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Review Paper

Privatisation of State and Municipal Enterprises: Legal Regulation

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ABSTRACT

The relevance of the subject under study is exceedingly high since this process is one of the main vectors of system-changing transformations in Ukrainian society. Thus, this vector includes the reform of property relations, which occurs through the privatisation of property of state and municipal enterprises. It is privatisation that should contribute to increasing the efficiency of property management, the emergence of a clear motivation for work, accelerating structural adjustment, and development of the country's economy, improving the investment climate in the state, as well as improving the state property management system. The purpose of this study is to investigate the basic principles of privatisation of state and municipal enterprises, to identify the advantages and disadvantages in the legal regulation of this phenomenon. That is why several scientific and methodological means were used in this study, specifically the systematic and functional approaches, including such general logical methods as analysis and synthesis, the comparative method, deduction, the formal legal method, and the method of scientific literature analysis. The main results obtained in this paper constitute the theoretical and practical foundations of the issue under study. The article covered the general principles and features of state and municipal enterprises and analysed the efficiency of the legal regulation of this process.

HIGHLIGHTS

- The practical value of this study lies in the fact that its main principles can be applied in future rulemaking activities and used in the educational activities of lawyers. As for promising vectors for future research on this subject, it would be advisable to investigate what risks can arise for the state during privatisation.

Keywords: State enterprises, municipal enterprises, privatisation, property, privatisation models

In a transitional economy, privatisation has multiple alternative processes with socio-economic consequences. However, inconsistent goals and inadequate assessment of methods led to crisis phenomena such as production decline and income inequality. Privatisation is crucial for market-type management and its efficient development, necessitating a competent national policy based on scientifically developed models and logical legal regulation. This promotes positive structural changes, competitive relations, and ensures sustainable economic growth and irreversible market transformations (Radic *et al*. 2021).

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Thus, the relevance of the study of the theory and practice of privatisation of state and municipal enterprises in Ukraine is conditioned upon, on the one hand, by the incompleteness of the processes of redistribution of property during privatisation, and on the other hand, by the multitude of its unresolved goals and objectives. In turn, the changes that are actively taking place at the present stage of society development require a deep understanding of legal regulation of privatisation, especially considering the positive foreign practices (Barringer *et al*. 2019). Privatisation involves transferring public-owned assets to private individuals or entities, serving as a crucial aspect of transitioning from a command to a market economy in post-communist countries. Its significance lies in ensuring efficient operation and investing in technical re-equipment of enterprises. The study of legal regulations in privatising state and municipal enterprises in Ukraine assesses budget allocations, market saturation, export development, and employment opportunities (Baumann *et al.* 2021).

This study paid great attention to the analysis of key regulations on privatisation of state and municipal enterprises in Ukraine, which are aimed at developing corresponding conditions for increasing the efficiency of such organisations. In addition, an important stage in the study was the establishment of the fact that, despite considerable and dynamic shifts in the legal regulation of privatisation in Ukraine, there are still some unresolved issues in this area. That is why the issue under study is not new in the scientific discourse. However, until the present, when analysing the privatisation procedure in Ukraine, researchers practically did not consider world practices in this area. Therefore, apart from the general issues of legal regulation of privatisation in Ukraine, it would be advisable to identify the features of this process in foreign countries and, accordingly, introduce their positive practices in Ukraine (Dieter, 2020; Khan *et al*. 2021).

The main purpose of this study is to investigate the specific features of legal regulation of the privatisation of state and municipal enterprises in Ukraine, as well as its comparison with foreign practices to highlight their advantages and disadvantages. Research objectives: analysis of the theoretical concepts of the issue under study, determination of their features and properties, investigation of available regulations in this area, consideration of foreign practices using its advantages for future introduction in national policy of Ukraine

MATERIALS AND METHODS

The study of legal regulations in the privatisation of state and municipal enterprises in Ukraine is a complex process, requiring a wide range of scientific research tools. This study employs various scientific and methodological approaches, including the systematic approach to comprehensively analyze the concept of privatisation and its elements. The functional approach is used to develop goals, objectives, and a work plan, identifying the interaction between different objects of study. The analysis and synthesis methods are employed to dissect and study the different concepts within the legal regulation of privatisation, while also exploring their interconnections and interdependence. These methods facilitate a thorough investigation and analysis of each component of the research subject and their cohesive examination as a whole.

The method of comparison plays a significant role in this study, enabling the examination of state and municipal enterprises and the comparison of foreign and Ukrainian practices. It helps identify key attributes and specific features, providing insights into their essence. The logical structure follows a deduction method, progressing from general theoretical aspects to the specific implementation in Ukraine. Given its relation to legal science, the formal legal method is employed to explore the relevant legal norms governing privatisation. Additionally, the analysis of scientific literature, including dissertations, articles, and theses, contributes to the theoretical framework of the study and provides insights from other researchers in the field.

The study was performed in three stages:

1. The first stage analyses the main theoretical foundations of privatisation of state and municipal enterprises, outlines the purpose and objectives of this study.
2. The second stage investigates the specific features of the legal regulation of privatisation of enterprises in Ukraine, as well as considers the foreign practices in this matter.

3. The third stage considers the obtained results and draws concise conclusions.

RESULTS

Privatisation is described as a process of paid alienation of state-owned property in favour of individuals or legal entities. Currently, all privatisation objects are divided into two groups, namely objects of small-scale and large-scale privatisation. As for the objects of small-scale privatisation, they include state-owned enterprises and blocks of shares, also objects of unfinished construction and those of social and cultural purposes, separate movable and immovable property, the value of which does not exceed UAH 250 million. Currently, the above objects are sold exclusively through ProZorro auctions.

In terms of sales, they follow the principles of full transparency, ensuring public and open processes to prevent corruption. This approach benefits entrepreneurs as it provides them with opportunities to acquire necessary assets for business development. However, for objects valued over UAH 250 million, it falls under large-scale privatisation, which involves the assistance of advisors who prepare the object and seek potential investors for auctions. Usually, these advisors are reputable consulting, auditing, and investment companies (Xu *et al*. 2021). In terms of statistical data, there are currently about 3.733 state-owned enterprises in Ukraine. Of these, only 2,300 are still operating, but their performance is often unsatisfactory and does not correspond to the proper level. In addition, more than 1.200 from this list must already be declared bankrupt and liquidated. It should also be noted that out of the total number, about 1.000 enterprises were on the list of objects prohibited for privatisation. This indicates that, nevertheless, the process of privatisation of this particular type of enterprise has drawbacks and is not dynamic. For comparison, the authors of this study cite different countries of the world where the number of state-owned enterprises is much smaller, namely: in the United States of America – 3, Australia – 5, Denmark – 11, Finland – 40, Hungary – 371 (Montes, 2020).

As for the main regulations governing privatisation in Ukraine, these include the Law of Ukraine No. 2269-VIII "On Privatisation of State and Municipal Property" (2018), as well as the Resolution of the Cabinet of Ministers of Ukraine No. 432 "On Approval of the Procedure for Conducting Electronic Auctions for the Sale of Small Privatisation Objects" (2018). Furthermore, attention should be focused on the main goals of the above process, specifically at this stage of Ukraine's development. Thus, they should include combating corruption, which is extremely common in state-owned enterprises and in the management of state property; attraction of direct investments and investors, both from Ukraine and abroad; facilitating additional revenues to the budget both from sales and, in the future, from tax revenues from business; improving the operation of enterprises or the quality of use of property by finding the right owner; improvement of production or re-profiling of facilities in accordance with modern conditions and the creation of new jobs (Demuth *et al*. 2021).

Having considered the general theoretical part, it is necessary to investigate the historical development and establishment of the regulatory framework for the privatisation of state and municipal enterprises in Ukraine to identify its basic principles and specific features on which it is based, as well as to conduct a qualitative analysis of the current state and efficiency of legal regulation of this mechanism. Thus, officially the phenomenon of privatisation in Ukraine as a process aimed at property, as well as the elimination of the state monopoly on the reduction of the public sector and the development of a diversified economy, started in 1992. Thus, as early as in March 1992, the fundamental regulations on privatisation were consolidated, namely: the Law of Ukraine No. 2482-XII "On Privatisation of the State Housing Stock" (1992d), the Law of Ukraine No. 2163-XII "On the Privatisation of State Property" (1992a), the Law of Ukraine No. 2171-XII "On the Privatisation of Small State-Owned Enterprises" (1992c), the Law of Ukraine No. 2171-XII "On Privatisation Papers" (1992b), although currently most of these regulations have already lost their legal force.

Given the evolving national policy on property regulation, it is important to identify the goals associated with the privatisation process. The primary objective is to promote the development of a socially oriented market economy in Ukraine,

while also fostering the growth of private owners and entrepreneurs, improving the efficiency of state and municipal companies, stabilising financial conditions, creating a competitive environment, and attracting foreign investment (White, 2020).

Notably, for a long time the key regulation on privatisation, aimed at creating conditions appropriate for improving the efficiency of enterprises, institutions, organisations, and creating a competitive environment, as well as ensuring the flow of funds from privatisation to the State Budget of Ukraine, was the Law of Ukraine No. 4335-VI "On the State Privatisation Programme" (2012). However, in March 2018, this Law became invalid. Furthermore, on March 4, 2016, the President of Ukraine signed the Law of Ukraine No. 1231-IX "On Amendments to Certain Laws on Improving the Privatisation Process" (2016). In the explanatory note to the draft of this regulation, it was stated that the main purpose of adopting and introducing amendments to some laws of Ukraine to improve the privatisation process is to improve the provisions of the Law of Ukraine No. 2163-XII "On the Privatisation of State Property" (1992), especially in the context of achieving transparency and openness of the privatisation process, strengthening the protection of national interests in the reform of property relations, the development of a clear, efficient legal framework in the area of privatisation (Bárcena-Ruiz *et al*. 2020).

Thus, to achieve the set goal, a new Law of Ukraine No. 2269-VIII "On Privatisation of State and Municipal Property" (2018) was adopted. Comparing it with the preceding version, they were fundamentally different from each other, since the former regulation was largely based on the denationalisation of property through labour collectives, while the new regulation laid a full-fledged foundation for the implementation of the process of attracting investments. As for the privatisation procedure, the regulation does not make provision for benefits or advantages for certain categories of buyers, and, accordingly, establishes the principle of competition and equality, which is clearly a positive step (Gabriel, 2020).

Furthermore, the regulation of privatisation has become a considerably simplified procedure as a result of the systematisation of regulations in this area. Moreover, it was proposed to use a simplified classification of privatisation objects. It is necessary to pay attention to the draft law on invalidating the Law of Ukraine No. 847-XIV "On the List of State Property Rights Objects Not Subject to Privatisation" (1999), adopted by the Verkhovna Rada of Ukraine of Ukraine, which abolished the list of prohibited enterprises. Thus, this regulation made provision for the elimination of the list of objects prohibited for privatisation. Moreover, changes were introduced to the Law of Ukraine No. 2269-VIII "On Privatisation of State and Municipal Property" (2018), specifically in the context of defining criteria for objects not subject to privatisation. Thus, it was consolidated that the objects of state property rights, which are located in the temporarily occupied territories, shall not be subject to privatisation until the full restoration of the constitutional order of Ukraine in these territories. However, despite the dynamic introduction of changes and reforms in this area of national policy and, accordingly, the regulations that govern it, the privatisation process in Ukraine still has several unresolved issues, which adversely affect it.

DISCUSSION

After analyzing the historical development of the regulatory framework for the privatisation of state and municipal enterprises, it is evident that the current procedure is imperfect and lacks efficiency in society. Therefore, it is advisable to examine foreign practices in countries such as Latvia, Lithuania, Romania, and Poland, which had similar starting conditions to Ukraine in the early 1990s. These countries effectively transformed their command-administrative economies and successfully implemented the "shock therapy" approach to address societal issues. However, in contrast to these countries, Ukraine did not adhere to the four key principles of effective privatisation, including speed, social orientation, efficient control, and access to foreign capital (Termes *et al.* 2020).

While implementing privatisation-related reforms, the lack of attention to global practices and the absence of a well-founded regulatory framework have posed ongoing challenges in this area (Ramamonjiarivelo *et al.* 2020). Highly developed countries have predominantly used methods such as direct asset sales and stock market transactions, which have generated significant revenue for the

state budget and attracted investments (Blach-Orsten *et al.* 2020). The UK serves as a successful example of privatisation, characterized by a decisive rejection of state intervention, a focus on market mechanisms and private enterprise, and a gradual and carefully prepared approach that prioritizes public profits and adheres to legal regulations (Bayliss *et al.* 2021).

The UK government emphasizes wide distribution and retail sales of shares, offering discounts and incentives to employees to purchase shares (Kessler and Arnon-Friedman, 2021). Effective regulation of natural monopolies in the post-privatisation period, including licensing, price control, and limits on price increases, is a notable feature in the UK (Kessler and Arnon-Friedman, 2021). France's privatisation process occurred in three stages, with an initial period of nationalisation in the 1980s that led to inefficiencies in state enterprises (Jennifer and Zelnick, 2020). The implementation of privatisation involved careful planning and consideration of various options, leading to lengthy processes. The state maintained oversight of privately owned enterprises to prevent resale and implemented measures to prevent concentration of capital and regulate foreign investor participation. In France, privatisation primarily targeted competitive and profitable industries, adopting a model that ensured management control and protection from unwanted investors. Foreign investors held a maximum of 20% of shares, stable shareholders held 15-30%, and 10% were allocated to company personnel, with the remaining shares sold on French stock markets (Jennifer and Zelnick, 2020).

The privatisation process in East Germany is interesting to analyze, as it took place during a relatively short transition period when the country integrated into an already developed market economy. This integration revealed that the main challenge was the non-technological gap, particularly in institutions and the legislative sphere governing economic and business activities. Germany benefited from a favorable economic infrastructure, which avoided crisis and sharp price increases, eliminating the need to determine prices. However, the transition to a market economy involved radical reforms that led to a structural production crisis, socio-economic tension, and unemployment. Privatisation in Germany focused on three areas: rapid sale of efficient and competitive enterprises, rehabilitation of troubled enterprises, and liquidation of nonviable ones (Liu *et al.* 2021).

The experience of privatisation in Poland can provide valuable insights for Ukraine, as Poland has been at the forefront of ownership changes in Eastern Europe. It is important to note that successful implementation of any reform requires a thorough examination and anticipation of the strengths and weaknesses of the process, though practical challenges may arise. In Poland, the Ministry of State Treasury employed four main procedures for transforming state and municipal enterprises, namely the capital method, legal liquidation, economic liquidation, and transfer to the National Investment Funds, as governed by relevant legislative acts (González *et al.* 2020).

Thorough consideration of these priority areas is necessary as they have been partially utilized in different stages of privatisation in Ukraine. Capital privatisation, which is the main method for medium- and large-scale enterprises, involves a two-stage process of changing ownership. The first stage involves commercializing the state enterprise and converting its funds into share capital, which is transferred to a designated ministry or body. In the second stage, the body relinquishes its sole shareholder status and offers shares to external investors through a public auction, allowing employees of the enterprise to acquire shares on favorable terms. Another common model is legal liquidation, which entails a rapid change in ownership for small and medium-sized state-owned enterprises. This procedure involves transferring the company's assets, either in whole or in part, to private investors through methods such as sale or leasing. The choice of privatisation methods in post-socialist countries depended on factors like the transfer of state property to new owners (free or paid, in cheque or cash, closed or open).

In all countries, including Ukraine, the question of determining the ultimate owners of privatised state or municipal enterprises arises, whether it be owners with sufficient capital, former owners, members of labor collectives, or all citizens. Lack of funds for the majority of the population is a pressing issue. Various methods of privatisation can be identified based on Ukrainian and foreign practices, such as joint-stock state enterprises involving foreign

capital, gratuitous transfer to municipal authorities, liquidation, public offer, employee buyout of a controlling stake, direct sale of assets, and mass privatisation through voucher schemes.

The main goal of privatisation is to bring about institutional changes and concentrate a significant portion of production in the private sector. Therefore, it is important to incorporate foreign practices in privatisation to assess potential risks and disadvantages for future implementation. France, in particular, shares similarities with Ukraine as both countries have faced challenges with inefficient state and municipal enterprises, which were restored to efficiency through privatisation and positively impacted state budget revenues.

However, such practices should be carefully investigated and used only with the consideration of all the existing features that are inherent in Ukrainian society and particular state and municipal enterprises. Furthermore, upon the implementation of the discussed reforms, it is imperative to consider the specific features of the current legislation governing the privatisation process, as well as the potential of the national economy. This condition is key, since without proper denationalisation and privatisation it is impossible to develop a full-fledged market and competition. In addition, based on foreign practices and partly Ukrainian practices, it can be concluded that a monopolised state economy cannot function and develop effectively. That is why the use of the aspects presented in this study, which were developed from foreign practices, would positively affect not only the economic, but also the legal spheres (Heywood *et al*. 2021).

CONCLUSION

Having conducted this study, it can be concluded that the privatisation process is a complex phenomenon that requires constant monitoring during its implementation. Thus, the study determined that privatisation is the transfer of property into private ownership, i.e., the process relating exclusively to the transfer of state or public property to a private owner. However, this phenomenon has several features that must be considered and compared with the conditions and level of development of national policy. Thus, the main stages in the development of the institution of privatisation of state and municipal enterprises were determined in this paper. The main regulations governing these legal relations are considered and analysed. It was essential to identify the goals of privatisation and compare them with modern realities in Ukraine. Proceeding from this, it should be established that the present-day privatisation process in Ukraine is difficult and insufficiently dynamic. A considerable part of this study analyses successful foreign practices, including post-Soviet countries that had features common with Ukraine. Thus, the study considered such countries as the United Kingdom, France, Germany, and Poland. Based on their practices, it is necessary to establish that the excess of inefficient, bankrupt state and municipal enterprises adversely affects the development of the country in general and in the context of the implementation of the privatisation policy. Therefore, it is necessary to continue to realise the goals prescribed for this process but refrain from applying severe restrictions to prevent a crisis or other adverse social phenomena.

As for future research on this subject, it is necessary to investigate the main risks and threats to the national economy that may arise from privatisation. Furthermore, it would be advisable to consider the available conflicts in the legislation governing the privatisation process to improve it to a suitable level.

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