

Serb Community Outlook on Privatization in Kosovo

2022



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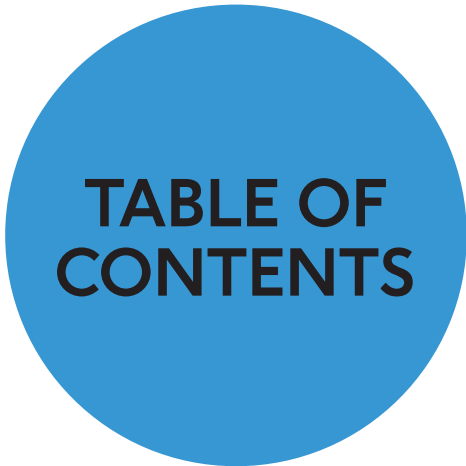


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About Open Initiative

"Democracy, Openness and Perspectives of the Serbian Community in Kosovo – Open" is an initiative of Kosovo Foundation for Open Society (KFOS) launched during 2020. The aim of this initiative is to develop an open and dynamic space for discussion within and among the Serbian and other communities, as well as with institutions in Kosovo.

Civil society organizations and media from Serb community in Kosovo, members of the initiative, specifically deal with analyses and assessments of impact of civic and political organizations on the development of democracy as well as openness of Serb community in Kosovo. These analyses assess the openness of institutions, public policies, and important processes towards Serb community in Kosovo, as well as the level of openness of Serb community towards them.

These analyses will help provide insights into the situation and perspectives of Serb community in Kosovo, serving at the same time for informed representation in front of decision-makers, local and central institutions, and the international community

1. Introduction

Besides the traditional challenges following every privatization of state and socially owned enterprises and property in transitional economies, this process in Kosovo faced additional hardships, reflected in an ambiguous legal framework, issues in establishing the ownership over the property of enterprises subject to privatization, but also many other situations exclusive to Kosovo. UNMIK Mission in Kosovo was established following the adoption of United Nations Security Council Resolution 1244/1999, and it took upon itself to build the legal system and institutions, as well as to manage public, state and socially owned property of Federal Republic of Yugoslavia and Republic of Serbia. All these years, but also after the unilateral declaration of Kosovo independence, privatization has been one of the most controversial

public policies in this area, against which legal disagreements and different interests collided, influencing the deepening of mistrust in relations between the Serb community and Kosovo institutions.

This paper provides a historical overview of the legal and institutional instruments for privatization in Kosovo before and after the declaration of independence, as well as the repercussions of this process in Serb areas. It should also be noted that this analysis is one of the few publications on the subject of privatization in Serb areas in Kosovo. Lack of similar publications, among others, is directly related to the issue of availability of publically accessible information, necessary to develop a comprehensive study that would do justice to this topic.

2. Privatization in Kosovo before 2008

Security Council Resolution 1244¹ (hereinafter UNSCR1244/99) stipulates the United Nations mandate, in accordance with the UN legal system and international law. This resolution provided the legal basis to establish the United Nations Mission in Kosovo (hereinafter: UNMIK)² charged of setting-up (provisional) administration, governing all socio-political affairs and institution building.

UNMIK Mission built its legal framework through regulations, adopted by the United Nations Special Representative of the Secretary General (hereinafter: SRSG). The first regulation was adopted on 25 July 1999, and it provided in Section 6 that UNMIK should administer all movable and immovable property registered in the name of the Federal Republic of Yugoslavia and the Republic of Serbia and/or any of its organs, which was in the territory of Kosovo.³ Thus, UNMIK initiated the development of the institutional framework for the administration of state and socially owned property, which was later regulated in more detail by the Constitutional Framework for Provisional Self-Government in Kosovo.⁴

In accordance with the Constitutional Framework, authority to administer state and socially owned property is the exclusive competence of the SRSG (Article 8.1(q) of the Constitutional Framework), however the SRSG shall cooperate with the Economic and Fiscal Council in relation to these issues, that fall under the Fourth Pillar of UNMIK administration, namely European Union⁵ and with Provisional Institutions of Self-Government (Article 8.1(r) of the Constitutional Framework). By adopting the Regulation 2002/12 in 2002, UNMIK established Kosovo Trust Agency (hereinafter: KTA)⁶ with its mandate to assist in the administration of state and socially owned enterprises. Based on Article 6.2 of this Regulation, the KTA was given a mandate to transform socially owned enterprises into one or more corporate subsidiaries, to sell all or part of the shares of subsidiaries, to initiate its liquidation, or to dispose of the money and other assets of the socially owned enterprise. This Regulation establishes the KTA as an independent body, in accordance with Article 11.2 of the Constitutional Framework. UNMIK Regulation 2002/13 prescribes a more significant portion of the legal framework

1 <https://unmik.unmissions.org/united-nations-resolution-1244>

2 UNMIK - United Nations Mission in Kosovo

3 UNMIK/REG/1999/1 of 25 July 1999, available at https://unmik.unmissions.org/sites/default/files/regulations/02english/E1999regs/RE1999_01.htm

4 UNMIK/REG/2001/9 of 15 May 2001, available at <https://unmik.unmissions.org/sites/default/files/regulations/02english/>

[E2001regs/RE2001_09.pdf](#)

5 UNMIK Mission is divided into four sections or "pillars", namely: Pillar 1: Police and Judiciary (led by United Nations); Pillar Two: Civil Administration ((led by United Nations); Pillar Three: Democratization and Institution Building (led by OSCE); and Pillar Four: Reconstruction and Economic Development (led by the European Union);

6 UNMIK/REG/2002/12 of 13 June 2002, available at https://unmik.unmissions.org/sites/default/files/regulations/02english/E2002regs/RE2002_12.pdf

for administering state and socially owned assets⁷ and it also provides a legal basis to establish Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters. In order to further advance the privatization process, the legal basis for the work of KTA was further promoted by adopting UNMIK Regulation 2005/18 of 22 April 2005⁸ thereby strengthening further the independence and importance of this agency within Kosovo Provisional Institutions.

There was a reasonable concern that by establishing the KTA, UNMIK stepped out of the mandate reserved to it under UNSCR 1244/1999, which was specified further under UNMIK Regulation 1999/1. Namely, UNMIK was given the right to administer public, state and socially owned property, without the right to change their ownership structure. Hence, the process of privatization of socially owned enterprises in Kosovo spurred controversy from the very outset.⁹ In addition, UNMIK had no easy task of determining ownership relations in socially owned enterprises, bringing the process to a temporary halt, in the aftermath of the first wave of privatization in July 2003.¹⁰

Models of Privatization of Socially Owned Enterprises in Kosovo

After the initial deadlock, privatization continued in 2004, when a model was approved, implying privatization without prior settlement of ownership rights. This model is also known as “*spin-off*”

7 UNMIK/REG/2001/13 of 13 June 2002, available at <http://www.kta-kosovo.org/ktareg/UNMIK%20Regulation%20No.%202002-13%20Special%20Chamber%20of%20the%20Supreme%20.pdf>

8 UNMIK/REG/2005/18 of 22 April 2002, available at <http://www.kta-kosovo.org/ktareg/UNMIK%20Regulation%20No.%202002-12%20Establishing%20the%20KTA.pdf>

9 Mulaj, Isa. “Delayed Privatization in Kosovo: Causes, Consequences and Implications in the Ongoing Process,” in *Path-dependent Development in the Western Balkans: The Impact of Privatization*. Siniša Kušić, ed., Frankfurt: Peter Lang, 2005, 123-163.

10 *Privatization and Post-Privatization in Kosovo: Glass Half Empty or Half Full? Reinvest Report*, September 2008, available at https://www.riinvestinstitute.org/uploads/files/2016/October/17/english_en1476702396.pdf

and it included different models of transformation of socially owned enterprises, prior to the privatization process, namely:

1. Ordinary *spin-off*,
2. Special *spin-off*,¹¹
3. Liquidation procedure.

Spin-off model provides a formal separation of assets (land, buildings, halls, machines and other equipment) and liabilities of the old company. Thereby, the rights and obligations over that company are separated, with the aim of freeing the new owners from the liabilities of the old one.¹²

Of the above listed models, ordinary *spin-off* was mostly used, including the establishment of one or more subsidiaries of a socially owned enterprise, in the form of a joint stock company or limited liability company, with the transfer of assets or part of assets from the old company to the new one (*NewCo*), with the sole purpose of further tender sale of all or part of the shares of the new company, under a new name. Before the sale, the shares of the newly founded company remain in provisional KTA ownership (until the sale) within a holding company, also managed by the KTA (more precisely KTA Managing Board).

Special spin-offs take place in the case of large, strategic and significant socially owned enterprises with a large number of employees, and where the sale is limited by special conditions the investor must fulfill in terms of employees, preservation of business activity and environment protection and technological standards. KTA has a policy of considering any company with at least 150 workers and a potential turnover of € 10 million as being of strategic importance for Kosovo.¹³ A total of 23 companies

11 There were 23 special *spin-off* companies in Kosovo. Source: *ibid.*, p. 5.

12 Davidović, Sandra. Privatizacija društvenih preduzeća na Kosovu i Metohiji pod okriljem UNMIK administracije: pregled, ocene, zaključci, Beogradski forum za svet ravnopravnih, Begrade 2018.

13 Privatization in Kosovo: Judicial review of KTA matters by the

that were granted a special *spin-off* status were identified within the privatization process.

Privatization procedure according to *spin-off* model is defined by the KTA Rules of Procedure “Rules of tender for *spin off* procedure for the tender and sale of socially owned enterprise”.¹⁴ This document provides the sale of shares at a public auction, during which bids are ranked based on the highest price offered. As already mentioned, within the special *spin-off sale* additional criteria are taken into account, so the privatization is organized in two bidding rounds based on three criteria: bid price, employment guarantees, investment guarantees.

Funds generated from the sale of the new company, in the form of cash revenues or shares, are placed in a trust fund, managed by the KTA. The funds from the sale would be distributed as follows:

Employees of socially owned enterprises,

20%

Administrative costs,

5%

Creditors and owners,

75%.¹⁵

Share right is not directly applicable. The enjoyment of these rights is subject to prior fulfillment of conditions provided and assessed by the KTA. All legal and natural persons may participate in the tender, except for public and socially owned enterprises, government institutions, legal persons under bankruptcy and persons criminally liable for war and other crimes. However, not a single provision provides the methodology to es-

tablish the initial price of the company tendered. In practice, the initial price was often arrived at by some sort of preliminary agreement between the potential owner and the KTA, thereby establishing a criterion on how much a buyer is ready to pay, that would prove itself to be minimally acceptable for the KTA.¹⁶

Voluntary liquidation represented the third form of privatization of socially owned enterprises. Compared to *spin-offs*, a far lower number of companies went through the liquidation process (about 10% of the total number). This method involves shutting down of any enterprise that is unable to continue with sustainable business. If deemed in the interest of creditors and/or owner of the company¹⁷ KTA may initiate the voluntary liquidation of a socially owned enterprise or its subsidiaries. This procedure takes place outside of the court, in accordance with the liquidation procedures stipulated by UNMIK Regulation 2001/6 on Business Organizations,¹⁸ and in that case, the proceeds from liquidation go to the KTA for safekeeping and administration, the same way as in the *spin-off* model.¹⁹

The basis of the established privatization model involves the sale of assets, i.e. the “healthy” portion of the company. This was developed in response to the request that the privatized company starts its economic activity as soon as possible, free of any unresolved liability claims. This produced a series of issues, primarily when it comes to the rights of owners and creditors. Unlike comparative legal practice, creditors are ignored in the subsidiary sale, as the new buyer does not assume any liabilities. The provision on reserving a portion of the sales proceeds,

Special Chamber of the Supreme Court of Kosovo, Organization for Security and Cooperation in Europe, Report: May 2008, p. 11.

¹⁴ The Rules of Tender are available on the KTA web page, link: <http://www.kta-kosovo.org/ktareg/srulesoftender.pdf>

¹⁵ Davidović, Sandra, Privatizacija društvenih preduzeća na Kosovu i Metohiji pod okriljem administracije UNMIK: pregled, ocene, zaključci, Beogradski forum za svet ravnopravnih, Beograd 2018.

¹⁶ Privatization in Kosovo: Judicial review of KTA matters by the Special Chamber of the Supreme Court of Kosovo, Organization for Security and Cooperation in Europe, Report: May 2008, p. 17.

¹⁷ Here, again the issue of establishing the ownership of socially owned enterprises, or their creditors needs to be reemphasized.

¹⁸ UNMIK/REG/2001/6 of 8 February 2001, available at https://unmik.unmissions.org/sites/default/files/regulations/02english/E2001regs/RE2001_06.htm

¹⁹ Privatization in Kosovo: Judicial review of KTA matters by the Special Chamber of the Supreme Court of Kosovo, Organization for Security and Cooperation in Europe, Report: May 2008, p. 19.

enables financial compensation later on, but it is only potentially there. Namely, it depends on the total privatization proceeds, the settlement of other claimants and finally proving the given claim as non-discriminatory.²⁰

As it was the case in terms of creditors, UNMIK attempted to satisfy the interests of the owners, by reserving a portion of privatization proceeds. However, in the case of owners, establishing the principle of monetary compensation, does not imply the solution to the issue of ownership. This is a provisional technical response to an essentially legal issue, that ownership transformation entails. Clearly, this is a consequence of the distance set by UNMIK regarding the final assessment of whether this model of privatization actually infringes ownership rights. However, it is not clear to whom UNMIK or the Provisional Kosovo Institutions left the final solution when it comes to property rights, as most certainly a permanent requirement, in property disputes in Kosovo. Being unresolved or partially resolved, it can serve as the basis for future conflicts, which call into question the idea of post-conflict reconstruction, on which UNMIK Mission is founded. Considering the share of the Serb party in the ownership structure, this model turned into an instrument of discrimination against one side in the Kosovo dispute. In addition, it is important to emphasize the fact that at the time of privatization in Kosovo, the Government of Serbia still serviced debts of Kosovo companies and thus bore the burden of satisfying international creditors. The authorities of the Government of Serbia hence requested from UNMIK that a portion of privatization proceeds in Kosovo be used to pay off the Kosovo share of the public debt; however UNMIK administration declared itself incompetent in relation to this request.²¹

An issue arose as to whether the payment of liabilities was related to the chosen model of privatization. Specifically, why was the *spin-off* chosen instead of, for instance, bankruptcy, especially since the majority of companies met almost all the requirements to initiate a bankruptcy proceeding, due to their debts. Thereby, creditors would be settled from the bankruptcy estate, and only then would the possibility of selling the rest of the company be considered, and not the other way around, as it was the case in the majority of implemented *spin-offs*.²² Without a solid legal basis and with lack of legitimacy, this framework was set as an undeniable model of privatization, corresponding to the territorial and socio-political context of Kosovo, though all the shortcomings and impracticalities will prove it wrong in the implementation process.

Based on the proposed privatization model, over 313 socially owned enterprises were sold between 2004 and 2008, in the form of 551 newly established business companies, with only 347 buyers signing sales contracts. Thereby, proceeds amounting to 383 million Euros were collected, which made 11.5% of Kosovo's GDP in 2007. At that point, there were around 100 socially owned enterprises that were still not privatized, including large companies, such as Trepča and Brezovica Ski Center.²³

Table 1 provides examples of transformation of socially owned enterprises into new business entities that were then privatized within the ordinary *spin-off* before 2008.

20 Davidović, Sandra, Privatizacija društvenih preduzeća na Kosovu i Metohiji pod okriljem UNMIK administracije: pregled, ocene, zaključci, Beogradski forum za svet ravnopravnih, Belgrade 2018.

21 Ibid

22 Petrović P. "Obim i kontroverze aktuelne i najavljene privatizacije na Kosmetu", zbornik radova "Pitanje Kosmeta", Institut za međunarodnu saradnju i privredu, Belgrade 2006.

23 *Privatization and Post-Privatization in Kosovo: Glass Half Empty or Half Full? Reinvest Report*, September 2008, available at https://www.riinvestinstitute.org/uploads/files/2016/October/17/english_en1476702396.pdf

Table 1. Examples of transformation of “old” companies into the “new” ones privatized by 2008

No.	“Old” Company	“New” Company	Ordinary or special spin-off	Sales price (EUR)
No.	“Old” Company	“New” Company	<i>Ordinary or special spin-off</i>	Sales price (EUR)
1.	“Energoinvest” Priština	“Energoinvest osigurači”	<i>Ordinary spin-off</i>	525.130,00
2.	“Energoinvest” LLC	Meridian Kompani	<i>Ordinary spin-off</i>	750.000,00
3.	“Žitopromet” Mlinpek, Kosovska Mitrovica	IMB Pekara	<i>Ordinary spin-off</i>	404.416,66
4.	IMB Mlin	Auto servis Gashi	<i>Ordinary spin-off</i>	406.000,00
5.	“Farmakos” Prizren	“Farmakos” Pharmacy	<i>Ordinary spin-off</i>	2.310.000,00
6.	“Farmakos” Austrian house	Viktoria InvestINT	<i>Ordinary spin-off</i>	310.000,00
7.	“Kosovotrans”, Kosovska Mitrovica (Kosmet prevoz)	Bus station “Kosovotrans” LLC, Srbica	<i>Ordinary spin-off</i>	451.750,00
8.	RO Auto kuća “Kompresor”	“Kompresori” LLC	<i>Ordinary spin-off</i>	715.000,00
9.	“Goša” Mining equipment and metal constructions factory “Metalac”	“Čelični valjci” LLC	<i>Ordinary spin-off</i>	555.555,00
10.	Hotel “Korzo” Peć	Hotel “Korzo” LLC Peć	<i>Ordinary spin-off</i>	915.000,00
11.	PKB “Pečka pivara” LLC Peć	“Pečka pivara” Peć	<i>Ordinary spin-off</i>	11.130.000,00
12.	Wholesale and retail enterprise “Korenik”, Istok	Department Store “Korenik”, LLC Istok	<i>Ordinary spin-off</i>	715.000,00
13.	Wholesale and retail enterprise “Korenik”, Istok	Hotel Korenik LLC Đurakovac	<i>Ordinary spin-off</i>	284.121,00
14.	SOE “Staklopan”, Beograd, factory in Prishtina	Kri Kos Factory LLC Priština	<i>Ordinary spin-off</i>	485.000,00
15.	Holding company cotton mill “Jumko” JSC Vranje, plant in Prishtina and Kosovo Polje	Factory “Jumko” LLC Priština	<i>Ordinary spin-off</i>	1.700.000,00
16.	Holding company cotton mill “Jumko” JSC Vranje, plant in Prishtina and Kosovo Polje	Jumko Land d.o.o. Priština	<i>Ordinary spin-off</i>	277.000,00
17.	DD “Kosmetput” K. Mitrovica	“Trasing industriale” LLC Priština	<i>Ordinary spin-off</i>	2.250.000,00
18.	PKB “Kosovovino” Mala Kruša	Vinery “Kosovo Vera” LLC	<i>Ordinary spin-off</i>	2.700.749,00
19.	DTP “Voćar” Priština	“Urata supermarketi no. 1” LLC Priština	<i>Ordinary spin-off</i>	1.400.111,00
20.	DTP “Voćar” Priština	“Urata supermarketi no. 3” LLC Priština	<i>Ordinary spin-off</i>	1.325.000,00
21.	DTP “Voćar” Priština	“Urata supermarketi no. 4” LLC Priština	<i>Ordinary spin-off</i>	160.150,00
22.	DTP “Voćar” Priština	“Urata supermarketi no. 20” LLC Priština	<i>Ordinary spin-off</i>	250.250,00
23.	DTP “Voćar” Priština	“Urata supermarketi no. 47” LLC Priština	<i>Ordinary spin-off</i>	100.500,00

Source: Aćimović, S, Analiza procesa i modela privatizacije na Kosovu, 2008.

3. Privatization in Kosovo after 2008

The unilateral declaration of independence created a new constitutional and legal state of affairs in Kosovo, defining all aspects of society, including relations in terms of the ownership of public, state and socially owned assets. It should be emphasized that in its Advisory Opinion on the Declaration of independence of Kosovo, the International Court of Justice established that *“the authors of the declaration of independence of 17 February 2008 did not act as one of the Provisional Institutions of Self-Government within the Constitutional Framework, but rather as persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration”*.²⁴ Thereby, the transformation of Provisional Institutions of Self-Government in Kosovo that were established in accordance with UNSCR 1244/1999, UNMIK regulations and the Constitutional Framework of Kosovo, into institutions of the independent Republic of Kosovo, as the basis for the Declaration of Independence and the Constitution of Kosovo is legally questionable.²⁵



Based on the Constitution of Kosovo, a new legal and institutional framework was created, which was largely contingent on UNMIK legal regulations and 2001 Constitutional Framework. In this regard, on the basis of Law no. 04/L-034 and Law no. 05/L-080 the Kosovo Privatization Agency (hereinafter: KPA) was established, as an independent public body that shall continue to perform tasks that were under the authority of KTA, all in accordance with Law no. 04/L-115, referring to the end of the international supervision of Kosovo independence.

²⁴ Advisory opinion on the Declaration of Independence of Kosovo, p. 48-49, available at <https://www.icj-cij.org/public/files/case-related/141/141-20100722-ADV-01-00-EN.pdf>

²⁵ The Constitution of the Republic of Kosovo was signed on 7 April 2008, ratified on 9 April 2008, and it entered into force on 15 June 2008. The text of the Constitution is available at http://zka-rks.org/wp-content/uploads/2017/06/USTAV_REPUBLICI_KOSOVO.pdf

After the declaration of Kosovo's independence, the new Constitution of Kosovo was adopted, which in Article 159 deals with property and socially owned enterprises, stipulating that socially owned property shall be privatized without any delay, as well as that all socially owned property in Kosovo is the property of the Republic of Kosovo (Article 159, Paragraph 2). Article 160 further specifies that all socially owned interests into property and enterprises in Kosovo shall be owned by the Republic of Kosovo, and that the obligations related to such ownership rights shall be the obligations of the Republic of Kosovo. Furthermore, this article, emphasizes that the law may authorize the Government of Kosovo to privatize, give under lease or concession all socially owned enterprises, as provided by law.

Based on the Constitution of Kosovo, a new legal and institutional framework was created, which was largely contingent on UNMIK legal regulations and 2001 Constitutional Framework. In this regard, on the basis of Law no. 04/L-034²⁶ and Law no. 05/L-080²⁷ the Kosovo Privatization Agency (hereinafter: KPA) was established, as an independent public body that shall continue to perform tasks that were under the authority of KTA, all in accordance with Law no. 04/L-115, referring to the end of the international supervision of Kosovo independence.²⁸

KPA carried on with the privatization of companies, especially large state-owned companies such as Kosovo Energy Corporation (KEK), which was sold to the Turkish consortium, Limak & Calik in 2012 for 26.3 million Euros.²⁹ Privatization of Post and Telecom of Kosovo (hereinafter: PTK) was launched in 2013 and the most favorable, German bidder *Axos Capital* was selected, offering 277 million Euros for 75% of PTK shares, however the sale was blocked by the Assembly, as there was no majority to finalize this transaction.³⁰

²⁶ Law No. 04/L-034 available at <http://old.kuvendikosoves.org/common/docs/ligjet/Law%20on%20the%20Privatization%20Agency%20of%20Kosovo.pdf>

²⁷ Law No. 05/L-080 available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=11296>

²⁸ Law No. 04/L-115 available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2840&langid=2>

²⁹ Radio Free Europe "Potpisan ugovor o privatizaciji KEK-a, protest Samoopredeljenja", available at <https://www.slobodnaevropa.org/a/24742657.html>

³⁰ B92 article "Odložena privatizacija PT Kosova" dated 25 September 2013, available at <https://www.b92.net/biz/vesti/srbija/odložena-privatizacija-pt-kosova-757884?version=amp>

4. Privatization in Serb Areas in Kosovo

Unlike KTA, KPA immediately initiated the privatization of socially owned enterprises and state land in Serb areas.³¹ Privatization mainly included the sale of state land, socially owned enterprises or subsidiaries of socially owned enterprises, primarily immovable property in the form of facilities, premises and other business premises. There are indications of the lack of information of the Serb community in relation to these processes, and there are also rare examples of participation of local companies from the Serb community in privatization. The issue also lies in traditionally poor communication instruments of Kosovo institutions with the Serb community, the media divided by language and ethnicity, but also in the use of Serbian language in official communication. There are also other systemic issues, such as poor investment potential among businesspersons from the Serb community, but also their operation in the dual system (Serbian and Kosovan). In addition to all that, there is a clear political opposition of the Serb community to KPA's intention to privatize socially owned and state enterprises in the areas they live in.

Resistance to privatization particularly comes to light in the case of privatization of major enterprises, such as the Trepča Mining and Metallurgical Company and Brezovica Ski Center. On

³¹ Vesti.rs article "KOSMET: Na prodaju preduzeća u srpskim sredinama", available at <https://www.vesti.rs/Kosovo/Kosmet-Na-prodaju-preduzeca-u-srpskim-sredinama-3.html>

14 August 2000, with the help of KFOR, UNMIK took over the administration of Trepča under the pretext of environmental concerns due to the operation of the smelter. Later on, KTA took over the administration of Trepča, and since the declaration of independence of Kosovo, the administration of this complex has been in the hands of KPA. In reality, Trepča operates within two separate companies, one of which manages facilities in majority-Albanian areas of central Kosovo (including Stari Trg mine)³² and the second in Serb areas in the north of Kosovo (e.g. Belo Brdo mine).³³

Privatization of Brezovica Ski Center also indicates the sloppiness of this process in Serb areas. Back in 2009, KPA started the privatization of certain parts of Brezovica Ski Center under the ordinary *spin off*. This was how "Restoran brvnara Brezovica", company "Mala brvnara" and company "Kafana Štrpce" were privatized. However, the privatization of other parts of Brezovica Ski Center to the French-Andorran consortium "MDP Consulting - Compagnie des

³² For more on issues of Trepča operation in the south, see Radio Free Europe article "Ugroženo funkcionisanje rudnika Trepča" available at <https://www.slobodnaevropa.org/a/ugrozeno-funkcionisanje-rudnika-trepca/32075433.html>

³³ For more on the operation of Trepča in the north of Kosovo see Insajder article "Dimičić: Nećemo prepustiti upravljanje našim delom Trepče" <https://insajder.net/arhiva/vesti/dimic-ic-necemo-prepustiti-upravljanje-nasim-delom-trepce> or Danas article "Sudbina srpskog dela "Trepče" zavisi isključivo od Prištine" available at <https://www.danas.rs/vesti/ekonomija/sudbina-srpskog-dela-trepce-zavisi-iskljucivo-od-pristine/>

Alpes” for 400 million Euros failed, as the local community and the Government of the Republic of Serbia opposed this. In the end, the privatization was prevented by the veto of Mayor of Štrpce.³⁴

All these years after 1999, Brezovica Ski Center worked within the Public Enterprise Skijalista Srbije (Ski Resorts of Serbia). However, through measures of “fiscalization”³⁵ the Government of Kosovo prevented the operation of this company within the Serbian system and imposed the management of the ski center by the new Board of Directors of the company „N SH INEX SHARR PLANINA BREZOVICĚ SH.P.K.” founded by KTA on 5 May 2021 with 100% ownership. This transformation was followed by a series of arrests of local officials of the Municipality of Štrpce, including the former mayor, under a charge of issuing illegal construction permits in the National Park.³⁶ The arrests sparked protests of the local community,³⁷ however that did not affect the decision of the Government of Kosovo to take over the operation of Brezovica Ski Center.

There are numerous socially owned enterprises in municipalities in the north of Kosovo that have not been formally taken over by KTA, and which (still) operate within the legal system of the Republic of Serbia. In many of them, production has started through funds from the Government of the Republic of Serbia, primarily by using subsidies granted through the Office for Kosovo and Metohija. Although there are numerous challenges in the operation of these companies, primarily due to the duality of the legal system and issues in the supply of raw materials, many of them operate with a significant

number of employees. Some successful examples include “Simpo” factory³⁸ and “Javor New”³⁹ from Zubin Potok.

Last year, Kosovo Foundation for Open Society - KFOS supported a comprehensive survey of attitudes and trends in Serb areas in Kosovo, using the opportunity to ask citizens about the level of their knowledge and participation in the privatization process in Kosovo. Out of 500 respondents, 21.2% (106 respondents) responded that before the war, they or someone from their family worked in socially owned enterprises in Kosovo. Among them, most worked between 16 and 30 years (44.3%), 6 and 15 years (28.3%) and more than 30 years (18.9%). When asked about the status of the socially owned enterprise at this moment, most of them answered that it was in bankruptcy (40.6%), in the privatization process (28.3%) or that it operated the same as before the war (11.3%). Bearing in mind that the process of socially owned assets administration in Kosovo does not recognize the instrument of “bankruptcy”, this information speaks volumes when it comes to level of information of the Serb population about the status of the company they used to work in. Among those respondents who said that the company still carried out business activities, half of them claim that they still worked for them, while the other half said they were no longer connected to that company, either as they independently left that job or retired, but also because they got dismissed after the war.

A total of 8.5% responded that the privatization of the company they used to work in had been completed and that the new owner kept the same activity, 1.9% said that after the privatization the new owner changed the activity of the company, while 9.4% did not know what the status of the company they worked in before the war, was.

34 Kossev “Šta će biti sa Brezovicom”, available at <https://kos-sev.info/sta-ce-biti-sa-brezovicom/>

35 RadiokIM “Normalizacija i fiskalizacija”, available at <https://www.radiokim.net/vesti/analiza/normalizacija-i-fiskalizacija.html>

36 Radio Slobodna Evropa “Na Kosovu nova hapšenja u okviru akcije Brezovica”, available at <https://www.slobodnaevropa.org/a/kosovo-akcija-brezovica-nova-hapšenja/31755975.html>

37 RTS “Protest u Štrpcu zbog nedavnih hapšenja”, available at <https://www.rts.rs/page/stories/sr/story/125/drustvo/4744431/strpce-protest-hapšenja.html>

38 InfoVranjske “Simpo ponovo u akciji Zubin Potok”, available at <https://infovranjske.rs/simpo-ponovo-u-akciji-zubin-potok/>

39 RTS “Javor pokrenuo proizvodnju u Zubinom Potoku”, available at <https://www.rts.rs/page/stories/sr/story/13/ekonomija/3802952/javor-pokrenuo-proizvodnju-u-zubinom-potoku.html>

All respondents who said that the company they worked for was currently in the process of privatization, stated that the company worked in the Serb system, which is somewhat legally illogical as the privatization is officially carried out by the KTA, which at the same time manages the company until the final sale. This information indicates the level of information of citizens about the privatization process in Kosovo. They also answered that they received a salary in dinars, which is an indication that they work for companies that operate in the Serbian system.

When the respondents who worked in a company subject to privatization were asked whether someone had contacted them in order to receive the shares in the company, 96.7% responded that this was not the case (only one respondent answered positively, that he had been contacted in this regard).

A total of 11 answers were received related to already privatized companies, with three respondents answering that they received the money, as financial compensation from privatization, while the other eight respondents responded negatively to this question. All three respondents who received the money expressed their dissatisfaction with the amount of compensation. Respondents who were not financially compensated within the privatization are unaware of the exact reason.

It is necessary to emphasize the lack of public data in the field of privatization. It is precisely why it is not possible to establish whether any of the owners or creditors from the Serb community were compensated after the sale of any socially owned enterprise in Kosovo. In addition, it is not possible to establish how many members of the Serb community received compensation from the proceeds of privatization, based on their working experience in the socially owned enterprise subject to privatization.

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5. Republic of Serbia and Privatization in Kosovo

The Government of the Republic of Serbia strongly opposes privatization in Kosovo, considering that the Republic of Kosovo, created upon unilateral declaration of independence, has no legal basis to dispose of the assets of the Republic of Serbia and the Federal Republic of Yugoslavia on the territory of Kosovo. In this sense, the Government of Serbia calls upon UNSCR 1244/1999 and emphasizes that UNMIK has the right to administer property, but does not have the right to change the ownership of public, state and socially owned property in Kosovo.

The Government of the Republic of Serbia has reacted in numerous instances to the privatization of state and socially owned enterprises in Kosovo, however the results of these reactions are only half-hearted. Thus, for example, at the United Nations, the Government of Serbia managed to stop the first wave of privatization in 2003 and 2004. However, this was short-lived as the United Nations and the European Union transferred responsibility from themselves to KTA, and the new model of privatization was developed in such a way as to resolve claims and ownership relations in an (ambiguous) procedure after the privatization.

Office for Kosovo and Metohija has no full information about the property it claims in Kosovo. According to incomplete data, companies from Serbia dispose with around 1400 facilities in Kosovo, of which PTT Serbia has 130 facilities, Railway Transport Company 55 facilities, EPS 19, "Srbijašume" 45 facilities. Among other things, "Lola corporation"

has plants in Zubin Potok, Lešak, Štrpce and Vitina. "Termovent" from Temerin has plants in Orahovac and Lipljan, "Zelengora" in Suva Reka, "Minel" in Pristina, Kosovska Mitrovica and Klina, "Coca Cola" in Lipljan, "Goša" from Smederevo in Gnjilane etc. In addition to that, according to the Government of Serbia the development of Kosovo is funded from the Federal Fund for the Development of Underdeveloped Areas, but also from the Provincial Development Fund, and the Development Fund of the Republic of Serbia is the legal successor of those funds. Since 1992, the economy in Kosovo was credited by the Republic of Serbia Fund for the Development, until 1997, when the Directorate for the Development of Kosovo and Metohija, based in Pristina, took over that position. In addition, the Fund also owns permanent shares in 163 companies there, in most cases more than 51 percent of the shares, of which the KTA was also informed.⁴⁰

Chamber of Commerce of Serbia (PKS) also got involved in this process by asking the World Chambers Association in several instances, to help review and halt the privatization of companies in Kosovo, since it has been carried out without any detailed ownership review. According to PKS, companies in Kosovo were privatized contrary to international standards, contrary to UNSCR 1244/1999 and to the detriment of company owners.

⁴⁰ Gulan Branislav "Privatizacija na Kosovu i Metohiji", *Ekonomski anali*, 4, September 2020, available at <https://www.makroekonomija.org/kosovo/privatizacija-na-kosovu-i-metohiji/>

6. Conclusion

Since the very outset, the privatization in Kosovo was followed by controversy as to whether UNMIK had the authority only to manage public, state and socially owned property, or whether it was entitled to transform the ownership of the property given to them for administration. After some hesitation, UNMIK resolved this ambiguity by establishing the KTA, to whom it transferred the competencies to administer state and socially owned enterprises, but also the Special Chamber of the Supreme Court of Kosovo for Kosovo Trust Agency matters, creating thereby the necessary preconditions for the privatization of state and socially owned enterprises in Kosovo as well as public property (land). A model of privatization was created through *spin off* - that did not consider the issue of ownership (or creditors) of the property subject to ownership transformation, i.e. no clear mechanisms were developed to determine the true owners or creditors, nor were instruments created to compensate them. This model is quite controversial, both from the legal point of view but also in terms of reconciliation between ethnic communities in Kosovo. The main focus of the privatization model included the sale of enterprises, or at least the portion of the company's assets with market value, while all other issues were left to be resolved later, which never happened. Thereby, conditions were created for discrimination based on ethnicity, against the members of the Serb community (and other ethnic groups) who were not adequately compensated along the process, whether in the form of financial compensation based on ownership, claims based on

debt or based on rights to shares according to their employment in socially owned enterprises. Discrimination also applies to owners and creditors from Serbia, who were also not compensated within the framework of application of this privatization model.

From the legal standpoint, the situation was further exacerbated by the unilateral declaration of independence of Kosovo and transformation of Provisional Institutions of Self-Government into the institutions of the Republic of Kosovo. Under legally ambiguous circumstances, public, state and socially owned property, given to UNMIK to administer according to UNSCR 1244/1999, became part of the ownership of the independent Republic of Kosovo. The Constitution of the Republic of Kosovo and accompanying legal acts created new legal and institutional instruments to continue the privatization of state and socially owned enterprises. In relation to this, KPA was established with the mandate to conclude the privatization process in Kosovo. KPA successes are still questionable, and many privatizations failed or become the subject of corruption affairs. Among the failed privatizations, the unsuccessful acquisition of PTK, Brezovica Ski Center and many other companies stand out.

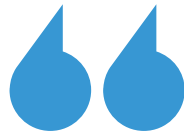
The work of KPA in Serb areas and communication with the Serb community also represents one of the controversies in the work of this agency. The work of KPA is specifically not well known in the Serb areas in the municipalities

in the north of Kosovo, which was confirmed, among others, through the public opinion survey that partly followed the development of this paper.

The behavior of the Government of the Republic of Serbia and its authorities when it comes to the privatization of public, state and socially owned enterprises in Kosovo is also questionable. At the beginning of privatization in Kosovo, Serbia had some success in stopping this process, while later on, Serbia's influence proved itself marginal. The resistance of the Government of Serbia and other stakeholders (e.g. PKS) is more symbolic, unorganized and unsystematically implemented. Hence, the fact that the Government of Serbia has not initiated any legal proceedings against the United Nations, the European Union or any other legal entity that participated in the privatization of assets and companies in Kosovo, comes as no surprise. In addition, there is no publicly available credible inventory of public, state and socially owned property claimed by Serbia in Kosovo, which could be the subject of claims during negotiations on the normalization of relations between Serbia and Kosovo. The focus of the Government of Serbia is primarily on property or businesses in Serb areas in Kosovo, with reactions coordinated with local officials. Ownership of property in other areas is generally not mentioned. An exception is the emphasis on property ownership in the field of energy, primarily energy plants and the distribution network. Privatization of Brezovica Ski Center serves as the best explanation of Serbia's action in this process. However, even in cases of privatization in Serb areas, the Government of Serbia provided no adequate legal or administrative assistance in gathering all relevant information and facts that would assist local officials or the local population to achieve the best possible position in the privatization process. As in other cases of transitional changes in Kosovo, the strategy of the Government of Serbia is to boycott Kosovo institutions, and not to reap the most benefits for the local Serb population out of the existing process.

The following recommendations stem from the findings and conclusions of this paper:

- Increase the transparency of KPA work and strengthen cooperation with representatives of municipalities with Serb majority;
- Approach the systematic collection of all necessary information that confirm ownership relations and labor rights in state and socially owned enterprises in Serb areas;
- Provide legal and administrative assistance to the local population affected in any way by privatization procedures;
- Include the issue of ownership and claims, in the negotiations process on the normalization of relations between Serbia and Kosovo.



Government of Serbia provided no adequate legal or administrative assistance in gathering all relevant information and facts that would assist local officials or the local population to achieve the best possible position in the privatization process.

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