations, including those on state aid and competition. In addition, the state cannot reduce (or increase) its ownership of a company without consent from parliament which is obtained by getting a “mini bill” approved by the parliamentary finance committee. According to government preferences, privatisation has, in the past, been either encoded in formal policy programmes or approached on an ad hoc basis.²²

In Estonia, the government provides a legal and regulatory framework for the state’s participation in companies and the sale of shares of SOEs with the State Assets Act (SAA). The Act establishes a codified list of rules for management and operating principles of SOEs, including a yearly evaluation of the state-owned

19 | See: https://old.jpacademy.gov.mk/wp56/wp-content/uploads/2019/12/presuda-na-eschp-2014-_1.pdf, https://old.jpacademy.gov.mk/wp56/wp-content/uploads/2019/12/presuda-na-eschp-2019-mak_.pdf, https://old.jpacademy.gov.mk/wp56/wp-content/uploads/2019/12/presuda-na-eschp-1-_2014-ang_.pdf, https://old.jpacademy.gov.mk/wp56/wp-content/uploads/2019/12/presuda-na-eschp_2019-ang_.pdf. (Accessed 20 January 2024).

20 | Used from OECD (2018), *Privatisation and the Broadening of Ownership of State-Owned Enterprises*, <https://www.oecd.org/daf/ca/Privatisation-and-the-Broadening-of-Ownership-of-SOEs-Stocktaking-of-National-Practices.pdf>. (Accessed 21 January).

21 | *Ibid.*

22 | *Ibid.*

enterprise ownership portfolio and procedures for the sale process. Usually, it is the shareholding ministry which is responsible for conducting the sale.²³

In France, capital transactions in public enterprises, including privatisations and transfers of government securities, are governed by the Ordinance of the Decree No. 2014-949, dated 20 August 2014. These texts have clarified and simplified the law applicable to capital transactions.

In Germany, the main legal basis for deciding on privatisation is provided by the Federal Budget Code. Several other pieces of legislation and regulation apply, including the Code on Public Governance and resolutions adopted by parliament, parliamentary committees, and the state audit institution. The privatisation process is the responsibility of the Ministry of Finance on behalf of the Federal Government of Germany. The continuation of ownership is reviewed every two years relative to the Budget Code.²⁴

In Hungary, Act CVI of 2007 on State Property governs accomplishment of a broad-scale privatisation with a view to managing state property more efficiently and cost-effectively. For its enforcement, Government Decree No. 254/2007 (4 October) was enacted with detailed regulations on exercising ownership rights relating to state property. The general aim of the legislation is to formulate a system of management for preserving the most important national assets, the effective operation and acquisition of state property and facilitating public duties. Within the legal framework, the state may sell stakes in an electronic auction in order to ensure transparency of the transaction. In the audited web-based electronic auction information system – operated by Hungarian National Asset Management Inc. (HNAME) – auctions are published and bids are electronically submitted.²⁵

In Poland, the current legal and regulatory framework for state ownership and disposal of state-owned shares is provided by the 2016 Act on the Principles of State Property Management. The Act is a key part of the government's reform of the Treasury's exercise of state ownership and it has led to a significant change in the ways of undertaking disposal of state-owned shares. The Ministry of Treasury was liquidated at the end of 2016 and SOEs were moved to appropriate sectoral ministries.

23 | Ibid.

24 | Ibid

25 | Ibid

4. Privatisation of state property in Macedonia – a stumbling stone for the development of Macedonian economic democracy

In the opinion of the leading economics, there is no single or best privatisation model for state enterprises. Eastern European countries were unable to fully rely on the privatisation experiences of Western countries as they also learn from their own mistakes and often modified their privatisation laws and models. Despite these problems and difficulties, Eastern and Central European countries managed to demonstrate significant progress in terms of privatisation, having in mind the fact that the private sector share in state production varied between 30-50% just a few years after the privatisation process was complete, which strongly reflected on the development on their micro economy. In order to speed up the privatisation process, many countries apply the model of so-called mass privatisation by enabling voucher distribution to citizens. This privatisation model was applied in the Czech Republic, Poland, Slovenia, Russia, Lithuania, Estonia and some other countries.²⁶

Regarding the restructuring of the enterprises two approaches were applied:

1. Restructuring the enterprises prior to the privatisation, and
2. Restructuring subsequent to privatisation.

The case of East Germany is often pointed out as the best-known example of enterprise restructuring before privatisation, where a separate state agency was formed to execute the restructuring of several thousand companies after which they were ready to be sold.

This type of restructuring was also applied in Hungary and Poland but with a somewhat weaker effect compared to East Germany.

Generally speaking, in most of the transition countries, the restructuring of companies was carried out after the privatisation, i.e. it was executed by new private owners. In all cases in which the model of the mass privatisation programme was applied, the privatisation took place before the restructuring.

In Eastern and Central European countries, it was mainly the government and other state bodies who directly organised the privatization process.

In Macedonia, the privatisation formally began in 1989 with the reforms of the former Yugoslav prime minister Ante Markovic, when the workers in the factories as shareholders were offered to buy the stocks of companies listed on

26 | Macedonian Academy of Sciences and Arts, Nikola Kljusev Macedonian Academy of Sciences and Arts Nikola Kljusev, Taki Fiti Mihail Petkovski, Trajko Slaveski, Vladimir Filipovski, Macedonian Economy in Transition (problems, dilemmas, aims), project leader and editor, Academic Nikola Kljusev, Skopje, 2002.

the market. Having in mind the fact that the previous system of state organisations in Macedonia created major issues that reflected on the employees in the state companies, it was natural to expect that privatisation will boost the capital market development in the country by providing trading “material” in the process of defining property rights.

The 1989 Law on State Capital adopted by the last federal government of the former Yugoslavia opened the possibility for the corporate structure of enterprises and their privatisation through “internal bonds”.²⁷

These bonds were issued based on their accounting value in the state capital of the companies, which in conditions of high inflation rate meant loss of the state capital value. The shares were offered with major discounts and were bought by the employees under very favourable conditions (up to 10 years payment period). The “internal” bonds could not be subjected to further trade and for this reason they were converted into simple stock.

The privatisation in many Macedonian companies followed the model of concluding agreements (voluntary or involuntary) between the workers and the people who took over the company management, which prevented the workers from selling their stocks to investors outside the company. This short-sighted policy had

27 | The Law on Transformation of State Capital adopted in 1989 by the Assembly of the Socialist Federal Republic of Yugoslavia, also known as Ante Markovic’s law, was implemented in Macedonia in 1990 and 1991. In this period, a total of 240 companies were privatised based on the sale of internal stocks. Regarding the privatisation model in mid-June 1992, an advisory conference was organised at Hotel “Radika” in Mavrovo, focused on the future privatisation model to be applied in the country. This event was organised by the technical government led by academician Nikola Kljusev, the first Prime Minister of Macedonia. This event was intended by a large number of economic and legal experts, state ministers, and managers of the major enterprises in the country. The opinions were divided regarding the future model, i.e. some supported the thesis that privatisation should continue in accordance with Ante Markovic’s law as it had already shown good results. The other group denied the success of the approach based on internal stocks, saying that they were distributed illegally without paying any taxes to the state, turning the managers into millionaires on a back of the middle class. On top of that, the new owners initiated massive layoffs and some entirely changed the company profile. Prime Minister Kljusev, his economic ministers and many of the economic and legal experts were in favour of applying so-called voucher privatisation, i.e. distribution of special privatisation documents (vouchers) to the citizens, who could then use them to buy stocks in the companies. These vouchers were to be distributed to the employees based on several criteria: years of work, age, salary, and other principles. This model was previously applied in the Czech Republic, Slovakia, Slovenia, and some other countries. Still, the two sides maintained their positions and the meeting ended without a conclusion to the question as to which privatisation model should be applied in the country. Two months later, the MP’s, at the Assembly session held on 17 August 1992, put forth a vote of no trust concerning Prime Minister Kljusev’s government. In their brief explanation, the MP’s said that “in order to achieve faster development and prosperity, the country needs a political government”. On 5 September 1992, Macedonia elected its first political government led by Branko Crvenkovski, president of the SKM-PDP. Previously, President Kiro Gligorov gave the mandate to the leader of VMRO-DPMNE, Ljupcho Georgievski, who returned the mandate, and later to Petar Goshev, who also return the mandate and resigned from SKM-PDP, thus the mandate went to the new leader of the SKM-PDP, Branko Crvenkovski. See: <https://novamakedonija.com.mk/makedonija/politika/modelot-na-privatizacija-urna-prvata-ekspertska-vlada/> (Accessed 22 January 2024).

a negative impact on the future development of these companies, mainly on their ability to attract fresh investment capital on the capital market.

In Macedonia, spin-offs typically occurred at the beginning of the 1990s, giving rise to a large number of new firms led by new top management. Macedonia is another case among transition economies where large numbers of break-ups occurred at the beginning of the privatisation process.²⁸

The Macedonian government adopted a mixed privatisation strategy that allowed firms to choose between a variety of methods such as:

- | EBO (employee buy-out),
- | (MBO/MBI) management buy-out/buy-in,
- | Issuing shares for additional investment,
- | Debt/equity swaps,
- | Leasing,
- | Sale of assets and
- | Privatisation of a firm in bankruptcy.

Firms that had not opted for voluntary privatisation by 1995 became subject to compulsory privatisation organised by the Privatisation Agency.

The Act on Transformation of Enterprises with Social Capital provides for the following: a) Employees are offered an initial discount of 30% of the appraised value plus 1% for each year of employment at the enterprise. Each employee can buy shares at a discount rate of up to DM 25,000. Payments can be made without down payments in five-year instalments and with a grace period of two years. b) At the beginning of the privatisation procedure, the company must automatically transfer 15% of the social capital (in the form of shares or stocks) to the Pension Fund. These are non-voting, preference, participating stocks and are expected to earn 2% fixed dividend.

The Act on Transformation of Enterprises with Social Capital offers different privatisation methods according to the size of the enterprise based on the number of employees:

1. Small enterprises (Article 41):

- | • Employee buyout • Sale of a part of the enterprise (in the form of shares or stock)

2. Medium-sized enterprises (Article 55):

- | • Sale of the enterprise or a part thereof • Buyout of the enterprise • Management Buy-Out • Issue of shares for additional investment • Debt/equity swap

28 | Polona Domadenik, Lubomír Lízal, Marko Pahor (2012), The Effect of Enterprise Break-Ups on Performance. The Case of the Former Yugoslav Republic of Macedonia, in *Revue économique* 2012/5 (Vol. 63), p. 849-866, <https://www.cairn.info/revue-economique-2012-5-page-849.htm?contenu=citepar>. (Accessed 22 January 2024).

3. Large enterprises (Article 71):

- Large enterprises use the same methods as medium-sized enterprises, with the only difference that the down payment for management buy-out is 10% and 15% for the issuing of shares for additional investment.

In addition, the following methods of privatisation can be applied to all enterprises, irrespective to their size:

- | Leasing (Articles 73-75),
- | Sale of all assets of the enterprise (Articles 76-79),
- | Transformation of enterprises under the bankruptcy procedure (Articles 80-86).

The pure start of the Macedonian stock exchange had negative impact on citizens' rights to free disposal of their property. It is worth mentioning that in Central and Eastern European countries in which the method of rapid and mass privatisation was applied, contrary to the "case-by-case" method, it resulted in the healthy development of national capital markets.

As in the Macedonian case, privatisation that was mainly controlled by insiders at companies (managers and other employees) failed to provide sufficient boost on the capital market.²⁹

Realistically speaking, the privatisation in Macedonia started in 1993 with the Act on Transformation of the Large Industrial Capacities in the country: Zelezara (Ferronickel industry), MZT (Bus factory), Rade Konchar (Electronics), Alumina (Aluminium alloys), Treska (Furniture factory), Gazela (Shoe factory), Porcelanka (Glass factory), etc.

Generally speaking, the commercial nature of the Macedonian privatisation model operated on a case-by-case approach.³⁰

Why was this model applied? Because it was believed that it would lead to achieving the main goals of privatisation: making company management more efficient, attracting foreign capital, boosting the market economy, and opening new possibilities for balancing the national internal and external debt.³¹

29 | Sukarov, M., V. Hadzi Vasileva-Markovska (1994). "Privatisation in Macedonia - 1994", CEEP, Ljubljana.

30 | Internal privatisation methods such as employee buy-outs and management buy-outs were widely adopted in the privatisation process in Macedonia. The Macedonian process of privatisation in the majority of firms was internal.

31 | Privatisation and Restructuring of the Socially and State-Owned Enterprises in the Republic of Macedonia and its Implications on Corporate Governance, by Marija Jovanovska, Privatisation Agency of the Republic of Macedonia, Director Emilija Belogaska, MSc, Investment Promotion Department, Director Slobodan Shajnoski, MSc, Legal Department, Director <https://www.oecd.org/daf/ca/corporat-governanceprinciples/2394769.pdf>. (Accessed 25 January 2024).

Between 1989 to 1996, a total of 900 companies in Macedonia were subject of privatisation with a total value of EUR 1 billion (mainly immovable property) and a total of 145,000 employees.³²

On paper, the privatisation process was considered successful and many authors agreed that the different privatisation methods came as result of the political shifts in power, i.e. changes in government, which resulted in different political goals. Consequently, the privatisation in Macedonia was politically motivated, and the privatisation strategies depended on the political interests, which reflected directly on the legislative and regulatory authorities as well as on the application of these strategies.³³

The process of direct company buyout by the workers and company managers resulted in long term weaknesses as the companies faced difficulties on finding their place on the market, there were shortages of investments and fresh capital, there was a lack of know-how and their corporative structure was weak. Instead of being offered on the stock exchange, the companies in Macedonia were sold in a process of suspicious direct agreements. That is why the privatisation process in Macedonia is viewed as based on numerous speculations with the buyout of the workers' shares from their managers for a price much lower than realistic, planned laws of property value before the privatisation took place, flooding of already established markets, takeover of the state companies by the former managers who most often misused the company name. (Porcelanka – Porcelana, Makedonija Sport – M Sport, MZT – MZT Skopje, etc.).

As result of these factors, in 1995 the rapid bankruptcy of large, privatised companies became a trend. In this context, 9 out of 10 large companies (with more than 2,000 employees) declared bankruptcy by 1995 and their workers became part of the bankruptcy mass.

This led to the adoption of the Act on bankrupt companies in 1995. However, with this law, the companies were fully fragmented based on production profile. For example, the Ferronickel factory Zelezara was divided into a dozen small companies (Smelter factory, Steel factory, Cooling factory, etc.). Each of these new companies were appointed a different bankruptcy manager which led to the removal of the mother company from the stock exchange. In this manner, the number of privatised companies who faced bankruptcy at the time increased from 900 in 1993 to 1,700 in 1996.

Since 1996, the privatisation, i.e. sale of the stocks of bankrupt companies was managed by the privatisation agency which existed until 2003 and which managed

32 | Arsov, S. (2005). Post-privatisation retrospective of Northern Macedonia – Could we have done it better?, in Kušić (Hrsg), *Path Dependent Development in the Western Balkans*, p. 184, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2033411, (Accessed 30 January 2024).

33 | Miljovski, K. Markovska, V. Stojkov, J. (2005). Privatisation in the Republic of Macedonia – Five Years After, in Conference “Privatisation in Serbia: Experience and Lessons from Other Transition Countries”, European Association for Comparative Economic Studies, p. 1.

to realise tremendous profit of over EUR 2 billion by the time it was formally terminated.

Starting from the fact that the initial assessed value of all privatized companies was EUR 1 billion, there is an obvious difference between EUR 2 billion and according to the experts, this comes from the robbery on the back of the workers who then became bankrupt workers with no rights to salary, shares, dividends etc.

Note the following statistical data from 2001, when privatisation process was almost complete:

1. 1,759 companies were fully privatized,
2. There were around 230,000 employees in these companies,
3. According to financial reports, the capital of the privatised companies was worth USD 2.1 billion.

As stated above, the most common method of privatisation was their buyout by the managers. The second method was buyout by the employees and the managers, which followed the Russian scenario, where the managers would buy the stocks from the employees in packages using the “barricade” method.³⁴

5. Privatisation of land in Macedonia

Following its independence in 1991, for the first time Macedonia started to develop its own agricultural policy which involved the Ministry of Agriculture, Forestry and Water Supply. The agricultural policy went through four phases of development:

1. The first phase took place from 1991 to 1995, which was based on the principle of market-price balance.
2. The second phase took place between 1996 and 2000, based on the first agricultural strategy from 1996, which foresaw the privatisation of the farm land and major agricultural factories.
3. The third phase took place between 2001 and 2006. In this period, Macedonia saw the second agricultural strategy (2001), signed the Agreement for Association and Stabilization with the EU and joined the World Trade Organization. Since 2007 until the present day, the country is undergoing intensive reforms in order to harmonize its agricultural legislation with those of the EU, as well as reforms aimed at increased budgetary support for agriculture.³⁵

Prior to 1990, there were 211 state-owned agricultural enterprises in Macedonia, 147 agricultural factories and 64 agricultural associations which provided jobs

34 | <https://idscs.org.mk/wp-content/uploads/2020/12> (Accessed 15 January 2024).

35 | http://www.fznh.ukim.edu.mk/images/stories/ap2019/8._ap_na_republika_makedonija.pdf. (Accessed 10 January 2024).

to around 30,000 people. The privatisation process of companies that operated with farmlands started in 1993.

These agricultural companies possessed around 450,000 hectares with an average size of land plots of 2.5 hectares and in the overall agricultural structure they represented:

| 82% of arable land, 63% of crops, 93% of meadows, 14% of pastures, 60% of fishing capacities, 95% of cattle, 62% of pigs, 92% of sheep, and 60% of poultry.

In his work entitled *The Mystery of Capital*, Peruvian economist De Soto³⁶ states that successful and efficient transformation of dead capital can be achieved in numerous steps, some of which are applicable in Macedonia.

The first step is to legalise properties with economic potential, and this is what took place in Macedonia. Namely, over 40,000 illegal agricultural facilities and 10,000 tractors and other mechanisation in the country lacked proper documentation and hence were considered illegal. With the amendments to the Act on farmland and the Act on vehicles ("Official Gazette of the Republic of Macedonia" no. 18/2011, and no. 123/2012), their owners received a chance for legalisation.³⁷

With the amendments to the Act on farmland ("Official Gazette of the Republic of Macedonia" no. 18/2011) farmers were provided a simplified procedure for the construction of new agricultural facilities, such as, barns, stables, orchards, processing facilities, etc. This made it easier for properties to become profitable.

Many farmers were in the need of financial support. According to the farmers, the main reason why the agricultural credits could not be fully used was due to the requirements imposed by banks to put their houses and other immovable properties under mortgage, but these properties had to be in urban areas and not in rural areas.

Most farmers were unable to meet these criteria as their entire property was in rural areas. A major problem in securing funds that farmers were faced with was incomplete property documentation, i.e. unresolved property relations. Bank requirements in this regard are rigid as it is not their job to sell properties, but rather to plan deposits and credits.

Although initially privatisations were not allowed in several categories (in enterprises and companies that conduct activities of special national interest and public utilities and enterprises that conserve water, forests, land and other public goods), even these companies were subject to privatisations in the 2000s.³⁸

It is worth mentioning that in the first years of Macedonian independence, the agricultural sector was characterised by two very different farm enterprise types:

36 | De Soto Hernando (2000), *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books.

37 | <https://cea.org.mk/documents/CEA%20osvrt%20zemjodelie-1.pdf>. (Accessed 16 January 2024).

38 | https://china-cee.eu/wp-content/uploads/2021/03/2021e02_North-Macedonia.pdf. (Accessed 17 January 2024).

1. Small family farms operating on privately owned land, and
2. Large socially-owned farms.

The latter can be further classified into two types: (a) agricultural enterprises, vertically integrated agribusinesses, which have large landholdings and are engaged in primary production, extensive agro-industrial processing, commercial storage, and marketing services; and (b) socially owned agricultural companies, which have smaller holdings and engage to a much lesser extent in non-primary production activities. At the time, the total arable land in Macedonia was 662,000 hectares, of which 204,000, or about 30 %, belonged to socially-owned farms. Most of the balance belongs to the private farm sector; the cooperative sector occupies a small percentage of arable land.³⁹

Small farms were not able to take advantage of economies of scale in marketing. They had difficulty in obtaining inputs, lacked access to agricultural credit, had few market outlets, and were offered low prices for their products. The socially-owned farm sector had acted as both factory and product market for the family farm sector surrounding it.

The privatisation of large agricultural enterprises started with the adoption of the Act for the transformation of enterprises and collectives with state capital who operate with state-owned farm land ("Official Gazette of the Republic of Macedonia" no. 19/96, 25/99, 81/99, simplified text in no. 48/00). This means that the Act on Transformation of State-Owned Companies was not applied for agricultural enterprises. In other words, in most cases of the privatisation of agricultural enterprises, the wrong legislation was applied and Article 3 of the Act on Transformation of State Companies which explicitly states that "the transformation is not applied in the case of companies and other legal persons who operate with waters, forests, farm land, and other public goods" was ignored.

Since many of the agricultural enterprises contained large processing plants, they purchased certain products such as wheat, vegetables, and fruits from the family farms. The agricultural enterprises also provided family farms with the necessary input and extension services. Many of these enterprises have greatly reduced their operations, however, because state subsidies have been cut and credit has been practically eliminated. Thus, they are no longer able to provide the same level of services to the family farm sector, particularly at attractive prices or on convenient

39 | There are serious discrepancies among data sources even for such fundamental numbers as the cultivated area. The 1994 Census reports that private farms make up about half the amount that the Statistics Office reports. There is also imperfect reporting of the subdivisions within the social sector, among the organised social sector (agricultural enterprises), the unorganised social sector (scattered parcels acquired by the state over time), and the cooperative sector.

Cited according to: Jolyne Melmed-Sanjak, Peter Bloch, Robert Hanson (1998), Project for the Analysis of Land Tenure and Agricultural Productivity in the Republic of Macedonia, WORKING PAPER, NO. 19, Land Tenure Center University of Wisconsin-Madison, October, p.1. See: <https://ideas.repec.org/p/ags/uwltp/12798.html>. (Accessed 10 February 2024).

terms. In addition, they are purchasing less of the family farm production and delaying payment for what they do buy. While these tendencies indicate a tendency towards a more efficient agricultural sector, the development of alternative forms of providing key services is important during the transition to a private economy.

The large enterprises also absorbed surplus labour from private farms in their areas. This important source of employment and wages for land-poor families will continue to shrink considerably with the restructuring of agricultural enterprises and other socially-owned farms.

6. Conclusions

The collapse of the socialist system and the democratisation in Macedonia in the 1990s resulted in numerous changes in the legal and economic structure of the system. The process of restitution of nationalised properties confiscated by the state in the previous socialist system as well as the following privatisation of social capital were the two key policies that strongly marked the first two decades of the country's independence.

Despite the enthusiasm among citizens regarding the announced denationalisation and privatisation, in the years that followed, the public mood shifted towards disappointment. The lack of experience in the functioning of these processes based on the rule of the law and the market economy created a fertile ground for the concept of the "Wild West" in the country's economic transformation which led to the creation of a political and economic elite that profited the most from these processes.

Under the patronage of the government, a small group of people in Macedonia became true oligarchs and millionaires at the expense of increasing poverty among the workers. By concentrating the institutional, economic, and political resources in the hands of a few, Macedonia, instead of becoming an economically robust country with an open market, became a captured state serving the elites.

In addition, ethnic turbulence in the country escalated the situation both politically and economically.

The capture of the former property of the state through privatisation processes has provided the political elite in the Macedonian divided state with significant resources used to cement their political power.

The political situation in Macedonia has offered preferential access to individuals loyal to the top echelons of political parties in the process of the direct sale of the state's assets. In addition to this, voucher privatisations, in which the state companies were sold through shares have also proven to be a major mechanism for capturing the state, since shares were offered to citizens at a nominal value, which

was not in line with supply and demand laws, but rather fluctuated according to 'who was in demand'.⁴⁰

The process opened routes for wealth accumulation to those who were close to the top party echelons in the subsequent waves of privatisation. In turn, this provided opportunities for corruption, clientelism and patronage that were of key importance in capturing the Macedonian state by weakening its democratisation prospects.

This deeply partisan society with entirely partisan administration and its servile attitude towards the party leaders made the overall situation even more complex.

Most of the major corporations in Macedonia emerged from the privatisation process. This is atypical manner of forming a corporation, but if we take a look at the ownership structure of the wealthiest Macedonian corporations, we can easily identify the inside method of privatisation, in which the company management came into the possession of the majority of shares, providing them with complete control over the newly-established corporations.

These tendencies were the main tumbling stone in the privatisation process in Macedonia where by downgrading the social capital, decreasing its value, gaining majority share packages for the management most often by pressuring the employees, and purchasing their stocks for much lower prices, enabled a broadly illegitimate, and in some cases illegal privatisation in Macedonia, causing deep economic and social problems in Macedonia.

40 | Jelena Dzankić (2018), Capturing contested states: structural mechanisms of power reproduction in Bosnia and Herzegovina, Macedonia and Montenegro, European University Institute, <https://cadmus.eui.eu/handle/1814/60030>. (Accessed 10 February 2024).

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