Privatization as the Basis of Reform Process in Serbia

Abstract

The basic goal of every legal entity in market oriented economy is creation and increase of the profit, while for the non privatized companies are characterized by bureaucratic management that encompasses great irrationality. Market economy, focused on entrepreneurial initiative presumes private property, and the role of the owner over the company is multi task oriented. Above all, the owner decides on the engagement of his own resources, directly manages the company or selects managerial or surveillance bodies, divides profit and covers losses, employs employees, and is responsible for company’s operations.

In market economies state intervention into economic life is minimal, unlike the countries where the market was almost suspended from economy, which resulted in enormous waste of social resources. The practice has shown that in economies with dominant private ownership, the rule of law is also dominant, while the countries with preferences over collective ownership where the source of legal instability and totalitarian regimes.

Countries in transition, among them is Serbia, have confronted with necessity of establishing market economy that demanded change of the ownership, that is transfer of social and community ownership into private.

Bringing in adequate laws and creation of the necessary institutions are one of the key elements for successful privatization process.

In front of our country there is established goal – involvement into international economic flows and cooperation with the market economy countries. The prerequisite of such goal is that the privatization process must come to an end in the nearest future, as well as the growth of private ownership and denationalization should be conducted. This means to take over the private ownership through nationalization and returning it to its former owners.

After several years of reforms, Serbia is even now almost at the beginning of the transition process into democratic society and market economy. With the bringing privatization legislative and creation of institutional framework for conducting this process the conditions for fulfilling the basic goals of our country – creation of democratic society, based on the market economy principals and joining European Union.

With the adoption of new Constitution of the Republic of Serbia in November 2006, private, public and cooperative ownership are proclaimed as constitutionally guaranteed forms of ownership. The law on denationalization is not yet adopted, and the effects of privatization are diminished due to the lack of consistent reforms. Although privatization process lasts for over decade, it is still acute economic problem and lacmus that clearly shows the strength of government in changing the social status and cultural template and way of thinking.
The experience shows that the privatization is prerequisite of faster economic development. Highly developed world countries, besides, have provided for the reached level of development through timely privatization. Privatization is not the act that occurs only once, but extremely complex social process, it is essential to achieve consensus on this question from all the important social strengths.

PRIVATIZACIJA KAO OСНОВА РЕФОРМСКОГ ПРОЦЕСА У СРБИЈИ

Апстракт

Након више година реформи, Србија се и данас налази скоро на јошачку иранацију у демокрашко друштво и ијерархичку економију. Донесеним прописама о ириацији и спиранањем институционалног оквира за сировођење овој процеса, сановани су услови за оснивање основних циљева наше земље - спиране демокрашке друштва, заснованој на ирицијама ијерархичке економије и ирикућивање Европске Уније. Приватизацијом се мења власник друштвеног, односно државног капијала, јајк ишииал ђуби својсцва административно-колективне својине, шако да је ириација саставни део економске иранације под којом се иодразумева ири процес иравођења иланских иривреде у ијерархичку економију, ишо је акцуелни ири процес у многим земљама. Класична ириација је најнеовонијија солуција због обавештности од злоупотребе ирицијног монопола, као и због њега ишио држава добија једнократно најмању могућу цену љодрдајом већинског дела у иредузећу. Комбиновани модели који иодразумевају ириујерсијо, класичну ириацију, са или без задржавања удела и коначоле државе, као и иницијалну јавну ионуду, која би уела грађане и фондове у аїраконцивне фирме, додириво би развоју ијериција ишиила акцијама иредузећу. Приватизација је и извор прихода за државу и један од начина да се надокнађи буџетски дефицити. Уколико ирихода од ириције не би било, не би могли нормално да функционишу ни државна управа, ни јавне службе. Браз љодаје великих иредузећа ради оснивања крајкорочних циљева су јако ишете за државу. Превасходни циљ ириције је иривађећа за добробоћи и задовољишта грађана, а не сама љодаја ишиила ирицијском иришеру. Приватизација је иривађећа да додириво би вомили и ефикасним љославуњу и упорављању, да омогући свима у друштву да учешћују у корисници од ириације.
И деоначарциво завољених и беслашна ириација су управо модели који успостављају јасан власнички режим са елементима ириначности и ексипедицивности.
Приватизација омогућава спиране услове за иносијрана уладања у наше ириведе, ар чему законом је иривађећа обезбезића иоишућу равноравнености и сигурности свих иоиционалних иницијатора, домаћих и спираних. Тек након окончања ирица ириације и унапређења финансијској ирицији, Србија би могла очекивати ириив иносијраног ишиила који би мањем долазио јосредством различитих иницијацији финансијској ирицији. Приватизација јесте објективна јоириба и основна јоцу љранације.

Кључне речи: јојам ириација, модели, циљеви, начела, рокови и доспећаднушиво иро ириацији у Србији.
1. The concept of privatization

Starting from the words of famous solicitor Valtazar Bogisic that: “Every thing looks for its master”, we can assume that market economy demands economic subjects that have ownership. The role of the owner over company is significant from many reasons.¹

The owner decides on the engagement of his or her own resources when establishing certain type of the company for performing economic activity, the owner even when does not directly manages his or her own company elects and replaces management bodies, selects supervisory agencies to control administrative and management bodies, participates in the business results of the company (divides profit and covers losses), handles his property (selling or renting the company, selling of the shares and stocks) through the subjectivity of the company, establishes labor relations with employees and defines their status in the company. Building the ownership type of the company, have its impacts on economical, social and political plan, demands giving the responses on series of opened questions. Above all, what is privatization?

Privatization is the term that is widely used in the world and directs to the process that the state or socially owned company through various agreements is transferred into private.² Privatization is the procedure of selling the social that is public capital in community owned companies, public companies and other legal entities, under the conditions defined by the law.³ Privatization changes the owner of the social that is public capital, that capital loss the adjectives of administrative-collective ownership, so that the privatization is constituent part of economical transition that means the process of translating of planned economy into market economy, which is actually happening in many countries. The enthusiasm for public companies diminished in the whole world in the last two decades, and the process of privatization of public and socially owned companies is the most present in transitional countries. Private ownership is not the only reason for good economic results of the companies, but the reasons are also good economic policy and the quality of legal and administrative institutions, especially of those that protect ownership rights and their market, capital market and the competition at all the markets. That is why privatization is usually one of the elements of the wider program of structural adaptation, which also covers institutional reforms, prices and international trade liberalization, financial system reform as well as of the public incomes and expenditures, antimonopoly laws etc.

2. The goals of the privatization

The goals of the privatization can be numerous, and are usually divided into economical and political. We should have in mind the fact that privatization is not universal remedy, so it should not have too many goals, because in that case conflicts between them are inevitable. The basic and the most important goal of the privatization is creation of the efficient economy, based on the domination of private property, instead of community property which is non rational. Experience of the former SFRY that lasted for several decades and the successor of FRY clearly tells that on social and public property and their unhealthy relations it is not possible to accomplish economic prosperity, and the crisis and stagnation are inevitable

³ article 3 of the Law on privatization
consequences of such relations. This goal is based on the expectations that private owners and managers appointed by them increase the chances for the company to survive competition through introduction of the new technologies and products, new financial sources, better organization and working discipline, generally, better management over the company.

The second goal of the economy is improvement of the financial status of the state. Through selling of the socially owned and public capital, the state can reach significant resources that can be used for financing general and useful activities or service its debts. The poor country can not give away, but has to sell. On the financial position of the state positive impact have stopping the subvention that the state used to give until the beginning of the privatization to the socially owned or public companies and the increase the income from taxes from the bigger and more efficient production.

The third goal is elimination of social and public sector to the benefit of autochthonous private sector. The state has permanently and almost inevitably saved big and inefficient social and public companies with various subsidies (tax relieves, favorable credit terms, favors in import...), which meant transferring modest resources from more productive towards less productive or non productive companies. As one political goal we can mention expansion of private property as the basis of liberal and democratic order, denationalization, strengthening of the middle class, lack of involvement of the policy in the economy and society etc. The program of privatization must have relevant political support in order to succeed. From this reason the political circumstances are very important for the success of privatization.

The goals of privatization are also opening new jobs, growth of the economy, regular pensions, realization of the social program, growth in the standards of living, inducement of local development, financing of the program for economic growth and growth of environment.

3. The principles of privatization

In the privatization process we should comply with the principles of: economy, publicity, fairness and selling on the market price.

With the economic principle there is the question weather faster or more slowly privatization is better. Strategy of fast privatization means radical reforms in transformation of social and public property into private, where is the biggest profit for managerial level. But, if we take into consideration that the privatization is the process, and not act, we consider this process should be well thought off, controlled, institutionalized and in practice efficient, and for that certain time period is needed. Of course, we also think that the privatizations should not be continued infinitely.

One of the basic principles that should be kept in mind in privatization of the public companies is transparency. The privatization process should be under public eyes because it is subjected to corruption. The citizens should know modalities of the privatization, ways of doing business in the companies, reasons and effects of the company selling. That is the only way to avoid corruption, illegal and non economical disposal of social and public property.

There is no fair privatization, because it always enables bigger benefits for some social groups to the expense of other social groups. From this reason the criteria of fairness can be obeyed only to the extent to which does not prevent privatization and does not diminish the effects of accomplished privatization. The poor country must be persistent to sell the companies with dominant public and social capital on their market price, so that they are not sold under their price or for nothing, and the benefit from privatization in such cases goes only to the
corrupted levels. Transfer of property rights during privatization of public and social companies creates so called redistributive effects, regarding the selling prices of the stocks, and also regarding the structure of the prices of privatized companies. Bad estimation, underrated or overrated value of the company due to the lack of capital market, as well as discounts in buying the stocks, are redistribution.4

Until now performed privatization the most probably led to sale of net social property. If it is really the case, than this process not fair regarding the future generation.

4. Models of privatization in Serbia

Privatization models defined by the Law on privatization are: selling the capital (method of public tendering and public auction procedures) and transfer of the capital without reimbursements for the employees and other citizens. The basic techniques of the privatization are tendering and auction, while the privatization of the insolvent companies in crisis is conducted after the previous restructuring procedure that means previous organizational, financial and statutory restructuring. Tendering and auctioning selling of the capital are based on the principles of publicity, competition, equality and eligibility. Competition of the participants makes sense and the capital can be sold under the most favorable conditions only if these principles are accomplished. On the contrary, with their breaking and limitations the budding makes no sense. The principle of publicity is satisfied if the ad is published properly, and therefore the public is informed about the subject and the conditions of the selling and if the interested parties are able to be present at selling timely and on the location defined by the ad. Unlike the principle of the publicity that affects the inducement of the demand, the principle of competition enables that the demand is expressed on the most favorable way for the organizer of the selling. For such thing, it is necessary that several persons participate in the procedure, where the competition must be conducted under good business customs. If these conditions are not satisfied, the principle of competition is not accomplished, so we can not speak about competition.

The principle of eligibility contributes in providing seriousness and regularity in competition, contracting with the person that has the necessary capacity to be the buyer in the concrete case, which is provided through the obligation for the interested buyer to pay the deposit and buy out the documentation, and the regularity by that the law lists who does not have the capacity of so called honor and who can not be buyer.

5. Privatization deadlines

The final deadline for privatization of non privatized social capital is prolonged, so that the public call for participation on public bidding, that is public auction, must be published until the December 31, 2008, on the contrary, the legislative defines the sanction which is the act on initiation of receivership liquidation of the privatization subject. Liquidation would be initiated if the social capital, that is the property of the privatization subject is not sold after III conducted public tendering, that is public auction, or if the privatization subject did not submit yearly financial report to the agency responsible for the conducting the register of economic

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subjects two years in the row. Liquidation procedure is conducted by the agency, and the funds that remain after the privatization procedure is conducted are the income of the budget of the Republic of Serbia, except from the means in private property. On the liquidation of the privatization subject we can apply respectively the articles of the Law on legal entities in the parts that define the liquidation of legal entities.\footnote{Law on economic entities, “Official paper of the Republic of Serbia”, no. 125/2004.}

Previously initiated privatization procedure until the Law on changing and adaptations of the law on privatization is enacted will continue to last according to the Law on changing and adaptation of the law on privatization from 2007.

6. Reached level of privatization in Serbia

The last day in December 2008, was the end date when it should at least generally be known the destiny of the remaining 802 socially owned companies. Deadline for privatization is moved to December 31, 2012. Currently, the chances for recovering are present in the biggest companies for whom the state would try to find strategic partners, like it is the case with Zastava from Kragujevac. Although the end date for privatization was delayed for several times, for selling until the end of this year remained the companies tat have big debts or their management was not inclined to sell them. People from the Agency say that these companies will be prepared for bankruptcy.

Having in mind current dynamics of privatization where each sixth offered company is sold, new owner in relatively short time line would hardly be finding for all the remaining companies. Yet, for all the big systems, the state will try to find some solution in the concrete case with the goal to avoid bankruptcy. But it is not the solution for those companies to remain on state subsidies, so another solution must be found for them, through strategic partner or selling on some other way (maybe through selling the property of these companies). It would mean that the privatization will not be ended this year, and most likely the next one, that is we can not for sure predict the end of the privatization. In such milieu, within overall reforms in Serbia privatization process is conducted through the existing legislative that should be changed.

Regarding the funds that the state has received from privatization, they have mostly been spent on paying off debts to domestic and foreign investors. The funds gathered in privatization procedure are used for financing: Fund for pension and insurance for the cases of emergencies in the Republic, incentives for the development, paying the compensation for the persons whose property was nationalized, paying off debts of or for whose guarantee the Republic of Serbia, special program for economic development or environmental protection that is defined by the local government body and other purposes.

In the Ministry of finance report, it is mentioned that for paying off the premature debt to the International bank for reconstruction and development (IBRD) is spent 310 million EUR, for the needs of the Ministry for capital investments is dedicated 23 million EUR, for the severance pays for the employees in “Robna kuca Belgrade” are taken 30 million EUR, while 20 million of EUR are given to the military reservists. During the last years, the state did not define clear conception of privatization, because it did not defined in long terms the way of using obtained money. Dynamics of the incomes from privatization during the previous years was proved to be unpredictable, which was reflected in
paying off the principal of the public loan. During 2006, Serbia earned from privatization more that it was the amount of the installments for paying off the public debt. Inflow of money was provided from the privatization of MOBI 63, but the money was spent because it was expected that during 2007. and 2008. the income from privatization would be bigger, which did not happen.

Between 2002. and 2008, 3119 companies in total were offered for selling, out of them the number of sold companies was 2276. With the tendering procedure of privatization in this period from 195 offered companies 91 were sold, which means that the percentage of the success in privatization was 47%. With the tendering procedure were privatized companies that by their strategic importance, size and potential possibilities are the great investments. Until now new owner was found in such manner for over 110 companies, and the incomes from them are over one billion EUR, as well as the investments of the new owners in such companies. Due to the fact that contracts were not fulfilled by the investors’ 12 contracts were broken. In the portfolio of the Center for tendering are currently 80 companies, out of them for 28 of them privatization procedure was initiated. Some of them are very attractive for domestic and international companies, like for examples “River shipping industry in Yugoslavia”. This company, specialized for the transportation of goods on rivers is the fourth biggest company in this branch in the region of so called downstream Danube. The selling of ski center on Kopaonik is ongoing, the center is located on the elite destination of winter tourism in the region.

Number of companies offered for selling via auction between 2002. and 2008. was 2162 companies. The number of sold companies was 1583 companies. With the auction privatization until now were privatized 2000 smaller companies, and it was created the income of around 1,3 billion EUR. Almost total inflow of capital from tendering comes from foreign investors, while it is totally opposite in case of auctions, where the dominant inflow of capital comes from domestic investors.

In order to simplify the selling of the remaining of Serbian companies, Ministry of economy has suggested that the state gives the possibility for the buyers to pay in installments. The total debt should be paid in 5 years period, when the buyer would become the rightful owner of the company. Regarding this suggestion the government would decide soon. Experience from privatization shows that in this process the companies that produce strategic goods, like cement, or have the market, like in cases of cigarettes or food, found their strategic owner.

7. Privatization models in Serbia

Privatization models in Serbia defined by the Law on privatization are selling the capital through the method of public tendering and public auction method, as well as the transfer of the capital without reimbursement: to the employees and other citizens. the basic privatization techniques are tendering and auction, while the privatization of non solvent companies in crisis is conducted after the previous procedure of restructuring that means previous organizational, financial and statutory restructuring. Tendering and auction selling of the capital are based on the principles of publicity, competition, equality and eligibility. Bidding of the participants is meaningful and the capital can be sold under the most favorable conditions only if these principles are fulfilled. On the contrary, with their breaking and limitations, bidding looses its meaning. The principle of publicity is satisfied if the ad is published in the proper
manner, where the public is informed on the subject and conditions of selling and if the interested parties are enabled to be present at selling timely and on the spot defined by the ad. Unlike the principle of publicity that impacts the inducement of the demand, the principle of competition enables for the demand is expressed on the most favorable manner for the organizer of the selling. For such thing, it is necessary that several persons participate in the procedure, where the competition should be conducted according to the good business customs. If these conditions were not satisfied, the principle of competition is not fulfilled, so we can not talk about competition. The principle of eligibility contributes that it is provided seriousness and regularity of the competition, contracting with the person that has necessary capacity to be present as the buyer in this case, which is provided through the obligation that interested buyers pay the deposit and buy out the documentation, and the regularity with that that legislative lists who does not have so called capacity of the honor, that is who can not be the buyer.

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