Legal and Institutional Framework of the Private Sector in Bulgaria

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I. LEGAL FRAMEWORK OF PROPERTY

When considering the property legislation framework, it is necessary to start by examining the past and present constitutional norms regulating the carrying out of economic activity in Bulgaria.

The first Bulgarian constitution - the Turnovo Constitution, was adopted in 1879. It proclaimed the country a constitutional monarchy with popular representation and introduced a number of democratic principles for the creation and development of parliamentary institutions in the country. Most significant to the development of market relations was no doubt the principle of the inviolability of private property upheld by the Constitution (Art. 67 "Property rights shall be inviolable").

Following the 1944 socialist revolution, the supreme law of the country became the first socialist Constitution of 1947. It provided the basis for turning Bulgaria into a country with one-party government - that of the Communist Party, and a centralized planned economy. Public property was accorded a central place and significance, with guarantees for its protection and development, while private property was relegated to the background and subject to considerable restrictions. The subsequently adopted laws limited private property to "personal property", which term covered real estate for personal use - i.e. housing and country houses at the most, as well as personal effects - objects of daily personal use, small-scale farm equipment, and private automobiles. The nationalization of industrial enterprises, mines and quarries carried out in 1947, and the subsequent collectivization of farm land in the 1950s, finalized the transition to a centrally planned economy, regulated by administrative acts.

The second socialist Constitution adopted in 1971 - the so-called "constitution of mature socialism" - conclusively established the leading role of the Communist Party in society and the state, i.e. the dictatorship of the proletariat. Bulgaria's economic system was defined as a socialist one, excluding the exploitation of man by man. The state controlled the national economy on the basis of unified five-year plans for social and economic development.

The forms of property were defined as state-owned (public), cooperative, property of public organizations, and personal property. Art. 15 of the Constitution defined public property as the highest form of socialist property, enjoying special protection. It covered industrial plants and factories, banks, mineral resources, natural energy sources, nuclear energy, waters, forests, pastures, roads, railway, water and air transport, posts, telegraphs, telephones, radio and television. The state exercised its property rights by creating economic organizations or state-cooperative enterprises which were to run, maintain and administer the property. Art. 29 of the Constitution included a provision whereby the state could establish by law exclusive right to engage in certain types of business activity, and the second paragraph stipulated that foreign trade was an exclusive right of the state.

The provision in Art. 19 of the Constitution defined cooperative property as owned by collectives of workers united voluntarily for the purpose of carrying out joint business

activity. The cooperatives could only own means of production in certain cases provided by law. There was more detailed provision for cooperatives in the Cooperatives Act, defining them as socioeconomic socialist organizations, and intrinsic part of the country's socialist economic organization. The fact that it was the Council of Ministers that exercised general supervision over their activity confirms the conclusion that cooperatives were not in a position to compensate for the absence of a private sector in Bulgaria and in fact constituted a disguised form of state-owned enterprises.

According to Art. 21 of the Constitution, citizens were entitled to personal ownership of real estate and personal effects to meet their own needs as well as the needs of their families. This category of personal property was also extended to cover the small-scale means of production and the agricultural output of cooperative member households and others cultivating land that had been granted for their personal use or other supporting activities. In fact, the private sector consisted in supply of services and retail by private persons on a contractual basis, or craft practice - supplying services or production of small wares for mass consumption or folk art and handicraft articles. In those cases citizens could be granted the use of workshops or small retail shops or outlets (public food-and-drink establishments, stalls, kiosks, etc.). This more or less exhausted the allowed business activities by persons other than the state-owned enterprises and cooperatives.

The now acting Constitution was adopted in 1991 and is the fundamental law for the development of a democratic society and market economy in the country. It provides the necessary legal protection and safeguards for private property and the economic rights of citizens.

Art. 17, Paragraph 3 of the Constitution asserts the principle of the inviolability of private property. The forcible expropriation of property can only be carried out on account of state and municipal needs and solely on the basis of an act of parliament provided those needs cannot be met by any other means and subject to equivalent preliminary compensation.

Another particularly important provision is that of art. 19, proclaiming free economic initiative as the fundament of the economy in Bulgaria. The principle has been established for investments and economic activities of foreign and Bulgarian citizens and legal persons to be granted protection by the law. The constitutional norms further guarantee equal legal conditions for economic activity to all citizens and legal persons, and provides for protection of consumers. The abuse of monopoly positions and unfair competition are prohibited by law.

The legal regulation of property rights issues is central to every economic system. After the Liberation those matters were provided for in Bulgaria by the Property Act. The approach of other European countries, where a single civil code regulates both property and contractual relations, was not adopted in Bulgaria.

As mentioned above, the first socialist constitution upheld the dominant role of public property. The Property Act passed in 1951, while adhering to the fundamental civil

and legal principles regulating property relations, also introduced a number of principles of a socialist character, which emphasized public property and placed personal property in a subordinate position. Public property included all trade and industrial enterprises and the mineral resources, and its administration was in fact carried out by the Council of Ministers by government decrees and regulations. And since, according to the Constitution, that type of property was not tradeable, it was not subject to the provisions of the Property Act.

The other types of property were the cooperative and personal property. According to the regulations contained in the Cooperatives Act and the standard statutes of the Collective Farms, cooperative property consisted largely of farm land and other real estate or movable property deposited as a contribution to share capital by the individual cooperative members.

Personal property was reduced to the right of each household to own one flat/house and one country house. Individual property rights and transactions involving them were regulated by the Property Act. The Citizen Property Act adopted in 1971 included additional measures of an administrative character meant to introduce further restrictions on the right of citizens to own real estate property under the proclaimed, seemingly "noble" intention of providing possibilities to meet the housing needs of all citizens. Thus, the Citizen Property Act represented a special law, and the property related norms set by the supreme law were in fact derogated.

All of these regulations substituted the freedom of contracting among legal entities for administrative measures, including even the possibility to determine the actual buyer and the selling price. In practice, there existed no genuine real estate market in the country, which meant that one of the crucial preconditions for private sector development was actually missing.

Since 1990 the legal regulation of property relations in Bulgaria has undergone rapid transformation. The hierarchy established by the socialist legislation and the subordinate position of cooperative and personal property with respect to public property was abolished with the adoption of the new Constitution. As stressed above, the constitutional provisions give equal and full protection to all types of property. The Property Act has been amended and all rudimentary socialist norms have been repealed. With the repeal of Chapter II of the Property Act the restrictions on the ownership of real estate by citizens have been lifted. This created the necessary legal framework for the regulation of property rights and provided the essential conditions for the development of a real estate market.

A critical factor for the transition to market economy and private sector development in Bulgaria is the withdrawal of state ownership over the enterprises. It is made possible by the mechanisms of restitution on the one hand, and through the process of privatization, on the other.

The setting up of joint ventures between state-owned and private enterprises first became possible with the adoption of Decree N 56 on Economic Activity and the

amendments to the 1971 Constitution which were passed in 1990. That was actually the first step in the gradual denationalization of property.

Presently the setting up of joint ventures is subject to the provisions of the Law on Commerce. However, since the state-owned enterprises are not free to dispose of their property, and the Council of Ministers exercises the rights of sole proprietor of state capital, the creation of joint ventures is also subject to the Rules and Regulations on the Manner and Procedure of Exercising State Property Rights in the Enterprises (passed in 1994 by Decree N 7 of the Council of Ministers). To a certain extent this tends to delay the process, as it is not only the state-owned enterprises, but likewise the respective state authorities - ministries and institutions - which are involved in the setting up of joint ventures with private investors.

On the other hand, with the adoption of the Law on Local Self-Government and Local Administration, the municipalities have been allowed the opportunity to dispose freely of the municipal property. Municipalities are free to form partnerships with other commercial entities and to participate in the carrying out of economic activity through municipal enterprises. In practice, this has actually placed municipal property in the market, which also played a favorable role for private sector development.

The legislation related to the restitution of property proved to be of great importance to private sector development.

In this respect, the foremost act in terms of the implications for the entire economy has been the restoration of property rights in farm land. In the time of socialism, this land, which used to be privately owned until 1950 and in the subsequent collectivization came to be part of the property of the Collective Farms, had been subject to regulations which completely destroyed private initiative and entrepreneurship. Ultimately that also brought about the ruin of agriculture in this country. With the adoption of the Law on the Ownership and Use of Farm Land, the property rights of the former owners and their heirs were restored, thus allowing them the opportunity for independent initiative concerning the use and cultivation of their land.

The Law on the Restoration of Property Rights in Nationalized Real Property was the second most significant restitution law. It is the chief law on the restitution of real property within the zoning map boundaries of built-up areas and of the nationalized private industrial, mining, and other enterprises.

The Law on Restoration of Property Rights in certain Shops, Workshops and Storehouses was the first restitution law. It encompassed relatively small-scale objects, but returning them to their owners has played an important role in encouraging private initiative and above all, for the development of the retail trade. It allowed the expansion of the retail outlet network, the setting up of the first offices of the newly created private companies, and the initial private accumulation of real estate capital.

The Law on Restoration in Property Rights in Some Expropriated Real Property under the Law on Territorial and Town Zoning, the Law on Planned Development of Built-Up Areas, the Law on Town Development, the State Property Act and the Property Act, was aimed at restoring the property rights of owners of expropriated real property.

The adoption in 1992 of the Law on the Transformation and Privatization of State-Owned and Municipal Enterprises (State Gazette 38/05.08.92) created the possibility for rapid denationalization and transfer of property to a wide circle of owners. It will limit state participation in the economy and lead to the emergence of a large number of independent commercial entities in a position to establish competition as a fundamental principle in the transition to market economy.

Industrial and intellectual property rights

In the context of socialist economy the industrial and intellectual property rights were of limited importance. The legal framework was outlined by the 1968 Law on Inventions and Innovations, which only reinforced the socialist principles and was exclusively oriented towards serving the interests of the state. Protection was given to the inventions, whose authors were granted the so-called "authorship certificates" and a minimal remuneration determined on the basis of the "economic effect" of the invention. The inadequate protection of intellectual property rights and the perfunctory financial reward inhibited creative initiative, all the more that there existed a number of restrictions on how the authors could dispose of their inventions, which were considered state property. With the adoption of the Patent Law in 1994, patents were given adequate protection and this type of property was subject to up-to-date legal regulation.

Trade marks and industrial model designs are provided for by the Law on Trade Marks and Industrial Models of 1967, which is regarded as rather important, as it also provides for the geographic names of origin - an element of unquestionable significance to a number of agricultural products and above all Bulgarian wines, which make up a considerable share of the country's exports.

II. LEGAL STATUS OF COMMERCIAL ENTITIES AND THEIR INTERRELATIONS IN THE PROCESS OF CARRYING OUT ECONOMIC ACTIVITY

After the Liberation, trade legislation included a Law on Commerce, Law on Market-Places, Law on Cooperative Partnerships, Law on Stock-Exchanges, Law on Limited Liability Companies, Commercial Shipping Law, Sea Trade Law, Pre-Bankruptcy Work-Out Agreement Law, and others. A subsidiary source of economic activity regulation were the general civil laws, most notably the Law on Obligations and Contracts. Commercial law provided the necessary legal framework of economic relations in Bulgaria, which were based on private property, equal treatment of commercial entities, and the competition under a market economy.

Following 1944, commercial law lost its significance in the context of centrally planned command economy. The nationalization of private industrial and mining enterprises in 1947 and the subsequent adoption of the new Law on Obligations and Contracts in 1951 in fact put an end to commercial law in the time of socialism.

With the repeal of the old commercial legislation, the regulation of the economic activity and relations among commodity producers was covered by civil law and above all, contractual law. A number of instruments designed to regulate commerce, such as the commission contract, shipping and forwarding contracts, the publishing contract, the insurance contract, etc., were covered by contractual law and more specifically, by the Law on Obligations and Contracts, passed in 1951. However, those instruments primarily served a single type of entities, namely the socialist economic organizations, as citizens were generally not allowed to engage in economic activities. A number of special regulations and legislative acts were also passed - Law on Contracts between Socialist Organizations, Foreign Trade Law, Ordinance on Commercial Contracts, Ordinance on Interrelations in the Investment Process, Rules and Regulations on Economic Activity, and others, which regulated the legal status of the socialist commercial entities and the relations among them.

The first attempt to break down the state monopoly on economic activity took place with the adoption of Rules and Regulations on the Collective and Personal Labor of Citizens for Additional Production of Goods and Services (Decree N 35 of 1987 of the Council of Ministers). It granted citizens the opportunity to exercise economic activity and to own means of production of a type and size required for the purposes of that activity. Citizens could own studios and workshops, shops, farming facilities, trucks, and others.

While the Rules allowed the carrying out of a wide range of activities, most of them were subject to special subsequently passed regulations. They introduced a licensing system for the exercise of those activities, as well as a number of formal administrative procedures for the granting of licenses. Foreign-trade activities, for instance, still remained an exclusive monopoly of the state. On the other hand, the forms in which citizens were allowed to carry out economic activities were limited -

citizens could engage in the production of goods and services by running small workshops and retail outlets granted for use through auctions and on the basis of contracts concluded for a term of up to 5 years; by organizing small production collectives for carrying out additional activity within socialist economic organizations or the exercise of a craft, manufacture, or retail business, and by supplying services upon registration.

One specific characteristic was the fact that the production of goods and services could only be carried out through personal or collective labor of citizens. Hiring labor force, i.e. the exploitation of another's labor, was prohibited.

In fulfillment of the basic normative act - the Rules and Regulations on the Collective and Personal Labor of Citizens for Additional Production of Goods and Services, it was followed by the adoption of a number of other acts:

Decree N 17 of the Council of Ministers of June 3, 1988, on the Reorganization of Domestic Trade and Services (State Gazette, 46/06.17.1988);
Ordinance N 6 on the Supply of Transport Services by Citizens, issued by the Ministry of Transport (State Gazette, 75/09.29.1987);
Ordinance N 3 on Holding Auctions for the Purpose of Granting Management of Small Objects, issued by he Ministry of Trade and the Ministry of Finance (State Gazette 76/10.02.1987);
Ordinance N 6 on Granting Licenses for the Exercise of a Craft, Organizing Manufactures, Trade, and Supply of Services and on Registration of Licensees, issued by the Ministry of Finance and the Ministry of Trade (State Gazette, 76/10.02.1988);
Ordinance N 7 on Architectural Designers' Services, issued by the Committee on Territorial and Built-Up Area Zoning (State Gazette, 78/10.09.1987);
Ordinance 1 on Software Design and the Supply of Programming Services through Collective and Personal Labor of Citizens, issued by the Information Technology Committee (State Gazette, 80/10.16.1987);
Ordinance N 7 on the Supply of Pedagogical Services, issued by the Ministry of Culture, Science and Education, (State Gazette, 40/05.27.1988);
Ordinance N 7 on Administrative and Legal Services, issued by the Ministry of Justice (State Gazette, 59/08.02.1988);
Ordinance N 1 on Family Run Hotel Businesses, issued by the Ministry of the Economy and Planning (State Gazette, 66/08.26.1988);
Decree N 53 of the Council of Ministers of September 15, 1987 on Establishing a Table on the Size of Fees of Persons Supplying Services
Ordinance N 7 on Determining the Fees and the Income Tax on Incomes Acquired under the Conditions of the Rules and Regulations on the Collective and Personal Labor of Citizens for Additional Production of Goods and Services, issued by the Ministry of Finance (State Gazette, 76/10.02.1987).

The next step in abolishing state monopoly on economic activity was made with the adoption of Decree N 56 on Economic Activity, which introduced the so-called company organization. The company organization of economic activity was an

attempt to restore, or reestablish rather, market economy principles in the context of centralized, planned economy.

Decree N 56 on Economic Activity prescribed the entities that individuals could form or participate in, in the exercise of their right to take part in economic life. The first text of Decree 56 allowed citizens to form only one-man or collective companies, and partnerships, with only the latter having the status of legal persons. It was not until 1990 that individuals were allowed to form or participate in limited or unlimited liability companies and joint-stock companies. At the same time, the restriction limiting participation to 2 companies at the most was still valid.

The use of "hired labor" was allowed for the first time, though the number of workers that could be employed was limited to 10.

Citizens were purportedly free to choose, register and exercise any objects of activity. However, this liberal system was immediately constrained by the condition that should there be a law, or a decree or other act of the Council of Ministers prohibiting the exercise of a particular economic activity by citizens' companies, courts would deny statement of that activity in the objects of the company upon its registration. Thus very soon, a number of government acts and regulations reestablished a restrictive system with respect to the possible objects of private companies. For instance, speculative activity was prohibited, meaning any activity involving buying of goods for the purpose of reselling them. In such cases companies could be terminated upon request by the competent state authority or the public prosecutor.

On the other hand, according to the initial text of the Rules for the Implementation of Decree N 56 on Economic Activity, citizens' companies were restricted with respect to the foreign trade activities they could engage in. The one-man and collective companies could engage in import and export through companies that were legal persons. At the same time, citizens' partnerships, which had legal person status, were prohibited from carrying out trade representation in the country and abroad, as well as from exporting goods manufactured by other companies, or importing goods other than those required for the purposes of their own activity.

Subsequently those restrictions were lifted and private companies were allowed to engage freely and independently in foreign trade activities with no permissions from state authorities required, except in the cases when the Council of Ministers set import and export quotas and conditions with respect to certain goods, or prohibited the import and export of certain goods, or established licensing with respect to certain foreign-trade transactions. The freedom of private companies to engage in foreign-trade activities was expressed in their right to negotiate and conclude contracts with foreign contracting parties, to make and receive payments, to contract for the accessory activities involved in foreign-trade transactions - freight, insurance, commissions, and others.

The rigid interpretation of speculative activity was also dropped. With respect to foreign trade, it was possible to export both the private company's own products, and goods produced by other companies. The restrictions on imports were also lifted -

private companies could import goods required for their own activity, as well as goods meant for sale in the country's retail network, for renting out, etc.

At the same time, however, private companies were still facing the problem of the established foreign exchange system. According to the provisions of Decree N 32 of the Council of Ministers of April 10, 1990, convertible currency transactions at market exchange rates were organized by the Bulgarian Foreign Trade Bank through auctions. Private one-man and collective companies and partnerships were required to sell to the Bulgarian Foreign Trade Bank 50 per cent of their foreign currency results from the export of goods and services, reexport, etc., at the current market exchange rate. The currency results were calculated after deducting the value of imported materials and packaging paid in foreign currency for the production of the exported goods, expenses for transport, insurances, commissions. The remaining sum after the sale of 50% of the foreign currency revenues was left at the disposal of the respective private company. The companies receiving income in convertible currency from international tourism sold 80% of their currency earnings to the Bulgarian Foreign Trade Bank at the market exchange rate, with the remaining 20% left at their disposal. The conditions were even more unfavorable for the companies licensed to sell imported goods and services in convertible currency or which received income in foreign currency by acting as representatives, intermediaries, or agents. They were required to sell 90% of their currency earnings to the Bulgarian Foreign Trade Bank at the market exchange rate, with barely 10% remaining at their disposal.

There existed a number of regulations and legal possibilities meant to place private companies on an equal footing with other companies. However, they were insufficient in themselves in the absence of guarantees about their application. The negative attitude and common practice of underestimating and neglecting private economic initiative in fact thwarted the emergence of truly equal business conditions.

Nevertheless, following the adoption of Decree N 56, there occurred a number of positive changes regarding the independence of commercial entities.

In accordance with the Law on Obligations and Contracts, the economic activity of companies and their interrelations were realized on a contractual basis. That was a considerable step forward compared to the former system of state commissions and obligatory planned deliveries.

The Law on Obligations and Contracts was created in 1951 and though its purpose was to regulate contracting between persons in the context of socialist planned economy, its provisions, particularly after the amendments and additions made in 1993, generally meet market economy requirements as well. The chief instruments of civil law which have been adopted and regulated by the Law constitute the basis for the development of private law relations. According to the stipulations of the Law, in their capacity of contracting parties, the commercial entities are free to determine the content of the contract at will, on the sole condition that it is not against the law. The contract has effect between the parties and with respect to third parties can only have effect in cases specified by law.

One of the most consequential legislative reforms for encouraging private sector development consisted in the adoption of the Law on Commerce.

The first two parts of the Law are devoted to the legal and organizational forms of carrying out economic activity. A definition is provided of the trader as a commercial and legal entity. The term "firm", which is quite meaningless from a legal point of view and which used to denote the commercial entity in the text of Decree N 56, has been dropped. It is now used to signify the name of the commercial entity. The various types of commercial entities have been defined - the sole trader, state-owned and municipal enterprises, as well as the commercial companies, including the general partnership, the commandite partnership, the limited liability company, the joint stock company, the company limited by shares. However, it is the Cooperatives Act that provides for the cooperatives as independent entities. The Law on Commerce also provides for trade representation.

Part three of the Law on Commerce, which is to regulate trade transactions, has still not been adopted, but as pointed out above, the relations between the commercial entities are subject to the provisions of the Law on Obligations and Contracts.

Part four of the Law on Commerce - Bankruptcy - was adopted in 1994 and regulated the legal procedure of adjudication of bankruptcy and/or insolvency.

III. TAXATION

Pirita Sorsa's presentation "Economic Challenges of Bulgaria"

Up to 1988 the legal framework of taxation was formed by numerous legislative and government acts - the Constitution of the People's Republic of Bulgaria, tax laws, acts of the Council of Ministers. In practice, however, it was also subject to continual modifications and specifications by various regulations, instructions, etc., on an administrative level. Until the end of 1988 the legal persons liable by law to pay taxes were the state-owned and municipal economic organizations and the cooperatives. Taxing of public organizations was limited, as few of them were engaged in economic activity.

The period of extremely centralized state regulation of the national economy was characterized by the use of the so-called "two-channel tax system" - turnover tax and contributions to the state budget. After the establishment of a new management system in 1965 there followed the introduction of other tax payments, with the fiscal aspect being of secondary importance, while the chief purpose was to use them as "economic levers" in orienting the activity of the enterprises towards a specific goal. Each new model of the economic mechanism changed the name, content, size and organization of these tax payments. Tax legislation was thus marked by legislative instability.

The incomes of individuals carrying out some sort of economic activity were charged according to the Income Tax Law.

As of January 1, 1989 and the introduction of the so-called "company organization", along with the major taxpayers - the state-owned and municipal companies, there appeared new entities - private companies, branches of foreign persons licensed to carry out economic activity on the territory of Bulgaria, as well as joint ventures.

The adoption of Decree N 56 on Economic Activity and the provisions for commercial companies marked a new beginning for the system of commercial entity taxation.

The conditions and organization of accounting in private one-man and collective companies, as well as the taxation of the personal incomes of their members and employees were provided for by Ordinance N 3 on the Organization of Accountancy in the One-Man and Collective Companies of Citizens, issued by the Ministry of the Economy and Planning and the Central Statistical Direction (State Gazette 50/1989).

Private partnerships organized their accounting in the manner established for legal person companies.

Despite the principle proclaimed by art. 4, par. 1 of Decree N 56 that all companies are granted equal business conditions, in practice private companies were placed on

an unequal footing in terms of taxation, moreover, at the very beginning of their economic activity.

Thus, for instance, instead of removing taxation on that part of the private company's earnings which is spent on the acquisition of built-up real estate for industrial purposes, the practice remained of charging the entire income. Typically, the chief source for purchases of real estate, constituting a fixed asset of every company, used to be the provisions for depreciation. However, that placed the newly created private companies on an unequal footing since only state-owned companies had acquired fixed assets up to then (for instance, real property - land and buildings), moreover, mostly granted to them free-of-charge by the state. On that basis state-owned companies were entitled to provide for depreciation on the total fixed asset value and use that free of tax allowance to buy new fixed assets, etc.

The newly created private companies had no fixed assets and consequently no basis to make deductions for depreciation. This led to absurd situations when a private company wished to buy real property from the income received in the end of the year and was required to pay profits tax even on the money spent for the purchase, since the state taxed the entire earnings.

Another serious problem for the development of private companies was the fixed depreciation rate of 1 per cent, determined in accordance with the Ordinance N 3 on the Organization of Accountancy in the One-Man and Collective Companies of Citizens. All allocations above that percentage were taxed, which posed another obstacle to the normal development of the business, more specifically accelerated depreciation and renovation.

According to Art. 64 and 78 of the then acting Constitution, taxation was determined by law, and not by government acts and regulations. However, Ordinance N 3 required one-man and collective companies to pay the due tax monthly, while according to art. 33, par. 1 of the Income Tax Law (in its version at the time), the tax was paid annually.

Furthermore, the newly formed companies were granted no preferential treatment - for instance, reduced taxation or tax exemption in the first few years of their existence.

All of these tax regulations placed private business in a disadvantageous position, and on the other hand prompted it to seek ways of sidestepping the law and tax evasion.

Since the adoption of the Constitution of the Republic of Bulgaria in 1991, taxation has been based on the provision of art. 60 of the Constitution, according to which citizens are liable to pay taxes and duties fixed by law according to their incomes and property, with tax concessions and discriminatory taxes being established only by law. The National Assembly determines taxation and the amount of payable taxes according to Art. 84, Paragraph 3 of the Constitution. The process of building up a tax

system in a position to meet the needs of the transition to market economy is currently under way.

Presently our tax system includes the following types of taxes, almost all of which apply to the economic activity of the private sector as well.

Direct property taxes:

Built-up Real Estate Tax.
This tax has been regulated by Art. 5-21 of the Law on Local Taxes and Tariffs. Sole traders and private companies which own buildings are liable to pay the respective taxes.

Inheritance Tax.
It has been provided for by Art. 22-32 of the Law on Local Taxes and Tariffs.

The category of direct property taxes used to include the so-called rent tax, or land tax. It was regulated by art. 87, par. 1 of Decree N 56 and used to be charged only on legal persons engaged in economic activity and having been granted the use of farm land. Farming cooperatives, sole traders, and farmers were exempted from that tax. The rent tax has been abolished as of October 1, 1993, with the repeal of the respective provisions of Decree N 56.

Direct income taxes:

Income tax.
It is imposed by the Income Tax Law. The tax is charged on all personal incomes (from contracts of employment and contracts of services, rentals, dividends to shareholders of cooperatives or companies), the incomes of sole traders, and of non-profit organizations.

The persons liable to pay income tax are:

- all Bulgarian citizens, irrespective of domicile and place of residence;
- foreign citizens, with the tax being charged only on the incomes received in Bulgaria;
- sole traders- the tax is charged on the incomes received from their business activity;
- foundations and non-profit organizations.

The incomes charged under art. 13 of the Income Tax Law include incomes from private business activity, registered under the procedure prescribed by Decree N 35 of the Council of Ministers on the Adoption of Rules and Regulations on the Collective and Personal Labor of Citizens for Additional Production of Goods and Services; the income from the business activity of sole traders, with a mandatory requirement of keeping accounts in accordance with the Accountancy Law.

Profits tax.

This tax has been regulated by art. 87 of Decree N 56 on Economic Activity. It is charged on the annual profits as the difference between total revenues and the expenses under sections I, II, and III of the Income-Outcome Statement (addendum to art. 40, par. 1, sec. 2 of the Accountancy Law). The resulting net profits are subject to restructuring under art. 73, par. 5 of the Rules for the Implementation of Decree N 56 on Economic Activity.

The profits tax is charged at a rate of 40 per cent, the banks and persons specified under art. 1, par. 4 of the Bank and Credit Activities Act pay at a rate of 50 per cent, and the State Savings Bank at a rate of 70 per cent.

The following tax concessions are presently given to private legal persons under art. 87, par. 4 of Decree N 56:

- companies pay at a rate of 30 per cent if their taxable annual earnings do not exceed BLV 1 million.
- companies reduce their taxable earnings by the amount spent and/or payments on bank loans for the acquisition or creation of tangible or intangible fixed assets in the country. The tax reduction applies upon acquisition of the following assets: commercial and industrial buildings and land, provided that a licence has been obtained for the construction of such buildings; facilities, machinery, and equipment; means of transport (excluding automobiles) for cargo and passenger transportation and supply of services; productive and draught animals.

Up to 1991, the provision of art. 90, par. 2 of Decree N 56 allowed in the case of certain manufactures and activities specified by the Council of Ministers for payments on the principal and interests on investment loans to be made from the earnings prior to charging the profits tax.

On the other hand, under the existing regulations until 1991 - art. 90, par. 4 of Decree N 56, the Council of Ministers could grant full or partial tax exemption to certain activities or territories. Thus, for instance, up to 1991, manufactures and services in built-up areas with up to 1,000 inhabitants were exempted from profits tax. Where the population was between 1,000 and 5,000 people there was a 20% reduction of the charged profits tax for activities in the trade and services sectors, according to Decision N 138 of the Council of Ministers of May 31, 1991. Decree N 97 of the Council of Ministers of May 29, 1991 exempted from profits tax manufactures and activities in specific built-up areas along our southern and western borders. Decree N 130 of the Council of Ministers exempted from taxes companies in the border zones licensed to trade in foreign currency. According to par. 6 of the Transitional and Final Provisions of the Rules for the Implementation of the Law on the Ownership and Use of Farm Land, the legal persons who are agricultural producers of vegetable and animal products are exempted from profits tax.

Currently the concessions with respect to the payment of profits tax are established in art. 20, par. 2 of the Law on Political Parties, art. 15 of the Law on the Academic Autonomy of Higher Education Institutions, art. 6 of the Foreign Aid Agency Law,

art. 12 of the Bulgarian Academy of Sciences Law, art. 26 of the Bank and Credit Activities Act.

A number of tax concessions used to be provided for foreign subsidiaries and companies with foreign participation, but have been abolished with the amendment to Decree N 56 of October 1, 1993.

One such provision, for example, was found in art. 107 of the Decree, according to which the profits of subsidiaries of foreign persons or companies with foreign participation above 49 per cent and above USD 100,000 or the equivalent in some other currency, were charged at a rate of 30%. The provisions were also abolished according to which profits from economic activity on the territory of the duty-free border zones were exempted from profits tax in the first five years, and were subsequently charged at a rate of 20 per cent. The provision of art. 112 of the Decree was equally abolished, according to which companies with foreign participation and the subsidiaries of foreign persons were exempted from profits tax for a term of five years following their registration, when their economic activity was in certain high-tech fields specified by the Council of Ministers, in agriculture, and the food-processing industry.

Tax on Pay-Roll Increase

This tax has been regulated by art. 87, par. 1 of Decree N 56. It is charged on the size of the pay-roll increase for each trimester of the current year and payable by companies with state or municipal participation over 50%.

Indirect taxes:

Turnover and Excise Tax
This tax was imposed by the Law on Turnover Tax and Excise Duties. It was charged on the sale of goods and services. Liable to pay this tax were companies, state-owned and municipal enterprises, sole traders and private persons producing or importing taxable goods and services.

With the introduction as of April 1, 1993 of the Value Added Tax Law, the Law on Turnover Tax and Excise Duties has been abolished.

Any commercial entity importing raw materials, materials, finished products, regardless of their designation - whether for sale in the domestic market or further processing - is liable to pay duty. The legal regulation is contained in the Customs Law, the Rules for the Implementation of the Customs Law and numerous government acts on the control, procedure of collecting, and the customs tariff. The frequent and numerous changes in the customs regulations is one of the reasons for the evasion or the delayed collection of payable duties.

Other contributions to the budget.

There are a number of provisions in Decree N 56 requiring companies and sole traders to make additional payments to the state, called contributions, such as:

- legal persons with state and municipal participation over 50% carrying out commercial activities as defined by art. 1 of the Law on Commerce make obligatory contributions to the municipalities amounting to 10% of their taxable profits, and to the Meliorations Fund amounting to 2%;
- employers make obligatory contributions to the Professional Training and Unemployment Fund to the amount of 7% of the accrued payroll, excluding benefits and bonuses;
- obligatory contribution to State Social Security to the amount of 35% of the accrued payroll;

In conclusion, it should be noted that the tax reform has not been carried out consistently since 1989.

At one point tax concessions did not apply to private legal persons, with the exception of foundations and cooperatives, but only concerned private persons.

On the other hand, the considerably delayed introduction of the value added tax and charging of the turnover and excise tax created a number of problems, both in terms of the prompt collection of payable taxes, and in impeding the activity of companies.

The requirement for taxation of citizens and commercial entities to be established by law has not as yet been fully met. The legal framework of taxation of commercial entities is still set by the repeatedly amended Decree N 56. There still exist a great many government regulations which in fact allows for constant tax modifications on the part of the executive power.

IV. LEGAL FRAMEWORK OF FOREIGN INVESTMENTS AND THEIR ROLE FOR PRIVATE SECTOR DEVELOPMENT

The significance of foreign investments for a country's development is incontestable. That is particularly relevant to Bulgaria, which is now in its fourth year of transition from centralized state command and predominantly state-owned property to market economy. Foreign investments not only bring capitals into the country, but managerial skills and experience and new technologies, they create jobs and outlets in new foreign markets. They also have a favorable impact on the private sector. Last but not least, the presence of foreign investments enhances the competitiveness of the national economy.

In the years of socialist planned economy, as the development of the private sector itself was inadmissible, foreign investments were denied access to the Bulgarian economy. Unless, of course, we consider the joint ventures that were being established between socialist organizations from Bulgaria and the other COMECON member countries.

It was not until the 1980s, with the adoption of Decree N 535, that there appeared opportunities to set up joint ventures with western companies. The legal framework was subsequently extended with the adoption of Decree N 56 on Economic Activity and foreign investors could establish trade representative offices, engage in independent business activities, open branches or establish joint ventures in the country. However, foreign investments were allowed access to the country by a licensing system.

That system was retained even after the adoption of the first Foreign Investment Law in 1991.

The presence of a stable foreign investment legislation framework is the first and foremost precondition for actual investments. Bulgaria has one of the most liberal and up-to-date laws in that respect. The 1992 Law on Economic Activity of Foreign Persons rectified the shortcomings and deficiencies of the existing regulations up to then. It provided for the indispensable preconditions allowing foreign persons to conduct business in the country. The international law principles adopted by the Law provide the necessary guarantees to foreign investments.

The scope of the Law is clear enough - foreign persons are defined as registered abroad legal persons and companies which are not legal persons, as well as individuals who are foreign citizens with permanent residence abroad. Foreign citizens who are permanently resident in Bulgaria are not considered foreign persons under the provisions of the Law and it is consequently the national regime that applies to them, whereas Bulgarian nationals with double citizenship are free to choose the status of Bulgarian or foreign citizens. Similarly, companies with foreign participation registered in Bulgaria are regarded as Bulgarian legal persons and are not considered foreign persons.

All familiar forms of economic activity allowed by Bulgarian legislation are likewise accessible to foreign persons. In this sense, foreign investments may be organized in the forms that the Law on Commerce provides for - sole trader, company, or partnership according to the Law on Obligations and Contracts.

Foreign person may set up and register in the country companies of which they are the sole owners. Foreign persons may form partnerships with Bulgarian legal and private persons with no restrictions on the share of foreign participation.

Foreign investments are not subject to special permits except in the cases specified by the Law (art. 5, par. 3, sec. 3). That provision abolished the former licensing regime.

Foreign persons are entitled to equal treatment under the national legislation except with respect to the ownership of land. Foreign persons may not acquire property rights in land, either through branch offices or as sole traders. As for companies with more than 50% foreign participation, they may only acquire property rights in farm land. Foreign persons may, however, own built-up real estate and acquire mere right of property in land.

In accordance with the provisions of the Constitution, the Law allows expropriation of foreign investments only on account of particularly urgent needs of the state which cannot be met in any other way. Any expropriation and compensation involving a foreign person takes place solely under order by the Minister of Finance. Furthermore, the expropriation can only be carried out after adequate compensation of the owner - in equivalent real property or money. The expropriation order may be appealed against before the Supreme Court, both with respect to its grounds, and concerning the valuation, the manner of compensation, and other elements.

Another important precondition is profit repatriation. The Law guarantees the repatriation of the incomes from the investment received in Leva, of the compensation upon expropriation of the investment object, the liquidation dividend upon termination of the investment, the price upon sale of the investment object, and the obtained sum in Leva following a writ of execution concerning receivables in foreign currency secured by a pledge or mortgage.

The Law also introduces the principle of the priority of international treaties. When an international treaty, ratified by the Republic of Bulgaria, grants more favorable conditions for the carrying out of business activities by foreign persons, the Law provides for the application of the more favorable conditions in accordance with the international treaty. That constitutes an additional safeguard of the interests of foreign investors, who are free to choose between protection by the provisions of the law or those of the international treaty.

V. LEGAL FRAMEWORK OF COMPETITION

The Law on the Protection of Competition is of great importance to the development of market economy in the country, as competition is a crucial factor of market regulation. The Law establishes a prohibition against abuse of monopoly position and unfair competition.

Such a law is all the more needed in view of the fact that in the context of centrally planned economy socialist enterprises were the only ones allowed to engage in economic activity; on the other hand, in order to reduce costs, the government created huge monopolistic organizations which played a dominant role in both industry and trade.

The Law on the Protection of Competition also appeared as a necessary precondition for guaranteeing the activity of foreign investors, since with the development of the private sector a great many newly created enterprises undertook unscrupulous actions to the detriment of the interests of foreign investors.

CONCLUSIONS

There is now a sufficiently broad legislation framework in Bulgaria for the economic activity of the private sector. Its development will above all be closely related with the privatization process, as private business still does not have the means of production concentrated in the state-owned enterprises. The possibilities for participation of private business in privatization have been provided for by the Law on the Transformation and Privatization of State-Owned and Municipal Enterprises.

A number of areas, however - taxation, the securities market, stock-exchanges, trade transactions, collaterals, land registries - are either subject to outdated, or no legislative regulation at all. Furthermore, even in the presence of modern legislation, the institutions authorized to enact it - administrative or court authorities - fail to operate efficiently. Those are the chief obstacles to the full-scale unfolding of private enterprise.

Our economic legislation still leaves a lot to be desired with respect to the private sector. An updated regulation of trade transactions would boost economic activity and would likewise contribute to a greater stability of the relations between the commercial entities. A number of laws still include provisions that tend to keep up certain contradictions between the public and the private sector. It is necessary to remove the ambiguity and lack of "transparence" in the legal framework.

Concerning the tax system, the principle should be upheld for all taxes to be established only by laws and for the provisions to be optimally clear and exhaustive, so as to avoid any conflicting interpretations in the process of their enactment. There should be internal consistency and conformity among the tax laws if they are to form a unified tax system. The legislation should be characterized by stability and continuity in order to allow taxpayers to make long-term economic development plans without facing constant uncertainty of their financial relations with the state. Tax concessions for the private sector ought to be equal for all entities - regardless of the particular legal status or the share of state or private capital.

Sofia
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