



CENTRAL ASIAN JOURNAL OF THEORETICAL AND APPLIED SCIENCES

Volume: 04 Issue: 01 | Jan 2023 ISSN: 2660-5317

<https://cajotas.centralasianstudies.org>

Economic and Legal Nature of the Concept of Privatization

Imomniyozov Doniyorbek Bakhtiyor ugli

Lecturer at the Department of Civil Law, Tashkent State Law of University

d.imomniyozov@gmail.com

Received 4th Nov 2022, Accepted 6th Dec 2022, Online 13th Jan 2023

Abstract: *This article will reveal the history of the emergence, essence, legal and economic aspects of the concept of privatization. This research paper analyzes the concept of privatization based on the comparative legal method. It is known that one of the effective ways to develop a market economy, increase private property in society, and reduce state intervention in the economy is the privatization of state assets. Privatization is not only the alienation of state property, but also the formation of new economic structures, the creation of an opportunity for economic companies to carry out entrepreneurial activities in sectors of the economy that were previously closed to them. Privatization makes it possible to solve the problems of monopolizing the economy, stimulating competition, replenishing state and local budgets.*

The results of privatization, its success largely depend on how perfect the mechanism of legal regulation of relations between the division of state and municipal property into the property of individuals and legal entities. On the other hand, the concept of privatization is interpreted economically and legally.

In this regard, this article analyzes the concept of privatization, its economic, legal aspects. The article discusses various approaches of doctrinal and normative concepts to privatization. In this regard, it was concluded that the need for an expanded interpretation of the term privatization as a legal category, but taking into account the economic justification.

Keywords: *privatization, state property, assets, private property, legal entity, individual, state share, economic company, share, share.*

Privatization became an important program in state and society in 1980s, when economic theories were changing and state enterprises faced a product default. Privatization can be accomplished in different ways, from directly selling state-owned property to private investors to public-private partnerships. Large privatizations occurred in former communist economies Europe, Latin America, China along with Central and Eastern Europe. Incomes which were earned by privatization saw a noticeable rise in an international rate at the end of 1980s. It is estimated that earnings from sales of state shares was about 3 634 billion dollars between 1988 and 2016. From the point of most effective economies, major part of privatizations occurred in telecommunication, transport (mainly railways and airport operation, airlines), other communal enterprises, particularly energy companies and finance [1, 1-b].

30 years ago, privatization came as a new, unknown institute to the civil law of Uzbekistan. This, as a result, led to a demand to force new civil legal relations. As it was in constitutional countries, privatization should be mean of lessening the role of government in economy and base of improving the state budget. In this regard, there was passed the Law on Expropriation and Privatization in 1991. Until now, this law is considered as main normative-legal basis of regulating privatization process. Privatization has been rising gradually for the past five years. According to the report of the State Assets Management Agency, as an evidence, more than 450 assets (including more than 40 shareholdings, around 130 shares and more than 300 real estate objects) are being privatized in progress [2]. Along with this, we can see a growth in the number of cases on the internet related to conflict with privatization. The statistics above can prove that this field is relevant in these days.

In legal publications, the term "privatization" should be analyzed in legal and economic meanings.

Economists consider privatization as a function against nationalization which transfers privately-controlled properties to state control. Privatization and nationalization are the mechanisms that give an opportunity for a state to participate actively in economic relations. Furthermore, the main factor lays behind privatization and nationalization is the efficiency of property management.

The term privatization (comes from Greek word "privatus") was firstly introduced on publications which were prepared for periodical bulletins of "Reason Foundation" by Robert Poole, an American scientist. However, the terminological origin of this concept dates back to 1969, when P. Drucker wrote in his book "The Age of Discontinuing" that the word "reprivatization" is the process of returning nationalized enterprises to their former owners [3, p. 187]. In Webster's dictionary, the economic concept of the term "privatization" first appeared in the 1961 edition and was defined as "the change of the status of an enterprise from government control to private ownership" or "the conversion of an individual enterprise or industry into private ownership" [4, p. 188]. According to Mary Shirley and John Nillis, who have studied the process of privatization in developing countries, the conditions for successful privatization are market-oriented macroeconomic policies that ensure that both the public and private sectors increase efficiency, that capital markets are adequately supplied, and that sales to buyers are gives a sufficient time period to identify possible firms [5, p. 129].

There is no unity in the approach to defining privatization from an economic point of view in Western Europe and the United States. Scientists put forward a wide list of actions that can be evaluated as privatization. American authors define privatization as "strategies and methods aimed at transferring (changing) the production system or the system of providing public needs from public authorities to the private sector." Canadian scientists conclude that privatization is not only a process of transferring material assets, production and supply systems from public companies to private corporations and individuals, but also a process of strengthening the role of the market by weakening the system of government regulation [6, p. 128]. The studies of English, consistently, maintains the idea that privatization performs the function of "turning state property into private, non-state property".

The term "privatization" is interpreted by Western experts in two ways - broad and narrow. In a broad sense, this process represents some aspects of the general policy of economic regulation, for example, a slowdown in the growth rate in the public sector or a reduction in production, which leads to an increase in the share of the private sector. In a narrow sense, the term "privatization" means the full or partial transfer of a certain state enterprise to the ownership of an economic entity, individual entrepreneurs [7, p. 76]. Literally, the general criterion of privatization is to reduce the share of the public sector and limit its functions.

V.M. Ignatov reveals the essence of privatization in a broad and narrow sense. "Privatization is understood in a broad sense as one of the institutions of regulating the economy by reducing the public

sector and increasing the contribution of the private sector. Privatization in the narrow sense of the term means the full or partial transfer of capital ownership to certain individuals and legal entities” he says [8, p. 11].

Analyzing the opinions of the scientists mentioned above, the conclusion about the economic nature of privatization is that the state, by transferring its assets to the private sector, reduces its management functions and its intervention in market relations. In this way, it provides the opportunity for self-regulation to the market.

It should be noted that the legal concept of privatization is much narrower than its economic definitions. According to V.S.Belich, the legal concept of the term "privatization" should have a complete and clear set of signs that make it suitable for practical use. In other words, the scope of regulated relations strictly defined by law, and others, uncertainty in interpretation and accordingly, it should have limits (in the narrow sense of the concept of customization) to avoid differences in practical application. Considering privatization in a broad sense can only show the multifacetedness and ambiguity of this category (for example, privatization can have political, commercial, psychological and other aspects) [7, p. 27].

The appearance of the term "privatization" in legal publications was used to denote a form of public administration or the process of privatizing a particular enterprise or industrial property. In a broad sense, privatization is a variety of measures aimed at reducing the scope of the state's activity in the economic sphere or strengthening the role of the private sector in the ownership of funds or in business activities.

Herbert Biner believes that privatization in a broad sense is the comprehensive transfer of property rights from the state to its citizens, the distribution of public services to the private sector, as well as the rejection of the active work of state bodies [9, p. 7].

From a legal point of view, S.I.Komaritsky says: "Privatization is usually understood as a legal institution related to the field of legal regulation of property rights and implies the termination of the right to ownership of certain property and the emergence of private property right"[9, p. 7]. It should also be noted that since privatization always implies the abolition of the right to state property, such relations have a public nature. This requires the development of general, publicly defined rules for the transfer of property through privatization.

In this case, as a result of privatization, the property rights to the objects of privatization belonging to the republican or municipal property are transferred to private property according to a specially established procedure. The Article 182 of the Civil Code determines the privatization of state property as one of the grounds for the creation of property rights. However, the Code is limited to defining this framework. The basis, order and conditions suitable for privatization are carried out within the framework of the subject of legal regulation of special legislation.

According to another scientist H.A.Gertsev, privatization should be understood as the procedure for transferring property regulated by law, which is in republican or municipal ownership, to the property of individuals or legal entities for a fee and (or) free of charge[10, p. 15]. But it cannot be fully agreed with this conclusion. Because the category of objects to be privatized is different, it will not be possible to privatize all of them for free.

M.T. Abaev, in our opinion, reveals the concept of privatization of republican and municipal property as a special method of acquiring private property rights. Based on his ideas, it can be said that the key to the concept of privatization for civil law is to define privatization as the returnable alienation of publicly owned property to the property of specific individuals or legal entities. In other words, privatization should be considered as a certain basis that creates and cancels property rights.

The legal definition of this concept is given in the Law on Expropriation and Privatization. This law defines two separate concepts, i.e. disposal from state control and privatization. According to Article 1 of the Law:

- expropriation is the transformation of state enterprises and organizations into economic companies and societies, and into other enterprises and organizations that are not publicly owned.
- privatization is the purchase of public property objects or shares of state joint-stock companies from the state by individuals and legal entities that do not belong to the state.

We can see that the law divides the process of privatization in a general sense, using the term of expropriation in relation to legal entities belonging to the state, and the term privatization in relation to other types of assets. In our opinion, the concept of privatization has a broad meaning. This concept includes the alienation of all types of state assets.

This concept is also defined in the draft "Law of the Republic of Uzbekistan on Privatization" posted on the portal for the discussion of projects of regulatory and legal documents. According to it, disposal of state assets in the form of private property under the procedures and conditions provided by this Law is considered privatization[11].

It should be said that this concept reflects the general goal of privatization, that is, regardless of the objects of privatization. Therefore, the concept of privatization given in the bill is its purpose.

In general, the legal sense privatization is the result of methods aimed at transferring republican and municipal property to the private property of legal entities and individuals and the execution of agreements based on them.

One of the unique features of this institution is that the contract on the obligation of privatization appears only at the final stage of the privatization agreement. Civil rights and duties in the obligation of privatization arise not from the contract, but from the administrative documents on privatization.

Concluding on the basis of the above analysis, the legal concept of privatization, separated from the economic component, cannot fully reveal the entire range of criteria reflecting the phenomenon of privatization. From this point of view, it is appropriate to take into account its economic characteristics in order to reveal the meaning of this concept. In this sense, privatization is a legally and economically interrelated phenomenon, which consists of the alienation of property belonging to the state for a fee. Literally, the institution of privatization includes norms that directly or indirectly regulate the problem as a set of civil legal norms that regulate the actions of the participants in relations related to the termination of the state's ownership of property and its purchase on the basis of private property.

References

1. Parker, D. Privatization of State-Owned Enterprises. Oxford Research Encyclopedia of Business and Management. Retrieved 27 Dec. 2022, from <https://oxfordre.com/business/view/10.1093/acrefore/9780190224851.001.0001/acrefore-9780190224851-e-93>.
2. <https://davaktiv.uz/oz>
3. Bel, G. (2006), The Coining of "Privatization" and Germany's National Socialist Party, Journal of Economic Perspectives, 20, 3, 187–194.
4. Bel, G. (2006), The Coining of "Privatization" and Germany's National Socialist Party, Journal of Economic Perspectives, 20, 3, 187–194.

5. Шерли М., Ниллис Дж. Реформа и приватизация государственных предприятий: обобщение опыта / Мэри Шерли, Джон Ниллис. – Мировой банк. Институт экономического развития. – Тбилиси: Издво «КОКА», 1992. – с 129.
6. Диденко А. А. К вопросу о развитии отечественной концепции источников гражданского права // Власть закона. – 2012. – № 3. – С. 124-131.
7. Камышанский В.П. Приватизация предприятий. Право собственности/В.П. Камышанский. – М., 2009. – С - 192.
8. Игнатов В.М. Приватизация государственной собственности в РФ: проблемы правового регулирования: Автореф. дис. канд. юрид. наук / В.М.Игнатов. – М., 2002. – с 19.
9. Комарицкий С.И. Приватизация: правовые проблемы: Курс лекций / С.И.Комарицкий // Исследовательский центр частного права; Российская школа частного права. – М.: Статут, 2000. – С - 94.
10. Герцев Д.А. Гражданско-правовое регулирование отношений по приватизации предприятий, находящихся в государственной собственности: Дис. канд. юрид. наук. / Д.А.Герцев. – М., 2008. – С - 200.
11. Ўзбекистон Республикасининг хусусийлаштириш тўғрисида қонуни ID-53179
<https://regulation.gov.uz/oz/d/53179>