

GLOBALIZATION, LAW AND PRIVATIZATION IN ALBANIA

Endri Papajorgji

Karl Franzens Universität Graz; Universiteti Luarasi
E mail: endripapajorgji@hotmail.com

Abstract

Globalization is the phenomenon of our times. In almost every area of human activity, the international interconnectedness of peoples, institutions, states and systems is increasing exponentially. This applies whether the activities are economic, social, cultural, technological, environmental or political. The issues and problems that arise in each of these spheres are also becoming increasingly global in scale. The huge cross-border flows of peoples, swift and massive movements of capital, the spread of disease, environmental degradation, the development of terrorist networks, the abuse of human rights and the inter-state arms race are but some of the more notable examples. Globalization has taken place for centuries and, with time, has accelerated, from the colonization of the inhabited parts of the world to the appearance of nations, from conquests to independent countries. Globalization is about economy. When used in an economic context, it refers to realization of a global common market, based on the freedom of exchange of goods and capital, when used in an industrial context, it refers to emergence of worldwide production markets and broader access to a range of foreign products for consumers and companies. When used in a financial context, it refers to emergence of worldwide financial markets and better access to external financing for borrowers. When used in a political context, it refers to the creation of a world government which regulates the relationships among governments and guarantees the rights arising from social and economic globalization. In this sense this paper tries to give an idea of the changes and implications that happened in Albania as a consequence of this two phenomena. In this sense this paper is aiming to explore different facets of the complex, evolving phenomenon of globalization in compliance to privatization and law in Albania. It does also introduce some of the main debates about the globalization and its effects in the global economy.

Keywords: *Globalization, Privatization, Albania, Law, Economy.*

Introduction

Globalisation and privatisation have become dominant forces shaping societies and economies the world over. With the fall of communism and the decline of socialism in most parts of the world these three processes are interrelated phenomena. Globalised economies are likely to be more privatized and liberalized economies. Globalisation and privatisation are multidimensional phenomena that have implications not only for the economic but also the sociocultural, law and environmental aspects of countries and societies. These three phenomena (globalization, law,

privatization) that form the focus of this paper also have differing impacts on different units of analysis. For purposes of understanding and analysing these two forces, the units of analysis can be conceived at regional, country, industry and organizational levels.

One of the major consequences of globalization and privatisation is the acceleration in foreign direct investment flows (Sharma 2007). While foreign direct investment has been increasing for some time among the developed countries, in recent years it has spread to other parts of the world (Balkans), especially to the giant emerging economies (China, India). The privatization policies pursued by these emerging economies have created new opportunities for foreign direct investment. International investors now face difficult problems such as choosing countries, evaluating risk-return relationships and assessing profitability in private and public sectors.

Globalisation and Business Law (general)

The agreement establishing the WTO is perhaps the most important and comprehensive development in global governance since the adoption of the UN Charter. The Uruguay Round's Final Act of 1994 strengthened the General Agreement on Tariffs and Trade's (GATT) institutional machinery through the creation of the WTO. The WTO is a single institutional framework encompassing GATT together with all the agreements and legal instruments negotiated in the Uruguay Round and other agreements relating to trade in goods; the General Agreement on Trade in Services (GATS); the Agreements on Trade-Related Property (TRIPs); and on Trade-Related Investment Measures (TRIMs); and The Understanding on Dispute Settlement; among others. The WTO has, in the short time since its creation, become the focal point for the promotion of global trade and

Development (Papajorgji 2012). The founders of the new international trading regime recognized that the opportunities of economic globalization could be exploited only if agreed, reliable, transparent and generally recognized international rules were adopted to regulate trading relationships between nations and only where those rules applied equally to all.

The structure of the organization is a clear reflection of a commitment to this ideal and provides a marked, albeit understandable, contrast to the problems that beset the development of an international constitutional order in the global political arena. The successful constitutional development of the organization lies principally in its members' adherence to certain fundamental norms and values. The overriding value is a commitment to free trade within free markets across international borders. The principal norms that underpin this commitment are first, most favored nation treatment, meaning that a nation will not in its trading relationships treat any one nation more or less favorably than any other. The second is that relating to national treatment. This involves an agreement by all member nations that they will not discriminate against foreign products, services or nationals in a manner that may disadvantage them in relation to their domestic. The third is market access for services. This involves the agreement by members that they will not place unnecessary burdens on the passage of foreign services, and the entities that supply them, into relevant domestic markets (Papajorgji 2012).

The transition period in Albania (A fundament of the free market economy)

The End of World War II, left in the Balkans 3.5 million people dead and destroyed perhaps half of all farms and industries. With the coming of Communism, Albania followed the Soviet pattern: nationalization of major enterprises, state direction of investment and production through a series of Five-Year Plans, emphasis on heavy industry and collectivization of agriculture. Pre-Communist trends often paved the way for these measures. However, the heart of the matter revolves around two questions: the question of economics and the question of politics. In fact, it can be argued that what has happened in Albania and the new countries that have emerged since 1989, is historically unique (Papajorgji 2013).

The nationalization of private property started with the banking and credit sector in 1946 and continued with the nationalization of the agricultural land where most available capital and labor was directed. Investments continued with the building of agricultural cooperatives in the villages and production cooperatives in the cities. By 1965 private property was abolished and only state-, cooperativist-, and personal property was allowed. From 1945 to 1955 all private property in the villages and cities was transformed into state property. In the late 80 s the economy totally collapsed as a consequence of resource mismanagement and the impossibility of meeting the needs of the population with food (Papajorgji 2013).

In the Albanian socialist legislation, it didn't exist a definition about "the enterprise", but according to Article 8 of the Constitution of 1946 only the basic principles of planned economy were defined, which designated the general annual plan of state-owned enterprises, cooperatives and other professional organizations. State-owned enterprises were managed by a director who was responsible for its economic- and financial management and who was appointed from Ministries or the Executive Committees (bodies) in the districts. He was assisted by an advisory body named techno-economic Council, which was responsible for the technical-economic-financial management of the enterprise. The Administrative Governing Body was the third institution of the state-owned enterprise, which managed the activity of the depending small enterprises or affiliates. The right of ownership during communism consisted of state property in the urban and rural areas and cooperative property in agriculture.¹

The wind of change in Eastern Europe in 1990 also reached Albania, and the last communist government, which had many economic difficulties, brought it in the brink of ruin (Stoppel 1990). The reforms in January 1990, which should have lead to a "democratization from above", which meant a redefinition of the relationship between state and citizens, the transformation of the economic system and personnel changes in the party and government apparatus, failed (Stoppel 1991). The hastily taken legislative measures, were half-heartedly designed and rather by a striving for maintaining power than the will to democracy, rule of law, pluralism, globalization and market economy (Stoppel 1990).

The extensive legislative package that included several CoM Decisions (Stoppel 1991) regulated the re-registration of private trade and crafts, first on a family basis, then also with employees and partners; facilitation in the construction of residential buildings; improvements to meet the housing needs; the re-authorization of private livestock, the protection of foreign investment, the

¹Article 17 of the Socialist Constitution of the Republic of Albania 1976.

establishment of banks with foreign capital participation and the opening of domestic branches or agencies of foreign banks (Stoppel 1990).

These reforms came too late and could not stop the beginning of the transition and the process of democratization. After the fall of the communist, the constitution of 1976 was replaced by a provisional constitution, called "Law on the most important constitutional provisions" from 29.4.1991. Albania became a democratic parliamentary republic with separation of powers and the guarantee of pluralism.

Economically, the constitution form 1991, in its Article 10 described the new economic order as: *"The country's economy is based on the diversity of forms of ownership, on the free initiative of all economic subjects and the regulatory role of the state, also in the economic initiative of the natural and legal persons."*

Article 11 of the Provisional Constitution, stipulated that the right of private ownership was guaranteed not only for the state but also for natural and legal persons. This Article is the most important, and it implied for the first time since 1944 the democratic and free market economy principles in Albania and which opened the way for Albania to embrace privatization and globalization.

Globalization and Privatization in Albania

Generally speaking, countries adopt globalization and privatisation so as to accelerate their economic and social development. In this sense, globalization includes a rapid increase in international trade in goods and services, as well as the free flow of labor and capital across borders. Some of the major consequences of globalization and privatization are the acceleration in foreign direct investment flows, the growth of the service sector, especially those services related to knowledge and information, real-time communication and the quick development of a new generation of technology. Other aspects refer to the growing interdependence of countries resulting from the increasing addition of trade, finance, people, and ideas in one global marketplace (Sharma 2007).

Like in other Eastern countries, even in Albania the globalization process followed privatization. In Albania the privatization – process began with the privatization law no. 7512 from 1991 "on the protection of private property, free initiative and privatization", at a time when Albania guaranteed only state property. The main method of privatization that was implemented included direct sales to workers, although this law described auction as its main procedure. The mass privatization process began in 1995 with DCM. 51 of 30.01.1995 on "some changes and improvements to acts of privatization privatization process". It uses the same principle as in all eastern countries, the "distribution of state property, to those persons who had contributed for 45 years" (Mema and Koci 2002). According to Article 1 of CoM decision only those enterprises were to be privatized by the privatization agency, that until the entry into force of this decision were published in the official gazette. This process proved unsuccessful due to the illegal procedures of privatization through privatization boards that were established in 1995 with the CoM Decision Nr 248 on "measures for accelerating the privatization of small and medium

enterprises." This decision set the auction as the main procedure for privatization and direct selling to workers as an exception, only for former owners.

Only in 1998, the government had a clear view of how the privatization process had to be implemented. The new privatization strategy included the selling of shares of small and medium enterprises only through auctions. In the same year the tender procedure for sectors of particular importance was implemented, which is still in force. Only after this procedure in Albania the process of globalization was facilitated. One of the major consequences of globalization in Albania after the implementation of the privatization process is the acceleration in foreign direct investment. On the other hand the macrolevel developments associated with globalization and privatisation have created many managerial challenges at the microlevel, such as all managerial functions have become global in scope and complexity, and competitiveness has intensified. In this sense technology and its management has become the bedrock of managerial efficiency.

Conclusions

Many countries in the developing world and the emerging democracies of Eastern/Central Europe have embarked on a privatisation policy as a way of freeing their economies from perceivably unattractive bureaucratic control (Sharma 2007). The problems being encountered are many and varied. These problems may stem in part from the fact that many adopters of the privatisation experiment have not addressed some of the conceptual issues, such as those relating to the goals and limitations of privatisation as a policy instrument in widely diverse social contexts. This has resulted in a whole variety of implementation problems; a major one, for example, is the task of confidence building among the citizens and major institutional stakeholders such as the banks and citizen action groups, because the privatization process in Albania has been a prime example of the inevitability of corruption, the privileging of government clientele, and almost the complete exclusion of foreign investors. Another problem had to do with a bigger problem in Albania is the monopolistic position of privatized enterprises. Even the restructuring of state companies before Privatization was unsuccessful.

People in Albania, for instance, may worry about the sale of enterprises previously seen as symbols of state ownership and may be less than supportive due to misconceptions about the free market system such as no interference and survival of the fittest.

Finally it should be stated that the Albanian reforms in the field of human rights, public- and constitutional law, business-, commercial- and privatization law were a necessary step (although connected with great suffering for the Albanian people) towards free market economy and globalization.

References

- Marjani, T. Malindi, Y. & Shtepani, V. (1982), Krijimi dhe zhvillimi i ndërmarrjeve bujqësore në Shqipëri. *Studime Historike* 2, 16-32.
- Menzel, U. (1996) New Images of the Enemy. The Renaissance of Geopolitics and Geoculture in International Relations. *International Journal of Political Economy*, 70-90.
- Mema, F. Koci, S. (2002), Mass Privatisation Process and Post Privatisation in Albania, *South and East European Development Centre*, p. 5.
- Papajorgji, E. (2012), *E drejta ndërkombëtare tregtare dhe e biznesit*. Tiranë.
- Papajorgji, E. (2013), *Privatisierung von Unternehmen in Albanien und Mazedonien im Rechtsvergleich*. Saarbrücken.
- Schmidt-Neke, T. (2009), *Die Verfassungen Albaniens*, München.
- Sharma, K. M. (2007), *Globalization, Privatisation and market economy*. Jaipur.
- Stoppel, W. (1990), Albaniens Recht im Umbruch, *WGO-MfOR*, p. 227.
- Stoppel, W. (1990), Albanien, *WOS III/1*, p. 1991,
- Stoppel, W. (1991), Albanien, *JOR*, p. 16

