



Foreign Experience of Legal Support Privatization and the Possibility of its Use in Ukraine*

Roman Victorovich Myroniuk¹, Anatolii Matviichuk²,

Olena Hrabylnikova³, Olesia Marchenko⁴

¹Dnipropetrovsk State University of Internal Affairs (Dnipro, Ukraine)

²State University of Infrastructure and Technology (Kyiv, Ukraine)

³Oles Honchar Dnipro National University (Dnipro, Ukraine)



10.15408/jch.v9i3.23743

Abstract

Successful examples of legal support privatization in a number of developed foreign countries are analyzed. In particular, the main attention was paid to the analysis of the experience of legal support privatization in developed and democratic countries of North America and Western Europe. The possibility and peculiarity of the procedure of introduction of specific forms and methods of legal support of the processes related to privatization in Ukraine are established. It is stated that privatization is one of the most significant phenomena both in the economy of a particular state and in society as a whole. It is noted that the proper legal enforcement and support of all privatization-related processes determine whether the economic development and prosperity of the state will take place, or, conversely, it will decline and suffer significant losses. It is noted that in connection with the gradual rapprochement of Ukraine with European states and their standards, the problem of inventing the most appropriate and relevant privatization of certain state or municipal enterprises is becoming more acute. At the same time, researchers prefer to conduct a qualitative analysis of the processes of privatization of state property that have taken place in the past in more detail, based on certain newly discovered facts. Among other things, it is considered necessary to check whether the rights, freedoms and legitimate interests of citizens, as well as the state, have been violated during the privatization process.

Keywords: privatization legal support, implementation, effective activity, qualitative regulation, research of processes and phenomena.

* Received: May 28, 2021, revised: June 21, 2021, accepted: December 25, 2021, Published: December 30, 2021.

¹ **Roman Victorovich Myroniuk** is a Doctor of Jurisprudence, Professor, Professor of the Department of Administrative Law, Process and Administrative Activity of Dnipropetrovsk State University of Internal Affairs (Dnipro, Ukraine), ORCID: <https://orcid.org/0000-0002-9620-5451>

² **Anatolii Matviichuk** is a Doctor of Law, Associate Professor of the Department of Justice Faculty of Law, Institute of Management, Technology and Law, State University of Infrastructure and Technology (Kyiv, Ukraine), ORCID: <https://orcid.org/0000-0003-2991-3236>

³ **Olena Hrabylnikova** is a Candidate of Jurisprudence, Associate Professor, Department of Civil, Labour and Economic Law, Oles Honchar Dnipro National University (Dnipro, Ukraine), ORCID: <https://orcid.org/0000-0001-5523-6254>

⁴ **Olesia Marchenko** is a Doctor of Jurisprudence, Associate Professor, Department of Civil, Labour and Economic Law, Oles Honchar Dnipro National University (Dnipro, Ukraine), ORCID: <https://orcid.org/0000-0002-3265-3597>

Corresponding author: Email: mironyk1311@gmail.com

Pengalaman Asing Dalam Privatisasi Dukungan Hukum dan Peluang Penerapannya di Ukraina

Abstrak

Contoh sukses privatisasi dukungan hukum di sejumlah negara maju asing dianalisis. Secara khusus, perhatian utama diberikan pada analisis pengalaman privatisasi dukungan hukum di negara-negara maju dan demokratis di Amerika Utara dan Eropa Barat. Kemungkinan dan kekhasan prosedur pengenalan bentuk khusus dan metode dukungan hukum dari proses yang terkait dengan privatisasi di Ukraina ditetapkan. Disebutkan bahwa privatisasi adalah salah satu fenomena paling signifikan baik dalam perekonomian suatu negara tertentu maupun dalam masyarakat secara keseluruhan. Penegakan hukum yang tepat dan dukungan dari semua proses terkait privatisasi menentukan apakah pembangunan ekonomi dan kemakmuran negara akan berlangsung, atau sebaliknya, akan menurun dan menderita kerugian yang signifikan. Sehubungan dengan pemulihan hubungan Ukraina secara bertahap dengan negara-negara Eropa dan standar mereka, masalah menciptakan privatisasi yang paling tepat dan relevan dari perusahaan negara bagian atau kota tertentu menjadi lebih akut. Pada saat yang sama, peneliti lebih memilih untuk melakukan analisis kualitatif terhadap proses privatisasi barang milik negara yang telah terjadi di masa lalu secara lebih rinci, berdasarkan fakta-fakta tertentu yang baru ditemukan. Antara lain, dipandang perlu untuk memeriksa apakah hak, kebebasan, dan kepentingan sah warga negara, serta negara, telah dilanggar selama proses privatisasi.

Kata Kunci: Dukungan Hukum Privatisasi; Pelaksanaan; Kegiatan Efektif; Regulasi Kualitatif; Penelitian Proses dan Fenomena.

Зарубежный опыт правового обеспечения приватизации и возможность его использования в Украине

Аннотация

Проанализированы успешные примеры правового обеспечения приватизации в ряде развитых зарубежных стран. В частности, основное внимание было уделено анализу опыта правового обеспечения приватизации в развитых и демократических странах Северной Америки и Западной Европы. Установлены особенности процедуры введения конкретных форм и методов правового обеспечения процессов, связанных с приватизацией в Украине. Констатируется, что приватизация является одной из наиболее значимых явлений как в экономике конкретного государства, так и в обществе в целом. От надлежającego правового обеспечения и сопровождения всех связанных с приватизацией процессов зависит будет ли происходить экономическое развитие и процветание государства, или же наоборот она испытывает упадок и получит существенные убытки. В связи с постепенным приближением Украины к европейским государствам и их стандартам, все более остро встает проблема изобретение наиболее уместного и актуального проведения приватизации определенных государственных или коммунальных предприятий. Вместе с тем, исследователи предпочитают более детализировано, опираясь на определенные вновь открывшиеся факты, провести качественный анализ тех процессов приватизации государственной собственности, которые произошли в прошлом. Среди прочего, признается необходимым проверить, не были ли нарушены при проведении приватизации права, свободы и законные интересы граждан, а также интересы государства.

Ключевые слова: приватизация, правовое обеспечение, эффективная деятельность, качественная регламентация, исследования процессов и явлений.

A. INTRODUCTION

Urgent economic reforms in Ukraine are impossible without improving the management of state property. Transparent privatization of state property and agricultural reform are important areas of reform under the Sustainable Development Strategy 'Ukraine 2020' and the relevant Government Program. However, large-scale land reform cannot yet be carried out due to the lack of unity in the Ukrainian parliament on the land market and the ongoing moratorium on the privatization of agricultural land. Moreover, in the process of privatization of state-owned objects located on agricultural lands there are a number of contradictions in legal regulation that require proper resolution (Snisarenko, 2017).

Taking into account modern trends and circumstances, we note that privatization and the peculiarities of its implementation are an important element of public policy. But it is argued that how well and freely it will be implemented may depend on a number of factors. First of all, it concerns the characteristic features of the functioning of state power and general national policy in a particular country. For example, if a state is democratic and economically developed, has a high political culture, etc., then the processes related to the implementation of privatization in this state will take place qualitatively, without violating the rights and interests of any of the subjects of legal relations.

As an example, the article will consider the features of the legal support privatization processes in the UK and Germany, as well as in some other countries. There is an opinion among the domestic scientific community that in its own legal support privatization, Ukraine, represented by its civil servants, should be based on the experience of the European Union member states. Conversely, it is firmly believed that Ukraine should circumvent the ways and methods of privatization in authoritarian countries. At the same time, it is strongly stated that Ukrainian society should abandon some of the negative or inefficient elements of life that we have inherited from the time of the Soviet totalitarian regime.

Due to the extremely high urgency of the problems and issues related to privatization processes in the domestic society, a lot of attention was paid to them by domestic and foreign researchers and scientists. For example, D. Lipton studied the legal support of privatization in Poland, and D. Morris considered a similar topic in Britain. Ukrainian jurists have also paid attention to this issue. In particular, L. Y. Snisarenko (2017) considered and analyzed legislation that regulates the privatization of objects with land plots. As the author noted, the

strategic tasks of privatization need proper legislation to reach its effectiveness and transparency in privatization procedure.

B. METHODS

Research methods are chosen taking into account the specifics of the topic studied in the article. The methodological basis of the study is the system of generally scientific and special (traditionally legal) methods. This article mainly used a comparative research method, with the help of which, by comparing the features of the legal support of privatization procedures in some foreign countries, as well as in Ukraine, it was determined which elements of privatization in Ukraine need urgent reform. At the same time, the bibliographic method of research was used, during the use of which the problems of legal support privatization were studied in more depth.

C. RESULTS AND DISCUSSION

Given the generally accepted views prevailing in the modern scientific environment, the legal support of privatization in Ukraine cannot be considered sufficiently reliable. First of all, this applies to those unfinished areas of domestic legislation that still allow certain subjects of public relations to receive significant illegal benefits from certain privatization processes. In particular, it is the low quality of legal acts that carry out the legal regulation of privatization procedures that foreign and domestic legal scholars point out when analyzing the past experience of privatization in Ukraine (Sasse & Davies, 2020).

One of the priorities of Ukrainian society in the need for progressive improvement of all mechanisms of public administration is the formation of effective social policy. And taking into account the aggregate of the most urgent issues of the development of our state, connected with overcoming the negative phenomena in a social life, the administrative and legal provision of the reliable mechanism of social protection of the population by public authorities requires particular attention (Katsalap, 2020). The purpose of control over the activity of non-government entities in the field of security and safety is to prevent deviations from the established order of state security and public order protection, prevention, detection, and termination of actions that harm the protected state interests. The need to strengthen this control is due to two main aspects: 1) there is a need to raise the standards of corporate governance in the field of non-governmental protection of human rights; 2) there is a more general

tendency to regulate the behavior of all business structures regarding human rights in all areas of their activities (Zavalnyi, 2019).

The topic of privatization in the 1990s and early 2000s is particularly popular. After all, at that time the domestic legislation on the legal regulation of privatization procedures was imperfect.

To confirm the above thesis, numerous examples are usually given of how, under the guise of "privatization", the transfer of rather valuable objects under state ownership was carried out into the hands of a narrow segment of the then representatives of the domestic and Russian oligarchy (Morris, 2018). In this context "oligarchy" is understood as persons who were part of politicians and government officials, and who did not hesitate to actively engage in their own enrichment and build their own business, putting it in a higher priority than the state goals and interests of Ukraine. Or the second type of representatives of the oligarchy was usually called "businessmen" who influenced the policy of the state in a particular sphere of public life in order to receive certain "dividends".

Among concrete examples, legal scholars cite the situation that arose during the privatization of the state enterprise "Kryvorizhstal". Then, under the political leadership of then-President Leonid Kuchma, oligarchs Viktor Pinchuk and Rinat Akhmetov acquired this large enterprise into private ownership at a very low price and in the absence of real competition. Thus, it is claimed that the amount for which this enterprise was "privatized" is much lower than its real value. Among other things, this was confirmed later, when the next government's decision annulled this privatization as a result of several court decisions on their illegality.

Ukrainian society has observed similar situations many times in the past, although most of them were not so significant. As a result of mistakes made accidentally or intentionally by the state and political leadership of Ukraine in the past, Ukrainian society has begun to perceive the word "privatization" and all related processes extremely negative (Parker, 2004).

Most researchers, as noted above, state that such a phenomenon as the legal support privatization is closely related to many environmental factors that exist in domestic society, as well as in the state system (Sachs & Lipton, 1990). In particular, many problems stem from the so-called "corruption factor" in Ukrainian society. Given that corruption and greed are now such that they have "covered" almost the entire structure and hierarchy of the state system, the threats and negative consequences they entail are recognized as a serious

obstacle to Ukraine's prosperity. At the same time, they allow other, no less dangerous problems and threats that also exist in the state system to exist without hindrance. Namely, such are the low efficiency of state mechanisms of the country and their general inability to meet contemporary threats and challenges.

Based on this, it is argued that the issue of improving the legal support privatization in Ukraine is much broader and covers a number of relevant areas of public life. Thus, researchers suggest that consideration of possible improvements in the field of legal support privatization should be considered inseparable from the problems surrounding it.

Systematic work in the legal and especially in the legislative sphere in the conditions of modern realities is recognized as an extreme necessity. Among other things, this concerns the increase of efficiency and effectiveness of normative-legal acts, which carry out legal regulation and provision of privatization procedures to a certain extent (Kotowski & Zagoździńska, 2016). As is well known, privatization processes in Ukraine are regulated by the Laws of Ukraine, the Land Code of Ukraine (in terms of land privatization), and other regulations. It is claimed that the state body that implements the state policy in the field of privatization, lease, use and alienation of state property, management of state property is the State Property Fund of Ukraine.

Despite some positive changes that have taken place over the past few years in the field of privatization and related processes, including the recently adopted Law "On Amendments to Certain Legislative Acts of Ukraine on the Conditions of Circulation of Agricultural Land", the general situation in this area is all still remains unsatisfactory. For example, as pointed out by foreign researchers of domestic privatization procedures, as well as partners and allies of Ukraine, the activities of the same above-mentioned Fund need significant changes. That is, in addition to the low assessment of the domestic regulatory framework in the field of privatization and control, international researchers are concerned about the lack of efficiency of executive bodies in this area.

The successful experience of developed and democratic countries once again proves that the activities of executive bodies of state power are no less important for achieving national policy goals than the legal framework (Ravasi, 2021).

The realities of everyday life of the Ukrainian state in the 90s and 2000s clearly demonstrated that even well-written, democratically oriented legal acts

will not be able to change the situation for the better if they are not actually implemented and observed by the authorities.

In this context, the example of the United States is relevant, where the high efficiency and effectiveness of the federal government is a constant phenomenon. Moreover, this applies in general to all spheres and branches of local social life. At the same time, it is in relation to carrying out procedures for the privatization of one or another object of state or communal property of Ukraine and its statesmen that it is necessary to refer to the experience of European states. This is especially true of those which were previously under the rule of socialist or communist regimes, and then, having received democratic changes, moved to free market relations. First of all, these are states such as Poland, Germany, Hungary, etc.

On the example of the Polish experience, we see that properly conducted privatization can bring significant profits to the state budget. After all, enriching the budget with cash is one of the two main goals of privatization in any state (Bachiller, 2017).

The second goal is to get rid of inefficient state-owned enterprises, which have ceased to be profitable and have become a burden on the state budget. Researchers claim that successful and properly regulated privatization can successfully achieve both of the above goals.

During the years of Margaret Thatcher's government in Great Britain, it managed to achieve that the total amount of all revenues from privatization exceeded \$ 150 billion at the then exchange rate. However, despite many successes and positive aspects, these privatization processes have also been criticized. First of all, the critical remarks were aimed at the fact that the revenues from privatizations were not evenly distributed, settling mostly with the owners and managers of private financial groups, who inherited significant tangible assets that previously belonged to the state. The United States of America is a state that has never experienced mass privatization in its history (Boubakri, Guedhami, Kwok, C. *et al.*, 2016). This is due to the fact that in this country state property did not have a significant, comprehensive scope and importance in society. On the contrary, private property and everything connected with it have always been a priority there.

At the same time, both federal (national) and local (municipal and state-level) public authorities are quite legitimate and effective in their competence. This fact completely destroys the stereotypes imposed by authoritarian (especially communist) regimes that state power will be powerful and capable

only when it owns and controls the bulk of the economy (Breen & Doyle, 2013). As it turns out, this is completely optional. After all, in the above-mentioned United States, as well as other developed countries, the legitimacy and authority of the authorities is based on the ever-present possibility of their democratic election.

In fact, based, *inter alia*, on the above statements, researchers and experts insist on the importance and necessity of privatization of those facilities that become a burden for the state due to various reasons (Bruton et al., 2014). Therefore, the legal support of privatization, i.e. its proper legal regulation, is important. The experience of Western countries has shown that there are many effective ways to reduce the burden on the state system (especially the state budget).

Among other things, foreign scientists recommend continuing the gradual development of market institutions within the country and improve their interaction with the outside world (Estrin & Pelletier, 2018).

An integral element of the requirements that the Ukrainian state must meet in order to turn it into one of the most economically developed is to increase the level of protection of private property, development of its own stock market (or markets), as well as improving the quality of state property management processes.

Specific actions, which, in the opinion of the authors of this article, should be taken to improve the legal support of privatization, should include the following components: in the regulations governing the legal support of privatization, should be added provisions on mandatory protection of rights and the interests of persons who were employees of an enterprise at the time of its transfer from state to private ownership (Fainshmidt et al., 2016). Also, a separate paragraph should prescribe a rule to ensure independent privatization auctions. Based on the scientific views of scientists, it is established that, given the negative experience of the past that Ukrainian society had to endure due to conspiracies of oligarchic groups with the state leadership in the 90s, 2000s and 2010s, the issue of independent privatization auctions is extremely important. Of course, the successful experience of the developed countries of Western Europe and North America in using the achievements of the high-tech sector in operations to evaluate the activities of certain enterprises and organizations that are considering the need for their privatization has not been ignored (Ford & Plimmer, 2018).

Taking into account that the high relevance of privatization processes still has not disappeared anywhere in the domestic society, the improvement of all the above elements of the privatization process should take place as soon as possible (Greve & Zhang, 2016). The involvement of international partners and allies of the Ukrainian state in reforming its privatization procedures has the full support of the current government. In particular, it is recognized that the state authorities of Ukraine should achieve the greatest cooperation with their foreign colleagues in such important areas as improving the regulatory framework and improving the quality of functioning of executive bodies (including in the field of property management) (Jupe & Funnell, 2015).

With regard to the first direction, it is considered more appropriate to refer to the experience of successful countries of Eastern and Central Europe (for example, Poland), which have personally passed the way from a socialist to a capitalist state and have common traditions with Ukraine. As for the executive branch, we believe that the US and Western European countries should be a model for its reform.

D. CONCLUSIONS

Thus, given the importance and relevance of privatization in domestic society, ensuring its proper legal regulation is an urgent need. It is argued that as a result of the gradual rapprochement of Ukraine with the developed and democratic countries of the West, as well as taking into account the prospect of its future accession to the EU, the situation with the reform of privatization procedures is gradually improving. However, as highlighted in the article, Ukraine still continues to feel the negative effects of the past.

Among the ways to successfully solve the current problems in this area, it is proposed to improve the legislative support of privatization procedures, enshrining new provisions that would guarantee the protection of each of those entities that will be affected by these changes. In particular, among the specific proposals is one that aims to enshrine in the relevant legislation a mandatory requirement for entities that will receive ownership of a particular object as a result of its privatization, to comply with the proper treatment of this object. Another equally important aspect of improving the legal support of privatization in Ukraine is to work on improving the quality of executive bodies in this area. It is stated that this can be done, including through the use of high technology.

Thus, one way or another, both directions of reforming the legal support of privatization in Ukraine will be implemented relatively quickly and successfully only on condition of interaction with developed democratic countries in this area.

REFERENCES

- Bachiller, P. (2017). A meta-analysis of the impact of privatization on firm performance. *Management Decision*, 55(1), 178–202. Retrieved from https://zaguan.unizar.es/record/63428/files/texto_completo.pdf
- Boubakri, N., Guedhami, O., Kwok, C. C., & Saffar, W. (2016). National culture and privatization: The relationship between collectivism and residual state ownership. *Journal of International Business Studies*, 47(2), 170–190. <https://doi.org/10.1057/jibs.2015.38>
- Breen, M., & Doyle, D. (2013). The determinants of privatization: A comparative analysis of developing countries. *Journal of Comparative Policy Analysis: Research and Practice*, 15, 1–20. <https://doi.org/10.1080/13876988.2013.741439>
- Bruton, G. D., Peng, M. W., Ahlstrom, D., Stan, C., & Xu, K. (2014). State-owned enterprises around the world as hybrid organizations. *Academy of Management Perspectives*, 29(1), 92–114. <https://doi.org/10.5465/amp.2013.0069>
- Estrin, S., & Pelletier, A. (2018). Privatization in Developing Countries: What Are the Lessons of Recent Experience? *The World Bank Research Observer*, 33(1), 65–102. <https://doi.org/10.1093/wbro/lkx007>
- Fainshmidt, S., Judge, W.Q., Aguilera, R.V., & Smith, A. (2016). Varieties of institutional systems: A contextual taxonomy of understudied countries. *Journal of World Business*, 53, 307–322. <https://doi.org/10.1016/j.jwb.2016.05.003>
- Ford, J., & Plimmer, G. (2018). Returning the UK's privatized services to the public. *Financial Times*. Retrieved from <https://www.ft.com/content/90c0f8e8-17fd-11e8-9e9c-25c814761640>

- Greve, H. R., & Zhang, C. M. (2016). Institutional Logics and Power Sources: Merger and Acquisition Decisions. *Academy of Management Journal*, 60(2), 671–694. <https://doi.org/10.5465/amj.2015.0698>
- Jupe, R., & Funnell, W. (2015). Neoliberalism, consultants and the privatization of public policy formulation: The case of Britain's rail industry. *Critical Perspectives on Accounting*, 29, 65–85. <https://doi.org/10.1016/j.cpa.2015.02.001>
- Katsalap, L. S. (2020). Genesis of State Social Policy of Ukraine: Administrative and Legal Aspect. *Law and Safety*, 76(1), 60–66. <https://doi.org/10.32631/pb.2020.1.08>
- Kotowski, J., & Zagoździńska, I. (2016). Privatization vs. productivity in Poland. Retrieved from <https://www.oecd.org/sdd/productivity-stats/37528505.pdf>
- Morris, D. (September, 2018). Is Britain's long love affair with privatization ending in divorce? Retrieved from <https://ilsr.org/is-britains-long-love-affair-with-privatization-ending-in-divorce/>
- Parker, D. (2004). The UK's privatization experiment: the Passage of Time Permits a Sober Assessment. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=514224
- Ravasi, D. (2021). Privatization: Implications of a Shift from State to Private Ownership. Retrieved from <https://journals.sagepub.com/doi/abs/10.1177/0149206320988356>
- Sachs, J., & Lipton, D. (1990). Privatization in Eastern Europe: The Case of Poland. *Brookings Papers on Economic Activity*, 2, 293–341.
- Sasse, T., & Davies, N. (2020). Outsourcing and privatization. *Institute for Government*. Retrieved from <https://www.instituteforgovernment.org.uk/sites/default/files/publication/s/government-outsourcing-reform-WEB.pdf>
- Snisarenko, L. Y. (2017). Legal support of privatization of objects with land plots: problems and prospects. *Electronic scientific journal «Derzhavne upravlinnya: udoskonalennya ta rozvytok»*, 3. Retrieved from <http://www.dy.nayka.com.ua/?op=1&z=1046>.

Zavalnyi, M. V. (2019). National, International and Legal Mechanisms of Control over the Activity of Non-Government Security Entities. *Law and Safety*, 73(2), 31–36. <https://doi.org/10.32631/pb.2019.2.04>