

A critical Analysis of the Reprivatization process in practice and Privatization of Apartments in Macedonia – Part 2

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Abstract

This paper is a continuation of the first part of the analysis of the Reprivatization process in practice and Privatization of Apartments in Macedonia. The choice of reprivatization procedures and models of privatization in Macedonia should take into account not only the political and legal developments of recent decades, but also the economic structure. This manuscript is based in the analysis of 2 decisions of the Court of First Instance. In addition the main problems of the Privatization of Apartments in Macedonia will be analyzed in a systematic method. Main objective of this paper is to analyze the problems that accompanied the reprivatization process in Macedonia in practice.

Keywords: Macedonia, reprivatization, commercial law, property.

Introduction

The search for suitable privatization procedures and institutions in Macedonia shows clearly that this process depends on the development of capital market institutions and the availability of domestic or foreign capital (Estrin, 1991). These elements were missing in Macedonia. Therefore, Macedonia refrained from radical privatization and opted for a moderate variant.

Decision of the Court of First Instance G ... Nr 28/2000 of 23.06.2003¹

At the request of the insolvency administrator of the state-owned A ... AG of G ... and the insolvency debtor as a user concerning the sale of the state property of the Republic of Macedonia by international tender sale procedure, published on 26.3.2003, by order of the creditor board dated 12.5.2003, the Court of First Instance G ... decided on 23.06.2003 as insolvency court as follows: It is stated that the property of the insolvency debtor A ... from G ... was sold with the international tender procedure, published on 26.3.2003, and due to the decision of the creditor board of 12.5.2003. The factory S ... with an area of 40.000 m² was sold for 210.000 Euro to G The buyer has to pay the sum of 210,000 euros or the corresponding Denar value within 21 days after the effective date of this decision to. The insolvency administrator is obliged to take all necessary measures to carry out the sale of the debtor's property as described above.

Motivation

With court decision No. 28/2000 of 15.2.2002 the insolvency procedure over the assets

¹ Odluka na osnoviot sud Gostivar br. 28/2000 na 23.06.2003.

of the debtor A ... from G ... was opened. By Decision No. 28/2000 of April 5, 2002, the creditors' meeting passed a decision to close the factory, liquidate the company, and instruct the liquidator to sell the bankruptcy assets through the international tender sale procedure. Following the publication of the sale procedure on March 26, 2003 and the resolution of the creditors' meeting on May 12, 2003, the insolvency administrator made a proposal to the creditor board on June 9, 2003. According to this, the terms of the tender sale procedure, the directives of the Ministry of Economic Affairs and the interests of the debtor A ... the main proceedings are carried out publicly, transparently and with the condition that no minimum price is offered, without employment and investment clauses, and that in the tender procedure, the offer of one Euro or more should be chosen. The creditors' meeting decided against it with five to one vote on 12.5.2003 for the offer of the L ... from Skopje in the amount of 210,000 euro. The court confirmed that all the conditions of Articles 171 and 174 of the Bankruptcy Law were met in the case of a sale to L ... which offered EUR 210,000, more than any other bidder. Within 20 days after the decision has taken effect, the sum should be paid.

This is an example of bankruptcy proceedings before the Court of First Instance and privatization through the international tender sale procedure. What matters is that the contract did not contain any commitment on the number of employees to be taken over and any investments. This again shows the main problem of corporate privatization in Macedonia, namely that the contracts were concluded without social and financial obligations of the acquirers and that there were no uniform rules on the form of privatization to be chosen.

Another decision of the Court of First Instance G ... dealt with direct sales issues:

Decision of the Court of First Instance G ... No 32/02 of 14.6.2004²

At the request of the liquidator administrator of the State Company A ..., the Court of First Instance G ... decided as insolvency court on the sale of the company belonging to the Republic of Macedonia on the basis of the decision of the creditor of 10.2.2004 as follows:

Decision

The assets of the debtor of the state-owned company S ... with a branch office in G ... were sold with a total area of 11,589 m² to the P The property was transferred to the P ... for the price of 50,000 euros or the equivalent in denar on the day of payment. The selling price was paid within the prescribed period. There is an obligation to take on 20 workers and to invest the total amount of 100,000 euros within one year. The insolvency administrator is obliged to carry out all measures related to the sale.

Motivation

It should be noted that the decision of the court was abolished by the second instance court in Skopje and remanded to the court of first instance for a new decision. In the subsequent decision in the same case, the previous decision was then upheld by the Court of First Instance in G The court pointed out that the creditors have to decide

² Odluka na osnoviot sud Gostivar br. 32/02 na 14.6.2004 (Entscheidung des Gerichts 1 Instanz Gostivar Nr 32/02 vom 14.6.2004).

on the execution of the sales procedure in accordance with Articles 171 and 174 of the Bankruptcy Law.³ Accordingly, the court confirmed the previous decision. This decision cannot be appealed based on Art. 11 of the Insolvency Law.

These decisions are examples of another phenomenon of privatization in Macedonia, namely that although two forms of privatization were chosen here, international tender procedure and direct sale, in both cases exclusively domestic Macedonian companies, were involved in the privatization of A AG. This is due to the restriction of the Macedonian privatization process to national stakeholders.

Privatization of Apartments

The situation between tenants and former owners was very complex in Macedonia. The privatization of the apartments started with the Yugoslav "Law on the sale of apartments in social property" of 1990.⁴ The price was based on the building price, the cost of preparing the building land, the place and the amortization according to the "Resolution of the Council of Ministers on the rules of fixing the sale price of the apartment in the social property" of 1992. This happened at a time when the denationalization law was not yet in force. The privatization of the apartments took place at prices between 7,000 and 10,000 DM. The law provided for a 10% discount on the full payment in one amount and a 40-year payment period for installments in annual installments not less than the amortization rate (Tsenkova, 2009, 86).

The old Denationalization law of 1998 provided for the return of dwellings and flats in cases where there was no holder of a right of use, and no restitution, but compensation for the case in which they had rights of use (Art. 23). In accordance with the 1998 Denationalization law, the Housing law was enacted in the same year,⁵ which provided for a purchase right until December 2004 and thereafter a tenancy agreement based on a lease to be concluded with the competent authority (Tsenkova, 2009, 87). This situation led to considerable uncertainty for the tenants, but with the Denationalization Law of 2000 the situation changed fundamentally. It provided for the restitution of residential buildings and apartments according to Art. 29, on the condition that the state had to get the tenant an apartment if he recognized the property rights to the previous owners. Until the new apartment was found, the tenant had one year to move out (Art. 70).

Nowdays, the Macedonian government has not found a solution for these two social groups. This is due to the lack of capital and the impossibility of quick restitution and compensation of the expropriated property.

Conclusions

Despite some parallels, legal developments in Macedonia and Yugoslavia were completely different from those in Albania, with this statement referring primarily

³ Zakon za stečaj, SI V RM 1997/55 idF SI V RM 2000/53 idF SI V RM 2002/37 idF SI V RM 2004/17.

⁴ Zakon o stambenim odnosima, SI I SFRJ 1990/12 idF SI I SFRJ 1990/47 idF SI I SFRJ 1990/55.

⁵ Zakon za Domuvanje, SI V RM 1998/21.

to the period after 1945. Nationalization quickly proved to be a failure, prompting attempts to flexibilise and decentralize the central planned economy. For both countries the compensation was not provided by state transfer payments, but by granting the expropriated property corresponding ownership title, ie by procuring entitlements, shares etc or by making available alternative plots of land. It is obvious that the "path" taken in Germany in the two Balkan countries was not an option, as it lacked the necessary financial reserves by the state.

The apartments were privatized under the Yugoslav law "On the sale of social housing in 1990" and then with the 1992 Council of Ministers decision "On the rules for determining the selling price of apartments in social property ". The apartments were privatized until 1998 without taking into account the rights of previous owners. This process was carried out more or less without any strategy for eight years. Only the denationalization law of 1998 took into account the rights of the previous owners. Again, the principle of "restitution before compensation" applied. The law provided for the return of dwellings and apartments in cases where no owner with a right of use lived in them. On the other hand case compensation was provided. The denationalization amendment of 2000 in Macedonia did not solve the owner-tenant problem. On the contrary, they complicated the situation further. In Macedonia the deadline for the tenants to move out was only one year; however, the public authorities were legally obliged to provide tenants with a replacement apartment if the ownership of the former owner had been recognized. This solution proved to be more advantageous from a socio-political point of view. The lack of a strategy and the incorrect law enforcement by state administrative authorities were the main causes of the failure of reprivatization in Macedonia. Although more than 25 years have passed so far, a solution has not been found yet.

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