Results of Public Opinion Poll and International Practice

About the draft law of Georgia on Amendments and Supplements to the Law of Georgia on Privatization of State Property
July 2007

1.1 Focus group analysis[1]

In July 2007, Transparency International Georgia, with the financial assistance of the Swiss Agency for Development and Cooperation, held a focus group on the draft law on amendments and supplements to the Law of Georgia on Privatization of State Property in Gurjaani.

The focus group meeting in Gurjaani was attended by representatives of local self-governance, law enforcement bodies of Gurjaani, the Regional Branch of the Ministry of Economic Development, the Department of Constitutional Security, non-governmental organizations, the mass media, and other interested persons.

Participants' opinions on the draft law

The main positive aspects of the draft

Participants approved of the main objective of the draft, which is to fill the vacuum that appeared after the abolition of the law of Georgia on Local Governance and Self-governance. To date, current legislation has not regulated the issue of the privatization of state and municipal properties.

The following was also positively evaluated:

1. Innovation in the draft on forming a new common rule on privatization and management of state and municipal property;
2. Compilation of a detailed list of property to be privatized on the basis of this law;
3. Determination of property to be managed and dealt with according to other legislative acts and not this law;
4. Innovation in the draft to identify the bodies that will execute the process of privatizing state and municipal properties and to define their responsibilities;
5. Stimulation of the processes of agricultural development and privatization; development of farming, and increase of number of plants processing agricultural products; introduction and approval of new crops, and in case of renting forests, development of forestry;
6. Opportunity given by the draft to reduce prices on privatized assets through bilateral agreements.

Remarks made on the draft law

During the meetings participants also expressed their opinions about the faults of the draft. They expressed their dissatisfaction regarding the following:

[1] The focus group report represents only members' ideas. The views expressed in this report are those of the focus group participants and not those of Transparency International Georgia or the Swiss Agency for Development and Cooperation.

Idea of the draft

While discussing the general idea of the draft most participants pointed to its exclusionary feature. Participants contend that the draft prevents the local population from participating in the privatization process because the middle class does not have sufficient financial resources to be competitive. This unfair competition leads to increase migration from those areas. Participants expressed the opinion that the draft focuses on attracting foreign investments and does not protect the interests of the local population.

The role of self-government body in the process of privatization

Participants also indicated that the adoption and enforcement of the draft will hinder the formation of independent and strong self-government units because the role and functions of the Sakrebulo are diminished in the draft. Specifically, the responsibilities granted to the Sakrebulo by the Organic Law of Georgia on Local Self-governance to own and manage municipal property have been limited by the draft. Apart from that, the need for the Gamgeoba (self-governmental executive body) to be responsible to the Sakrebulo for controlling and monitoring the process of privatization was not mentioned at all.

Most participants noted that on the local level the Sakrebulo must be a party to the privatization process while the Gamgeoba must only have the function of technical support and mediator. Otherwise the formation and implementation by the Sakrebulo of a strategic program for long-term development is pointless as the Sakrebulo will not be able to create an attractive investment climate on the local level.

Participants were also dissatisfied with the fact that the draft stipulates that the Ministry of Economic Development and not the local self-government bodies will carry out the privatization of non-agricultural lands on behalf of the state. As the participants of the meeting noted the reason for such changes is the adoption of the Organic Law of Georgia on Local Self-governance. This law eliminated the bodies of local self-governance that were responsible for management of state-owned non-agricultural lands.

List of privatization enterprises

Most comments were made on the new method of defining the list of state property that is not subject to privatization. In particular, participants emphasized enterprises of strategic importance that are not on the list of protected enterprises.

Current legislation protects such enterprises as railway and water supply systems, means of communication, and energy supply from alienation. According to the draft, these enterprises have been removed from the list.

According to the participants, the sale of cemeteries, water and energy supply systems, and the railway is unacceptable. As a result of amendments proposed in the draft, the privatization of cemeteries in villages and towns will create new taxes. This will be an additional burden on the local population and many of them cannot pay these additional taxes. The participants expressed their fear that this will lead to the loss of grave plots for already deceased people if their relatives are unable to pay the taxes.

As regards the railway, participants considered the railway to be a military/strategic enterprise. They thought that the sale of the railway is impossible while developing the army.

Participants also stated that other important enterprises are not included in the draft. Participants thought that the alienation of such strategic enterprises would cause degradation of local

infrastructure and in future the owners of such enterprises will use them as tools for pressure and manipulation of the government.

Participants underscored the need to form a special commission by the initiative of the Parliament to discuss the problem and change the list of properties that are not subject to privatization according to the public opinion.

The fact that the draft's explanatory note does not contain a strong argument for the bases of the draft was stressed at the meeting.

Forms of privatization

Participants expressed their dissatisfaction with the draft's approach to the forms of privatization of state and municipal properties. Participants do not understand why such forms of privatization as competitive bidding and lease-redemption were eliminated. As it was mentioned at the meeting, the aim of competitive bidding is to offer the best conditions to the seller and participants could not understand why this form of privatization had been eliminated. Regarding the lease-redemption form of privatization, until the complete redemption of property the state retained some right to dispose this property. This form of privatization is also abolished by the draft without any reason offered.

Participants considered that the authors of the draft selected auction as the only form of privatization and gave supreme priority to the president's choice (the president decides on the matter of direct sale) for the following reasons: to give the right of decision-making to the President and to give preference to those parties that pay more during the auction. The most important factor while carrying out privatization - to create better conditions – is not one of the government's main priorities.

According to participants, apart from the fact that the president should not make the final decision on the direct sale of property, he should also not have the right to unilaterally defy the mandatory norms for potential buyers. According to the draft in case of direct sale of property on the basis of competitive bidding, an interested party must submit a bank guarantee or provide a deposit of 5% of the total price of the privatized property. According to the draft, the President has the right to ignore the imperative norm and make a decision without the above-mentioned procedures.

Participants objected to the right of the President to make exceptions for certain persons. As they noted, it is necessary to allow the Government of Georgia and Chamber of Control to conduct oversight of the process of privatization.

The role of means of communication in the process of privatization

According to the draft, for competitive bidding during the direct sale of the asset, the Government of Georgia will publish the information on the assets and conditions of privatization in media sources of international or state importance. The timeframe for the publication, as a rule, must be no less than one month prior to the established date of privatization. Participants highly appreciated this point, though they noted that the draft vaguely determines those media sources that would be involved in the process of privatization.

Participants believe that the draft should specify such requirements as minimum circulation, periodicity, and coverage area of those newspapers, TV, and radio companies that will spread information about privatized enterprises.

Suggestions received during the process of draft elaboration

Participants expressed their dissatisfaction with the fact that only representatives of governmental bodies and governmental experts were involved in the elaboration of the draft. The Government did not hold meetings with representative of local self-governance, non-governmental organizations, independent experts, or international organizations.

1.2. International Practice on State Property Privatization

Practice of Latvia, Lithuania, and Poland (a new member country of the European Union with a successful privatization model) are discussed in this review.

The process of state property privatization in Latvia is regulated by two laws: the Law on Privatization of State and Municipal Asset Units (this law was adopted by the Latvian Seym in 1994) and the Law on Completion of Privatization of State and Municipal Asset Units and Use of Privatization Voucher (this law was adopted on June 16, 2005). The latter amended the country's privatization process and regulated the issue of usage of the so-called voucher.

According to the above-mentioned legislation, the Latvian Privatization Agency, which is a joint-stock company, heads the process of privatization in Latvia. The activities of this agency are controlled by the Oversight Council, which consists of representatives nominated by the Seym factions (one member from each faction). The Ministry of Economy of Latvia also actively participates in the process of privatization. The Minister of Economy or his/her representative personally presides over meetings of the council. The Ministry of Economy also recommends to the Cabinet of Ministers a nominee for the position of Chair of the Executive Council of the Agency. Consequently, the main institutions carrying out the privatization process in Latvia are: Privatization Agency, Ministry of Economy, and Cabinet of Ministers.

On the municipal level representatives of local self-government bodies carry out the privatization process. The third point of Article 31 of the Law on Privatization of State and Municipal Asset Units gives a list of bodies that are responsible for the process of privatization: city councils, regional self-governance units, and municipalities.

According to Article 19 of the Law of Latvia on Privatization of State and Municipal Asset Units, privatization of state property that was previously in the possession of a person who sues for restitution of his/her property is prohibited.

Article 17 of the Law on Completion of Privatization of State and Municipal Asset Units and Use of Privatization Voucher is also important. This article gives a list of those state joint stock companies which are not subject to privatization according to the law. Such companies are as follows:

- The State Joint Stock Company "LatvEnergo," which is the largest state-run energy group in Latvia;
- The State Joint Stock Company "Latvian Post," which is a state-run joint stock company that manages postal communications and service;
- The State Joint Stock Company "International Airport Riga;"
- The State Joint Stock Company "Latvian Railway," which is the largest company of the country with 13,000 employees. This company is also the largest taxpayer. It consists of seven daughter companies;
- The State Joint Stock Company "Latvian Air Navigation," which administers Latvian air navigation.

As we see, Latvian legislation on Privatization of State Asset Units strictly determines the most important enterprises of the country and prohibits their alienation.

Lithuania has a much more liberal approach to the privatization process. The privatization process there began in September 1991. The process can be divided into three important stages:

During the first stage, which lasted from 1991 to 1995, mass privatization with vouchers was carried out. This method was selected as one of the most effective methods of transmitting state enterprises to private ones. The Law of Lithuania on the Initial Privatization of State Property was in force in those years.

The second stage of privatization was launched in July 1995. The Law on Privatization of State Municipal Asset Units was adopted, which regulated the issue of privatization of state and municipal properties. According to this law, the Privatization Agency and Commission on State Privatization were set up. They were in charge of administration of the privatization process. On the basis of the new law, equal conditions were established for both local and international companies' participation in the privatization of state properties. But the involvement of some ministries and the existence of some bureaucratic problems in the process of privatization limited the attraction of greater number of investments.

The third stage of privatization in Lithuania started with the Parliament of Lithuania's adoption of the Law on Privatization of State Property and State Fund in November 1997. According to this law, the Privatization Agency of Lithuania was restructured and a special State Property Fund was established. The newly-established fund is in charge of state property privatization. The same fund carries out privatization of municipal property.

The above-mentioned reform was designed to maximally simplify bureaucratic mechanisms. The new law simplified process of privatization through revision of the old system and establishing of the State Fund.

As a result of the above-mentioned reform and a fairly liberal privatization policy, in 1998-1999 Lithuania alienated LLC "Lithuanian Telecom," which was a state-run company. The new owner was a Swedish – Finnish consortium "Amber TV Holding." In the energy sphere the state-run oil refinery was also privatized. The Lithuanian government also alienated two state airline companies Lithuanian Airlines and the Lithuanian Airline Company. In 2005, LAL Investiciju Valdymas, a consortium of Lithuanian companies, purchased Lithuanian Airlines.

Consequently, according to the existing model, the following state bodies participate in the process of privatization of state enterprises of strategic importance:

1. The State Property Fund, which is the coordinator. It prepares a list of privatized state assets and manages the technical side of the alienation process;
2. The Privatization Commission, which directly leads and controls the privatization process and makes final decisions;
3. The Special State Bidding Commissions, which conduct international bids in the spheres of energy, transport, and communications. The commissions determine the criteria while elaborating privatization programs according to state policy and international practice.

The privatization policy of Lithuania, which is regulated by the Long-term Strategy of the Country's Development adopted on November 12, 2002 by the Seym of Lithuania, is worth attention. This strategy considers the privatization of the energy and transport sectors to be of primary importance.

Regarding Poland, it has much more liberal and simplified model of privatization. The alienation process of state assets here is regulated by the Code of Polish Commercial Companies and the Act on Commercialization and Privatization adopted in 1996. Privatization in Poland is carried out by the State Treasury and the process is headed by the Minister. According to the Act on Commercialization and Privatization, the chair of the Treasury, the Minister, has the legal right to transform state enterprises into joint stock or limited liability companies, or in other words has right to commercialize them. The Minister represents the State Treasury at stakeholders' meetings as the sole owner of the established companies.

Though there is no list of enterprises of strategic importance in the above-mentioned law, the state, according to the privatization programs of the State Treasury of Poland, retains control in such strategically important spheres for the country's economy as: maritime ports, airports, railway, energy distribution networks, gas and oil pipelines, and telecommunications.

Apart from that, according to the order of the Council of Ministers released on December 13, 2005, a list of state-run companies (76 in total) of strategic importance to the country's security and economy were defined. In order to have them under special control, the state has the controlling share in those companies.

Hence, the review of the practice of state property privatization in the Baltic States and Poland shows us that state policy frequently includes maximum alienation of state property in order to attract foreign investments and promote economy development. At the same time, the states retain control and management of strategically important enterprises, which are defined by the legislation.

Sources:

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