

## ARTICLES

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### **CONSTITUTIONAL AND LEGAL BASIS FOR PRIVATISATION AND DENATIONALISATION OF PROPERTY IN THE REPUBLIC OF BELARUS**

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**Abstract:** The article deals with the peculiarities of constitutional and legal regulation of ownership relations in the Republic of Belarus at the present stage, the process of implementation of state policy in respect of denationalization and privatization of state-owned property. The author's definition of ownership is given. Stages of the privatization process are defined. At the first stage (1991–1993) the state pursued largely fiscal aims by receiving non-tax revenues. The second stage (1994–2008) was characterised by the country's transition to a market economy, an increase in the share of private property, and an increase in business ownership. The third period (2008 — present) is characterised by the active development of stock market instruments, which are shares of reformed enterprises. Both positive results and problems in the reform of state ownership are highlighted.

**Keywords:** Constitution, State, President, Government, law, decree, executive order, economic relations, property, ownership, reform, privatisation, denationalisation.

Economic relations are an essential element of the constitutional order of any state. They constitute the economic basis of the state and consist of relations of ownership, production, exchange, distribution and consumption of material and spiritual wealth. At the same time, society and the state, using legislation and social norms, can have a significant influence on the development and formation

of economic relations. Economic relations arise and develop objectively in their basis, because the democratic state does not establish the economic order of society. It only protects its basic foundations, based on rights and freedoms, the freedom to choose forms of ownership and forms of economic management. Economic relations are an important precondition for the sovereignty of the people and the real freedom of the individual.

Ownership is an important element of economic relations. The right of ownership is the possibility to own, use and dispose of specific property. According to Article 13 of the Constitution of the Republic of Belarus “ownership may be state and private. The state shall grant equal rights to all to engage in economic and other activities, except those prohibited by law, and shall guarantee equal protection and equal conditions for the development of all forms of ownership”<sup>1</sup>.

An essential peculiarity of the constitutional development of the Republic of Belarus at the end of the 20th century is the idea of the property social function consolidation at the constitutional level. Thus, the Constitution of the Republic of Belarus stipulates that the state shall ensure the direction and coordination of public and private economic activities for social purposes (part five of Article 13).

The second most important element of economic relations is the production of material goods. No society can function properly without an increase in material production. Therefore, the constitutions of most democracies contain provisions stipulating the duty of the state to create favourable conditions to stimulate highly productive labour.

An important part of the constitutional order is also social relations, through which the social policy of the state is implemented. The main directions of social policy are the regulation of relations between labour and capital, interethnic and family-marriage relations, as well as in the field of environmental protection, human life and health, protection of consumer rights, etc. The fundamental principles of social relations are also reflected in the Constitution of the Republic of Belarus, which has substantially enshrined all the social and economic rights and freedoms of man and citizen universally recognised by the international community.

Ownership relations in any society play a paramount, predominant role, since the basis of economic life is the process of production taking place in a certain historical form. Ownership of the means of production, and in the first place, of the means of labour as their most active part, characterises the essence of socio-economic relations prevailing in any socio-economic formation.

In other words, ownership is a special kind of social relationship in that some persons freely and “absolutely” own, use and dispose of a thing or object, and others are not allowed to interfere with this ownership.

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<sup>1</sup> National Register of Legal Acts of the Republic of Belarus. 1999. No. 1. 1/0; 2004. No. 188. 1/6032.

Property *in the broad sense* is a system of historically changing objective relations between people in the process of production, exchange, consumption, characterising the appropriation of means of production and consumption objects; it is the appropriation, the gaining of something into one's own power, into one's own possession.

According to the Marxist doctrine, ownership as an economic category expresses relations between people regarding appropriation (alienation) of means of production and material goods created with their help in the process of their production, distribution, exchange and consumption. In this definition, attention is fixed on the fact that the fact of ownership of material goods by a subject should be recognised not only by him/her, but also by other subjects, therefore, the right of ownership emerges as a social relation. K. Marx considered ownership in connection with the attitude towards objects "as one's own"<sup>1</sup>. Property, according to K. Marx, is the relation to the conditions of production as its own and it is realized only through production itself<sup>2</sup>. A characteristic feature of the Marxist interpretation of property was the underlining of the primacy of the economic content (economic nature) of property over its legal form, as well as the underlying basis of property as a relationship between people in contrast to the relationship of man to thing. "Ownership means, therefore, initially nothing other than man's relation to his natural conditions of production as belonging to him, as his own, as preconditions given together with his own existence, a relation to them as natural preconditions of himself, forming, so to speak, only his elongated body"<sup>3</sup>.

Therefore, according to classical Marxism, the term "property" refers to the historically changing way in which society and the individual appropriates the means of life.

The French Civil Code of 1804 (the Napoleonic Code) stated, "Property is the right to use and dispose of things in the most absolute manner, so that the use is not such as is forbidden by laws or regulations"<sup>4</sup>.

According to the restrictive approach, ownership is the main constitutive element of the economic system in which it acts as a separate (original and basic) production relation. From the point of view of the expansive approach,

<sup>1</sup> K. Marx. Kritika politicheskoy ekonomii [Critique of Political Economy] (draft, 1857–1858) // K. Marx, F. Engels. Op. Ed. II. Vol. 46. Part I. M.: Izdatelstvo politicheskoy literatury, 1968. P. 479.

<sup>2</sup> Ibid. P. 482–483.

<sup>3</sup> Ibid. P. 480.

<sup>4</sup> See: Art. 544 of the French Civil Code (Napoleonic Code) of 1804 // Khrestomatiya po istorii gosudarstva i prava zarubezhnykh stran: d 2-kh t. [The Reader on the History of State and Law of Foreign Countries: in 2 vols.] / Ed.-in-chief N.A. Krashenninnikova. Vol. 2. M: Norma, 2008.

however, property in itself cannot act as a separate, independent production relation at all, because, as a condition and result of the social process of production, it embraces the whole system of production relations within which its economic content unfolds<sup>1</sup>.

*In a narrow sense*, the concept of “property” is identified with property belonging to a certain person by right of ownership.

The social relations, which determine the position of the participants in the production of material goods towards such objects of production as instruments of labour, means and products of production, etc., are economic relations of ownership.

By means of legislation, the state establishes legal norms that regulate existing forms of ownership, as well as social relations connected with possession, use, disposal of property belonging to the state or certain persons. In this way, economic ownership relations acquire the form of legal relations, and the subjects of ownership are endowed with the right of ownership, because willful ownership relations cannot develop outside the legal framework, without obligation and protection by the state.

Thus, *the right of ownership* is a totality of legal norms that enshrine and protect ownership (appropriation) of material goods to the owner, providing for the scope and content of his rights with respect to the property owned by him (the owner), as well as methods and limits of exercising these rights.

Ownership relations are the most important element of the economic system of civil society, which is based on the forms of ownership established in the state, the forms of organisation and methods of regulation of economic activity inherent in it. However, the content of ownership rights is revealed not only through traditional rights of possession, use and disposal, but also by granting the owner the right to perform, at his own discretion, any actions with respect to the property belonging to him that are not contrary to legislation, public benefit and safety, not damaging the environment, historical and cultural values and not infringing upon rights and legally protected interests of other persons.

In most states, there are two main forms of ownership — public and private. All other forms of ownership are derived from them. These forms of ownership differ both in the mode of use and in the subjects.

As mentioned above, in accordance with Article 13 of the Constitution of the Republic of Belarus there are two types of ownership in our country — state and private. The subjects of the right of state ownership are the Republic of Belarus and administrative-territorial units. The subjects of the right of private ownership are natural persons and non-state legal entities. The Republic of Belarus guarantees

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<sup>1</sup> Z. Kh. Dzugaev. *Sobstvennoct' v sisteme proizvodstvennykh otnosheniy* [Property in the System of Production Relations] // *Filosofiya i obshchestvo* [Philosophy and Society]. 2010. No. 4. P. 105–106.

equal protection and equal conditions for the development of all forms of ownership on the basis of constitutional provisions.

State property is a national property (property of the Republic of Belarus) and communal property (property of such administrative-territorial units as regions, cities, districts, etc.). The national property consists of the treasury of the Republic of Belarus<sup>1</sup> and the property assigned to the legal entities of the Republic.

Communal property consists of the treasury of the administrative-territorial unit<sup>2</sup> and the property assigned to communal legal entities.

State-owned property may be assigned to state-owned legal entities on the right of economic management or operational management.

According to the legislation, there are the state bodies in both republic and communal forms of state ownership: republic's state administration bodies and local government and self-government bodies.

The state administration body in the field of property reform in Belarus has been the BSSR's State Committee for State Property Management (Gosimushchestvo BSSR) since February 1991<sup>3</sup>, which was reorganized in June 1993 into the State Committee for State Property Management and Privatization<sup>4</sup> and later the Ministry of State Property Management and Privatization<sup>5</sup>.

Presidential Decree No. 516 of September 24, 2001 assigned the functions of state property management and privatisation to the Ministry of Economy by establishing the State Property Fund in its structure, which was a department with the rights of a legal entity<sup>6</sup>.

At present, according to Presidential Decree No. 289 of May 5, 2006 (with amendments and additions), the State Property Committee (Goskomimushchestvo) carries out state policy of management, disposal, privatisation, evaluation and accounting of property owned by the Republic of Belarus. The Ministry of Economy

<sup>1</sup> In accordance with Article 215 of the Civil Code, the Treasury of the Republic of Belarus consists of the Republic's budget, the gold and currency reserve and the diamond fund, objects of exclusive property of the Republic of Belarus and other state property not assigned to republic's legal entities.

<sup>2</sup> The treasury of the respective administrative-territorial unit consists of local budget funds and other communal property not assigned to communal legal entities.

<sup>3</sup> SPP BSSR. 1991. No. 7–8. Art. 62.

<sup>4</sup> On the State Privatisation Programme: Resolution of the Supreme Soviet of the Republic of Belarus. On the State Privatisation Programme: Resolution of the Supreme Council of the Republic of Belarus, June 16, 1993 // Bulletin of the Supreme Soviet of the Republic of Belarus. The State Privatization Program: Proclamation of the Supreme Council of the Republic of Belarus. 1993. June 16. No. 26. Art. 329.

<sup>5</sup> Collection of Presidential Decrees and Resolutions of the Cabinet of Ministers of the Republic of Belarus. 1994. No. 6. Article 142.

<sup>6</sup> National Register of Legal Acts of the Republic of Belarus. 2001. No. 92. 1/3078.

retains the functions of formulating state policy in the area of state property management and privatisation<sup>1</sup>.

Global experience of economic development shows that it is possible to transfer property from private to public (nationalisation) and public to private (privatisation). As a rule, this is done on the basis of constitutional or other legal provisions. Ideas on the social function of property are the most important feature of constitutional development in most democracies in the 20th century. Thus, Article 42 of the Constitution of the Italian Republic of December 22, 1947 (amended and supplemented) establishes that “in cases provided for by law, private property may be alienated in the general interest, subject to the payment of compensation”<sup>2</sup>. The Constitution of Greece, which entered into force on June 11, 1975 (Article 17), also provides that “no one may be deprived of his property except in the public interest”, “subject to prior full compensation corresponding to the value of the property alienated...”<sup>3</sup>. The institution of property is regulated in more detail than in foreign constitutions in the Constitution of the Russian Federation of 1993<sup>4</sup>.

In designing the Belarusian economic model, the experience of transition economies has been fully taken into account, which shows that both monetary and non-monetary leverage have an equally negative impact on economic development.

*Privatisation of state property* was seen as the sale of those or other objects to subjects of privatisation in the manner and on the terms established by legislation and means a change of ownership through the sale or gratuitous transfer of state property to other economic subjects: private or legal entities, labour collectives. As a result of privatisation, the state fully or partially loses the right to own, use and dispose of state property. In a broad sense, privatisation refers to the transfer of state assets to the private sector, accompanied by a fundamental redistribution of available productive resources, restructuring of the existing institutional structure of production, and the introduction of new methods of corporate governance. The main content of privatisation is that the transformation of centrally regulated state enterprises into independent market entities fundamentally changes ownership relations both within the enterprise and throughout society. The result is a new system of economic interests requiring new mechanisms of reconciliation and

<sup>1</sup> National Register of Legal Acts of the Republic of Belarus. 2006. No. 74. 1/7567; National Legal Internet Portal of the Republic of Belarus. 05.10.2017. 1/17294.

<sup>2</sup> Konstitutsiya gosudarstv Evropy: V 3 t. T. 2. [Constitutions of the States of Europe: In 3 vols. V. 2]. M.: Norma, 2001. P. 111.

<sup>3</sup> Konstitutsiya gosudarstv Evropy: V 3 t. T. 2. [Constitutions of the States of Europe: In 3 vols. V. 2]. M.: Norma, 2001. P. 652.

<sup>4</sup> Constitution of the Russian Federation of December 12, 1993 (amended and augmented) // Full Collection of Codes of the Russian Federation. M.: OMEGA-L, 2005. P. 540–552.

a new system of governance. By transforming property relations, privatisation creates the preconditions for fundamental changes in the social structure of society.

The objects of privatisation are state enterprises, institutions, organisations, structural units of associations and structural subdivisions of enterprises; state property leased out; shares (units, shares) owned by the Republic of Belarus and administrative and territorial units in the property of economic entities.

*Denationalisation* generally refers to the transfer from the state to individuals and legal entities of part or all of the direct economic management of property, replacing vertical links between state administration and enterprises with horizontal ones, i.e. links between the enterprises themselves. Denationalisation involves a change in the role and functions of the state in the economy, in particular the dismantling of administrative management and its replacement by economic regulation, the creation and development of competitive market relations, the formation of a multi-structure economy, and a reduction in the share of the state sector in the economy. In other words, denationalisation is the process of eliminating state monopolism, forming a multi-structural, mixed economy, its decentralisation and freeing the state from direct economic management functions. Thus, denationalisation means, on the one hand, a transition from command-administrative to economic methods of governance and, on the other hand, a change in the form and content of property relations.

The objects of denationalisation are state enterprises, institutions, organisations, structural units of associations and structural subdivisions of enterprises, as well as state property leased out.

In Belarus, the process of reforming state property relations actually started at the end of the socialist period with the adoption of the Law of December 11, 1990 “On Property in the Belarusian SSR” (hereinafter referred to as the Law on Property)<sup>1</sup>. By that time, 99% of the property in the USSR republic was owned by the state.

In general, the process of state property reform in Belarus can be divided into three stages.

*The first stage* (1991–1993) was characterised by the beginning of formation of legislative acts regulating the process of normative regulation of this process. In particular, the Law on Property established the circle of owners, forms of ownership, grounds for origin of ownership rights, content and objects of ownership rights, principles of protection of ownership rights. At the same time, the Law determined that the ownership right in the Republic of Belarus is recognized and protected by the law, while the state provides equal rights necessary for the development of all forms of ownership and guarantees their protection. According to Article 4 of the aforementioned Law, the right of ownership arises through labour participation in economic activities for the use of property, entrepreneurial activity,

<sup>1</sup> Bulletin of the Supreme Soviet of the BSSR. 1990. No. 2. Art. 13

manufacture or acquisition of property as a result of a commercial transaction, restoration of ownership, inheritance or in any other way not contrary to the law.

In essence, the legal basis for property reform, including state ownership, was laid down in Article 6 of the Law of Property Act, according to which the owner owns, uses and disposes of the property belonging to him at his own discretion, and may perform with this property any actions not contradicting the law. He may dispose of his property, as well as transfer its possession, use and disposal to others.

In the adopted decree of December 11, 1990 “On Introduction of the Law of the Belarusian SSR “On Property in the Belarusian SSR”, the Supreme Soviet of the BSSR instructed the government to develop and submit for its consideration draft legislative acts on joint-stock companies and partnerships, as well as to solve the question of formation of the Committee on state property management under the Council of Ministers of the BSSR<sup>1</sup>.

With the view of implementing the basic conceptual provisions on denationalization and privatization of the economy, approved by the Supreme Council of the Republic of Belarus, the Council of Ministers of the Republic of Belarus by its Resolution No. 360 of September 23, 1991 “On Denationalization of the Economy and Privatization of State Property in the Republic of Belarus in 1991” has approved the list of associations, enterprises and organizations to be denationalized and privatized as given by the State Property Management Committee under the Council of Ministers and the State Economic Planning Committee. Also, it was inadmissible to transform state-owned enterprises and organisations of Union subordination situated in the territory of Belarus into joint-stock companies and other economic entities, and to transfer state property free-of-charge to labour collectives, other legal entities and private individuals without the consent of the Council of Ministers. The same ordinance stipulated that until the Law of the Republic of Belarus “On Privatisation” was adopted, reorganisation of state enterprises into enterprises based on other forms of ownership was predominantly carried out through leasing with subsequent redemption, and any disputes between a state enterprise, a labour collective and a ministry or agency regarding privatisation would be considered by the State Property Management Committee under the Council of Ministers of the Republic of Belarus and the economic court in accordance with the current legislation<sup>2</sup>.

In December 1991, the Council of Ministers of the Republic of Belarus approved the Programme of Economic Denationalisation and Privatisation of State Property of the Republic of Belarus for 1992, which was aimed at deepening the privatisation process, formation of a mixed economy, development of entrepreneurial activity on this basis in order to increase the efficiency of the national economy, bring

<sup>1</sup> Bulletin of the Supreme Soviet of the BSSR. 1990. No. 2. Art. 14.

<sup>2</sup> SPP BSSR. 1991. No. 27. Art. 328.



it out of crisis and stabilise it in the conditions of sovereignty of the republic<sup>1</sup>. Enterprises (associations) and organizations were granted the right to independently determine the amount of net profit to be allocated for the redemption of state property. In addition, the ordinance stipulated that the transfer without compensation to labour collectives of privatised state-owned property belonging to the republic's property could be made by the decision of the Council of Ministers of the Republic of Belarus, which was adopted on the basis of proposals made by the State Property Management Committee under the Council of Ministers and agreed with the State Economic Planning Committee and the Finance Ministry, while the property belonging to the communal property, in the order determined by local councils of people's deputies. It has also been established that the method of privatisation shall be justified for each property included in the list. The lease with buyout was deemed a priority method for relatively small and technologically unsophisticated enterprises. The creation of collective (people's) enterprises was recommended for facilities with small production potential. It has also been established that such major state corporations as Minsk Tractor Works, Gomselmash, Azot, etc., should be denationalized through the establishment of joint-stock companies. The main form of payment for objects of state property and redemption of shares of privatised enterprises is payment in instalments. The source of financing of denationalisation and privatisation could be bank loans provided according to the procedure specified by Resolution of the Council of Ministers of the Republic of Belarus No. 393 of October 24, 1991 "On Temporary Provisions on the Procedure of Crediting and Payment for the Sale of State Property to Citizens and Legal Entities".

Thus, at the first stage of the state property reform in Belarus, the legal foundations for privatisation and denationalisation were laid, and privatisation projects were financed exclusively with money. Nevertheless, during this period around 500 enterprises were transformed.

*The second stage of the state property reform* can be defined as the period from 1994 to 2008. The beginning of this stage is associated with the enactment of the laws "Privatisation of State Property and Transformation of State Unitary Enterprises into Joint-Stock Companies" of January 19, 1993 (the version of the Law of July 16, 2010)<sup>2</sup> and "On Personal Privatisation Cheques of the Republic

<sup>1</sup> On the Programme of Economic Denationalisation and Privatisation of State Property in the Republic of Belarus for 1992: Resolution of the Council of Ministers of the Republic of Belarus, December 23, 1991. No. 486 // SPP BSSR. 1991. No. 36. Art. 447.

<sup>2</sup> On Privatisation of State Property and Transformation of State Unitary Enterprises into Open Joint-Stock Companies: Law of the Republic of Belarus, January 19, 1993 // Bulletin of the Supreme Soviet of the Republic of Belarus. 1993. No. 7. Art. 41; The National Register of Legal Acts of the Republic of Belarus. 2010. No. 184. 2/1724.

of Belarus”<sup>1</sup> of July 6, 1993. These legislative acts changed the form of financing and allowed the use of securities as payment for state property. The “Property” cheques could be used to pay up to 50% of the value of the property, and the rest was redeemed for cash.

The main principles of privatisation and transformation of state unitary enterprises into open joint-stock companies were: legality; planning and consistency; transparency, openness and wide public information on privatisation and transformation of state unitary enterprises into open joint-stock companies; equality of subjects of privatisation; compensability of privatisation objects to subjects of privatisation; observance and protection of owners’ rights; promotion of effective socially-oriented market economy development.

The most important legal act regulating the relations of denationalisation and privatisation of state property in the Republic of Belarus is the Decree of the President of the Republic of Belarus of March 20, 1998, No. 3 “On Denationalisation and Privatisation of State Property in the Republic of Belarus”<sup>2</sup>. The Decree stipulated that transformation of state-owned and leased enterprises into open joint-stock companies and buyout of leased state property by the leased enterprises shall be carried out on the basis of proposals by labour collectives, agreed with the relevant republic’s government bodies, associations subordinate to the Government of the Republic of Belarus, and regional (Minsk) city governments; with the relevant local executive and administrative bodies for communally owned facilities. It was also stipulated that the Council of Ministers of the Republic of Belarus could initiate the denationalisation and privatisation of owned enterprises by the Republic for the purpose of their financial rehabilitation if there are no proposals from the labour collectives of the enterprises, and the relevant local executive and administrative body in the case of communally owned enterprises. In the event of discord between the labour collectives of enterprises in the republic’s ownership and republic’s bodies of state administration, associations subordinated to the Government of the Republic of Belarus, and regional (Minsk) city governments on the expediency of denationalization and privatization of particular objects, decisions shall be made by the President of the Republic of Belarus for enterprises with the number of employees over four thousand persons; by the President of the Republic of Belarus for enterprises with the number of employees between two and four thousand persons; by the Ministry of State Property Management and Privatisation for enterprises

<sup>1</sup> On Personal Privatisation Cheques of the Republic of Belarus: Law of the Republic of Belarus, July 6, 1993 // Bulletin of the Supreme Soviet of the Republic of Belarus. 1993. No. 25. Art. 305.

<sup>2</sup> Collection of Decrees, Presidential Decrees and Resolutions of the Government of the Republic of Belarus. 1998. No. 9. Art. 206; National Legal Internet Portal of the Republic of Belarus. 03.09.2019. 1/ 18540.

with the number of employees up to two thousand persons. The Ministry of State Property Management and Privatization has the right to transfer on a competitive basis in accordance with the procedure to be determined by the Council of Ministers of the Republic of Belarus, shares of open joint-stock companies created in the course of denationalization and privatization of state-owned enterprises.

In addition, Presidential Decree No. 3 of March 20, 1998 stipulated that the sale of state-owned objects at tenders and auctions shall be carried out only for monetary means.

During the first five years of the second phase (1994–1999), on average about 540 enterprises were reformed per year.

However, the pace of reform during the second stage gradually began to slow down, as highly profitable enterprises had already been privatised or were not included in the programmes. Between 2000 and 2004, on average only 170 enterprises per year were reformed, and by 2005, the process of reforming state-owned enterprises was effectively abandoned. This was largely due to the fact that the shares purchased for “Property” cheques could not be realised, as the country had declared a moratorium on these securities.

*During the third stage of the state property reform* (after 2008 up to now), the processes were resumed and it was largely promoted by the Decree of the President of the Republic of Belarus of April 14, 2008, No. 7 “On Introducing Amendments to the Decree of the President of the Republic of Belarus of March 20, 1998, No. 3”<sup>1</sup>. The said decree and the resolution of the Council of Ministers of the Republic of Belarus of July 10, 2008, No. 1002 “On the Introduction of Amendments to the Resolution of the Council of Ministers of the Republic of Belarus of November 14, 2000, No. 1740”<sup>2</sup> make the privatization of state-owned facilities subject to the three-year plans approved by the Government and local councils of deputies. The shares of open joint-stock companies created in the process of denationalization and privatization were to be sold through tenders and auctions. In addition, the state gave up its pre-emptive right to purchase shares (stocks) in authorized funds of commercial organizations created in the process of privatization. Restrictions on the circulation of shares in open joint stock companies created in the process of denationalization and privatization, alienation of which was prohibited before 2008, were to be gradually abolished. The moratorium on shares purchased for “property” cheques for individuals and legal entities was abolished. Shares in open joint-stock companies that had been created in the process of privatization of state

<sup>1</sup> On introduction of amendments and additions into the Decree of the President of the Republic of Belarus of March 20, 1998 No. 3: Decree of the President of the Republic of Belarus, of April 14, 2008, No. 7 // National Register of Legal Acts of the Republic of Belarus. 2008. No. 94. 1/9625.

<sup>2</sup> National Register of Legal Acts of the Republic of Belarus. 2008. No. 172. 5/27984.

property were also started to be sold. As a result, enterprises could be financed from the stock market. In addition, participants of the privatization process now have the opportunity not only to sell, but also to donate, transfer into trust, as well as to inherit the shares of open joint stock companies. At the same time, the Belarusian Currency and Stock Exchange has become the main trading platform for transactions in shares. Overall, between 2008 and 2014, a total of 1089 state-owned enterprises were reformed, and the reform of state-owned enterprises was largely completed by 2015<sup>1</sup>.

Thus, by now, a mechanism for denationalisation and privatisation of state property has been formed in the Republic of Belarus and adapted on the basis of adopted legislative acts. Thus, the President of the Republic of Belarus determines the content of the unified state policy in the field of privatization and transformation of state unitary enterprises into open joint-stock companies. He approves the plans for privatization and plans for the transformation of the republic's unitary enterprises into open joint-stock companies; and takes the decisions on privatization and lowering of the initial sale price for privatized objects, authorizes the Council of Ministers of the Republic of Belarus or the republic's body of state administration for managing state property (*Goskomimushchestvo*) to take decisions on privatization and on lowering of the initial sale price for privatized objects. The President of the Republic of Belarus may establish other procedures, methods and conditions for privatisation than those established by the law *On Privatisation of State Property and Conversion of State Unitary Enterprises into Open Joint-Stock Companies*.

Implementation of the unified state policy in the field of privatisation and reformation of state unitary enterprises into open joint-stock companies is ensured by the Council of Ministers of the Republic of Belarus, which at the initial stages approved plans of privatisation of objects owned by the Republic of Belarus, and at present stage approved plans of transformation of republic's unitary enterprises into open joint-stock companies, and determines the procedure of auctions (tenders) for selling objects of privatisation, determines the procedure for holding tenders for transfer of shares of open joint-stock companies owned by the Republic of Belarus or an administrative and territorial unit into trust management, takes decisions on privatization of objects of privatization owned by the Republic of Belarus in accordance with the approved plans for privatization, on reducing the initial sale price of objects of privatization owned by the Republic of Belarus, etc.

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<sup>1</sup> S.S. Ryabova. *Etapy reformirovaniya gosudarstvennoy sobstvennosti v Respublike Belarus'* [Stages of state property reform in the Republic of Belarus] / S. S. Ryabova // *Scientific Papers / The Republic's Institute of Higher Education*. Minsk, 2016. Vol. 15: *Philosophical and Humanitarian Sciences*. P. 330–337.

Local Councils of Deputies of the Republic, as the main link of local self-government, ensure the implementation of a unified state policy in the field of privatisation and transformation of communal unitary enterprises into open joint-stock companies on the territory of the respective administrative-territorial unit in accordance with their competence.

The most important link in organising the privatisation of state property is the privatisation bodies. In accordance with the Law of the Republic of Belarus of January 19, 1993 (as amended by the Law of July 16, 2010) “On Privatization of State Property and Transformation of State Unitary Enterprises into Open Joint-Stock Companies”, privatization bodies are the republic’s bodies of state administration for administration of state property (Goskomimushchestvo), its territorial bodies, local executive and administrative bodies which act on behalf of the Republic of Belarus or administrative and territorial authorities in privatization and transformation of state unitary enterprises into open joint-stock companies Subject to the decision of the President of the Republic of Belarus, certain powers of the privatisation bodies may be exercised by other state bodies or organisations.

Privatisation bodies implement the unified state policy in the field of privatisation; directly carry out the process of organisation of privatisation; establish commissions for privatisation; prepare draft decisions on privatisation; make decisions on the transformation of state unitary enterprises into open joint stock companies; prepare proposals on the method and conditions of sale of objects of privatisation; act as founders of open joint stock companies established in the process of transformation of state unitary enterprises; organise auctions (tenders) for sale of privatisation objects and tenders for transfer of shares of open joint stock companies into trust management with the right to buy out a part of these shares according to the results of trust management, etc.

Planning of the transformation of state unitary enterprises into joint-stock companies was carried out on the basis of respective plans for three years as per Ruling of the Council of Ministers of the Republic of Belarus No. 348 of March 21, 2011 “On Approval of the Plan of Privatization of State-Owned Unitary Enterprises in the Ownership of the Republic of Belarus for 2011–2013 and the Plan of Transformation of Republic’s Unitary Enterprises into Joint-Stock Companies for 2011–2013”<sup>1</sup>. As regards the current privatization plans, Presidential Decree No. 8 of September 10, 2012 stipulated that state property shall be privatized without the privatization plans specified in the Law of the Republic of Belarus of January 19,

<sup>1</sup> National Register of Legal Acts of the Republic of Belarus. 2011. No. 36. 5/33513; 2011. No. 121. 5/34662.

1993 on the Privatization of State Property and the Transformation of State Unitary Enterprises into Joint-Stock Companies<sup>1</sup>.

In order to privatise an enterprise as a property complex by selling it at an auction (by tender), the privatisation body establishes special commissions for privatisation.

Sellers in respect of objects of privatisation owned by the Republic of Belarus — the republic's body of state administration for management of state property; by the administrative and territorial units — relevant local executive and administrative bodies.

The composition of the enterprise to be privatised as a property complex is determined on the basis of a balance sheet taking into account the inventory of property and liabilities of the state unitary enterprise.

As a rule, the initial selling price of an enterprise as a property complex when sold at an auction (by tender) is determined in the amount of its appraised value, which is determined on the first day of the month and is valid for 12 months from the date on which it is determined. The procedure for determining the initial selling price of shares (stakes in authorized funds) shall be established by the Council of Ministers of the Republic of Belarus in respect of shares (stakes in authorized funds) owned by the Republic of Belarus; and shall be established by relevant local Councils of Deputies in case of the administrative and territorial units.

In this case, the initial selling price of the privatisation objects may be reduced.

The President of the Republic of Belarus or a state body authorised by him shall be take decisions on privatization in respect of privatisation objects owned by the Republic of Belarus; and in accordance with the procedure determined by the relevant local Councils of Deputies in respect of administrative-territorial units.

In accordance with the Law of the Republic of Belarus of January 19, 1993 (as amended by the Law of July 16, 2010) "On Privatization of State Property and Transformation of State Unitary Enterprises into Open Joint Stock Companies" privatization is carried out by selling: shares (stakes in authorized funds) at auctions; shares (stakes in authorized funds) by tender; enterprises as property complexes at auctions; enterprises as property complexes by tender; shares of open joint stock company by results of trust management. At the same time, sale of privatization objects without holding an auction (competitive bidding) shall be carried out in the event of sale of shares of an open joint-stock company according to the results of trust management and in other cases established by the President of the Republic of Belarus.

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<sup>1</sup> National Legal Internet Portal of the Republic of Belarus. 12.09.2012. 1/13737.

Privatisation objects are sold at open auctions (tenders) for cash only, and subjects of privatisation are entitled to participate in auctions (tenders) for the sale of privatisation objects.

The sale of shares (stakes in authorised capital) and enterprises as property complexes at auction is carried out when no conditions are required of the buyer.

Sale of shares (shares in authorized funds) is carried out on a competitive bidding, when the buyer is required to meet certain conditions established in the decision on privatization (the volume, timing and direction of investments; preservation or creation of a certain number of jobs within a certain period of time; preservation for a certain period of time the profile of the business entity; preservation and financing for a certain period of time of social facilities owned by the business entity and or under a contract of gratuitous use, etc.).

Sale of enterprises as property complexes is carried out on a competitive bidding, when the buyer is required to meet certain conditions established in the decision on privatization (volume, timing and direction of investments; maintenance or creation of a certain number of jobs within a certain period of time; retraining and or further training of employees; maintenance of the range of goods produced within a certain period of time; maintenance of the activity profile of the state unitary enterprise within a certain period of time).

Sale of shares in an open joint stock company as a result of the trust management may be carried out with shares in unprofitable open joint stock companies.

Decisions on transformation of the state unitary enterprises into the open joint stock companies in accordance with the approved plans of transformation of the state unitary enterprises into the open joint stock companies are made by the republic's body of state administration for managing state property for the republic's unitary enterprises with a number of employees over 1,000 people; by territorial bodies of the republic's state administration body for state property management for republic's unitary enterprises with less than 1,000 employees; by the relevant local executive and administrative bodies for municipal unitary enterprises.

The founders of the open joint stock companies created in the process of transformation of state unitary enterprises are the privatisation bodies. In addition to the state, other founders of open joint-stock companies can be the subjects of privatisation who have made monetary or non-monetary contributions to the authorised funds of the open joint-stock companies.

Thus, in Belarus, the main way of privatisation is the transformation of republic's and communal property enterprises into open joint-stock companies: corporatisation has proved to be a priority in most of all the ways of market reform of state property.

At the same time, the planned indicators of privatization approved by the Government and local authorities were not fully implemented, and the process of privatization and corporatization significantly slowed down. Thus, according to the new



privatization program for 2011–2013 announced in 2011 for 244 state-owned enterprises, in 2011, out of 180 small and medium-sized enterprises planned for sale, only 39 enterprises were actually sold for a total amount of approximately \$ 43 million. According to the assessment of the European Bank for Reconstruction and Development, in 2011 the share of products produced by state-owned or state-controlled enterprises accounted for 70% of Belarus' GDP. This figure was almost twice as high as in Russia and other countries.

Based on this situation, in March 2012 the President of the Republic of Belarus decided that any state-owned enterprise can be privatised provided that the investor offers a higher price for the assets. The President of Belarus decided that any state-owned enterprise can be privatised provided that the investor offers a higher price for the assets and is prepared to meet economic and social requirements (including increasing production capacity and maintaining the composition of the workforce without layoffs during the first few years).

Overall, it can be stated that in 2015 the process of reforming state-owned enterprises in the country was actually completed. The positive outcome is that the process of forming a mixed economy with different forms of ownership and types of enterprises has started and continues in the country. The relationship between enterprises has become new, more dynamic and efficient: directives and instructions from the center have been replaced by independent contacts based on mutual interest and benefit; new relations between enterprises and the state budget have taken shape, as the sources of funding for enterprises have changed significantly: from non-repayable budget subsidies and grants to loans based on repayment, payment and maturity principles.

However, there are also negative aspects of denationalisation and privatisation. The results by themselves have not led to a significant economic upturn. The reforms lasted longer than planned. Denationalization and privatization did not always promote efficiency and often led to social conflicts. In addition, society was not prepared for transparent and controllable privatization, especially in the initial phase. Foreign investment has been negligible. The imperfect legal framework and insufficient control by the Government of the Republic of Belarus have in some cases led to the undesirable phenomenon of spontaneous privatisation. Individual enterprise managers and their cronies or relatives bought up or simply appropriated state assets for next to nothing. Sometimes large enterprises were split into a number of smaller ones run by people close to the management. Such cases have caused and continue to cause natural indignation among the population and have created a sense of distrust in the reforms undertaken.

As established by the Constitution of the Republic of Belarus (Article 13, part six), subsoil, waters and forests are the exclusive property of the state, while agricultural land is owned by the state. In addition, in accordance with Article 13



of the Constitution (part seven), the law may define other objects that are only owned by the state, or establish a special procedure for their transfer to private ownership, as well as enshrine the exclusive right of the state to carry out certain types of activities. Thus, the Law of the Republic of Belarus of July 15, 2010. The Law of the Republic of Belarus of July 15, 2010 “On Objects under Exclusive State Ownership and Activities Exercised by the State” defines a list of objects under exclusive state ownership only<sup>1</sup>.

The Constitution of the Republic of Belarus and the Civil Code of December 7, 1998 adopted based on its provisions provide not only for state ownership but also for private ownership. The subjects of the right of private ownership may be natural persons and non-state legal entities, which, under Article 214 of the Civil Code, may own any property, with the exception of certain types of property, which, in accordance with the law, may not be owned by them. At the same time, the number and value of property owned by citizens is not restricted, except where such restrictions are prescribed by law in the interests of national security, public order, and protection of morals, public health or the rights and freedoms of others. For legal entities, such restrictions may also be prescribed by legislative acts<sup>2</sup>.

According to the current legislation, any enterprise may be privatised in the Republic of Belarus. The legal framework for this is in place. However, it is deliberately complicated to prevent a chaotic sale of property, because this key principle remains unchanged in the country.

Recently, the concept of “spot privatisation” has come into use, in which, including with strategically important economic entities, the investor takes on additional obligations. The country has experience of such transactions. An example is the privatisation of Beltransgaz, in which the Belarusian side received the declared USD 5 billion. A substantial discount to the price of fuel, a guarantee of its supplies and transit, and increased incomes for the workforce should be added to. In addition, taxes from the company’s activities go to the budget of the Republic of Belarus, which obviates the need to maintain a strong infrastructure.

At the same time, there is a need for a “re-privatisation” mechanism, which would be triggered when the investor does not fulfil the obligations undertaken. In order to do so, the relevant documents should specify the privatisation objectives. Everything should go back to square one in cases where these goals are not met. There should be a single, comprehensive document that sets out all the conditions for privatisation, which should be known in advance to the potential investor.

<sup>1</sup> National Register of Legal Acts of the Republic of Belarus. 2010. No. 184. 2/1721; National Legal Internet Portal of the Republic of Belarus. 14.01.2016. 2/2347.

<sup>2</sup> Bulletin of the National Assembly of the Republic of Belarus. 1999. No. 7–9. Art. 101; National Legal Internet Portal of the Republic of Belarus. 27.12.2019. 2/2709.

Thus, the privatisation process in Belarus is quite fully regulated, and criteria have been approved, according to which economic entities are classified as strategically important. For such entities, a number of additional conditions accompanies the procedure of transfer into private hands.

Reforming ownership relations in the Republic of Belarus is aimed at creating a socially oriented market economy and stimulating investment activity. By taking care of the functioning of the market economy, the Republic of Belarus creates equal conditions for all economic entities, defines the rules of their economic behaviour, protects their interests, realises the opportunity for the most efficient aspects of the market mechanism and eliminates its negative consequences.

Legal methods play an extremely important role in the system of state regulation of economic and social policy. Its legal regulation provides a purposeful impact on the behavior and activity of people, and on social relations through them. The main elements of legal methods are legal norms, state regulations and acts of application of law, legal relations, and acts of rights and obligations implementation. Thus, constitutional provisions, fundamental norms of civil, land and other legislation of the Republic of Belarus create prerequisites and state-legal basis.

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