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Causes of domination of individual enterprises in relation to other legal forms of business organizations in the Republic of Kosovo

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Abstract

Business associations in each country may be established and can operate under specific legal forms. They are established by two or more natural persons and/or legal entities that agree to achieve common business objectives through contributions to society, as defined in the act of incorporation or its statutes. Individual business (sole proprietorship) is one of the simplest forms of business activity, in which the owner of the leading business simultaneously. This form of business functions without the need to establish complex business organization, and in our country the law does not consider it as the legal personality. This kind of formation from the year 2000 until now participates with highest percentage, compared with other forms of business associations in Kosovo. Although registered in this form, the strength, volume, distribution and operation of their business is not in harmony with the mission of their registration. So far there is no study what are the causes of domination of the establishments in relation to other business formations. The phenomenon no adverse, effects on the legal plan but their impact from this aspect is reflected in the fiscal economic system. This phenomenon is not likely to decrease without a synchronization of laws of companies, by systematic regulating of laws in tax system, by forcing the founders who depend on the size and economic power, to adopt the legal form of the organization.

Key words: Law, Organization, Business Association, Tax System,

1. Introduction

In each state of the modern world position of business organizations in practice depends on changes and features determined by the economic and legal system. This is reflected according to the position of organization either by the function of producer or as a basic business subject by clearly determining its role and position in the market. This function includes the right to participate and possess generated results (total incomes, profits and personal incomes), raising and using funds in order to extend social development and in relations with state bodies in the scope of their business policy integration. Based on these components their position in certain stages of social-economic system development is clearly identified. Therefore, activity and business operations are regulated by law. In this respect they are perceived as regular activities which include production of goods and provision of services, property and/or works of any person or organization, in return or compensation of any payment provided that the employee performing services for his employer, not to be considered to be conducting "business activities" unless such services are compensated under contract of employee with the employer.

An individual enterprise is a form of business organization, without being a legal person. The person being the owner of an individual enterprise, whether registered or not, has unlimited personal liability for all debts and other liabilities, incurred or imposed by law or contract related to the respective business. Full and unlimited responsibility includes property and all other types of assets and capital, owned directly or indirectly by the responsible person, regardless of the fact that the property and such capital are used for business, personal or household purposes.

2. Forms and types of business organizations in the Republic of Kosovo

The term business organization in the Republic of Kosovo is a general term, which according to the law includes legal - business forms established by applicable legislation. In this context, in our country law allows corporations respectively certain enterprises to have the legal status such as individual enterprise, collective corporation - partnership, limited partnership, corporations with limited liabilities, and joint stock companies. (*Krasniqi A., 2014*).

Actually for ordinary readers as well as for professionals, used term "Business Organization" implies that the law regulates only the business organization, while in fact it regulates functioning of "individual enterprise" as well. Therefore, not only according to our opinion, naming of the law is not comprehensive and causes uncertainty. Individual enterprises in Kosovo are more numerous compared to the total number of other business organizations, consequently it turns out to be unproductive and a knockout approach not to include this type of organizations to law naming. On the law title, the word "business " lets us understand that this legal act only applies to business organization, respectively business enterprises. Only by seeing the title dilemma is raised: since this law regulates functioning business organizations, then what law regulates functioning of non-commercial, manufacturing, service provision, construction companies, etc ,? In fact the law regulates functioning of all enterprises, such as manufacturing, trade, service provision, construction companies, etc. but without due care and uncreative approach it was concluded in one expression, a law naming, being improper. It is necessary for the naming of this Law to be changed into a more inclusive name for all enterprises, respectively business organizations, such as for individual, business, production or service organizations, etc ., . Based on practices of countries in the region we believe that change of the name of "Law on Business Organizations" into "Law on Enterprises" would be a very constructive step. It is not clear why this Albanian and meaningful word is avoided! ([Http://www.telegrafi.com/lajme/terminologji-ekonomike-26-4184.html](http://www.telegrafi.com/lajme/terminologji-ekonomike-26-4184.html)).

Under the provisions of the current law for business organizations we have exactly five certain forms of legal business organization presented in nine forms as follows: **business, respectively individual enterprise**, the owner of which has unlimited liability for all debts of organization. The organization has an official name or includes the legal owner's surname and includes abbreviation "I.B.", **General partnership** when all the partners are responsible without limitation and solidarity react for the organization's debts. Collective partnerships have a name, which may include the name of one or more partners, and putting the abbreviation "O.P." after it; **Limited partnerships**, in addition to 'unlimited' partners (partners responsible without limitation and solidarity react for the organization's debts) there participate also "limited" partners or those partners who are responsible for the obligations of the company to limit of their contribution value. A limited partnership has a name, which may include the name of one or more partners, putting after it the abbreviation " SH.K.M"; **Companies with Limited Responsibilities (SH.P.K)** are those companies that are established by one or several founders, who are responsible for all their debts and other obligations with all assets. Companies with limited responsibilities have a name and abbreviation "SH.P.K." after it. ARBK can register a limited liability company, without having to provide evidence on the payment of capital. **Joint Stock Companies (J.S.C.)** are those companies, whose capital is divided into shares and shareholders are responsible for all debts and other obligations with all its assets and property. The Company can be established by having one or several shareholders. It has a name and the abbreviation "J.S.C." after it. (*Krasniqi A., 2014*)

The Law on business organizations regulates establishment, respectively the operation of some other business companies which should have one of the two legal forms of organization described above. The said legal form is about **foreign Companies** which upon registration is considered as a branch in Kosovo that has no legal identity of a legal person. After registration it has all the rights and obligations established under the applicable law. After its name "BRANCH IN KOSOVO" is added; **Joint Companies** include a legal person and are jointly owned. These enterprises until privatized are monitored and registered by the Kosovo Privatization Agency based on Law no. 02 / L-123 on Business Organizations. **Public enterprises** are specific legal forms which carry out activities of general interest, being established by the state. Public enterprises are monitored by the government

and they are organized as joint stock companies under the applicable law on business organizations. All ownership interests in a public company will be represented by shares and these shares have to be registered; **Agricultural Cooperatives** are companies established by natural or legal persons who should be farmers and contribute with their own private property in the capital share. Farmer's Cooperative is established of at least five (5) farmers, who are the signatories of liabilities. Cooperative shall not be established without capital and shall not exist without capital. The capital is divided into shares of equal value with the minimum value of € 10. The Director cannot be a member of the cooperative. All these can be found in the Law Nr. 2003/9 on Farmer Cooperatives and the Law No. 03 / L-004 on Amending and Supplementing the Law on Farmer's Cooperatives No-2003/9. ([http://www.arbk.org/sq/Business types](http://www.arbk.org/sq/Business%20types)).

3. Meaning, registering and characteristics of individual enterprises

Entrepreneur or individual enterprise is a natural person who is registered as an individual entrepreneur who performs legal activities including art crafts and old crafts and craft works as a profession in order to profit, e.g. filigree - activity, shoemaker, potters, and works with artistic aesthetic features. The natural person who deals with free practicing of his/her profession in accordance with special provisions is considered as an entrepreneur, if it is defined as such by those rules. (Krasniqi A., 2014).

Entrepreneur of an individual Enterprise is considered the person who deals with business activities as a profession - permanently and not temporarily from time to time. Although he/she is not a legal person, the entrepreneur should own the necessary property to deal with business activities. (Krasniqi A., 2014).

Regulations do not define the minimum initial capital as a condition for the registration of of entrepreneurs in the register. Regarding liabilities, entrepreneur is responsible for his property in overall. Entrepreneurs who deal with independent business activities as a rule a number of employees are employed. Only a natural person who possesses full business capability can be an entrepreneur. In addition the rules define other special assumptions to be implemented by entrepreneurs, depending on the type of activity, such as: certain health ability, education, that it is not prohibited to deal with certain activities, not employed etc.. (Law on Business Organizations no. 02 / L-123, Article 27)

Entrepreneur is registered in business entity register, by adding the name "entrepreneur" or abbreviation "entrep." with one or more business activities. With a report of entrepreneurs, evidence of entrepreneur's identity is attached (copy of identity card or passport). If the entrepreneur does not perform operations on its own behalf, but in another name, it is obligatory to record this fact in the register. Provisions of the Law on Business Organizations, which regulate: the name, head office, activity, conditions for activity performance, representation, liquidation and age, are duly applied to entrepreneurs, if these relationships are not otherwise regulated by particular law.

4. Trend of numbers of individual enterprises in the time period 2004 - 2015

From the official data presented in the tables below, with great data accuracy it is shown that since 2004, total domination of legal formation of all companies registered in Kosovo was and continues to be the individual enterprises with a total of 93.78% in 2004 to 76.4 at the end of 2015. Even after twelve years, gradually until 2015, this percentage was decreased only to 76.4%. On the other hand it turns out that the legal formation of limited liability companies since 2004 has increased from 2.66% to 29.8% in 2015. Whereas, number of other formations in years does not present any significant increase in percentage. What turns out to be interesting is the growth trend and decrease trend of the number of individual enterprises during this period. In this respect, in 2004 up to 2008 the number of individual enterprises begins to undergo a significant decrease from 93.78% to 79.77, but this trend changed again in 2009 increasing to 89.1%, with a tendency to decrease again in 2010-2015. Changes

in the percentage decrease of individual enterprises have resulted in increasing the percentage of limited liability companies and vice versa. This indicates that the formations with the largest number in Kosovo are individual enterprises and limited liability companies. And the least legal form to be found is the limited partnerships.

Tabela nr. 1 Raporti statistikore për vit të dhënë në shifra të përgjithshme	Forma juridike e organizimit										
	Gjithsej	Biznes individual	Ortakëria e përgjithshme	Ortakëri e kufizuar	Shoqëri me përgjegjësi të kufizuara	Shoqëri aksionare	Kompani e huaj	Ndërmarrje shoqërore	Ndërmarrje publike	Kooperativa Bujqësore	Ndërmarrje tjera nën juridiksion të AKM
TM4 2015	2480	1708	14	1	739	9	8	-	-	1	-
TM4 2014	2175	1630	18	1	498	8	20	-	-	-	-
TM4 2013	1805	1350	25	-	414	2	-	2	-	2	-
TM4 2012	2261	1832	31	-	276	3	18	-	-	1	-
TM4 2011	1799	1445	32	-	305	3	13	-	-	1	-
TM4 2010	1665	1358	39	-	243	3	18	-	-	4	-
T 4 2009	74436	66345	2474	-	4899	188	386	16	12	62	34
T 2008	67950	61004	2269	19	4085	176	279	15	12	57	34
T 2007	6020	4802	274	-	836	39	56	3	-	9	1
T 2006	6933	5817	305	2	708	23	52	5	3	8	10
T 2005	10590	0394	372	-	706	27	59	2	6	24	-
T 2004	40917	38373	1288	17	2089	45	55	6	12	9	23

Source: Number of business organizations according to legal organization form from T 2004 to TM4 2015. ask.rks-gov.net/regjistri-statistikor-i-bizneseve/publikim

Tabela nr. 2 Raportet statistikore për vit të dhënë në përqindje	Forma juridike e organizimit										
	Gjithsej	Biznes individual	Ortakëria e përgjithshme	Ortakëri e kufizuar	Shoqëri me përgjegjësi të kufizuara	Shoqëri aksionare	Kompani e huaj	Ndërmarrje shoqërore	Ndërmarrje publike	Kooperativa Bujqësore	Ndërmarrje tjera nën juridiksion të AKM
TM4 2015	100 %	76.4	0.6	0.4	29.8	0.4	0.3	0.0	0.0	0.3	0.0
TM4 2014	100 %	74.9	0.8	0.0	22.9	0.4	0.9	0.0	0.0	0.0	0.0
TM4 2013	100 %	74.8	1.4	0.0	22.9	0.1	0.0	0.1	0.0	0.6	0.0
TM4 2012	100 %	81.0	1.4	0.0	16.6	0.1	0.8	0.0	0.0	0.1	0.0
TM4 2011	100 %	80.3	1.8	0.0	17.0	0.2	0.7	0.0	0.0	0.1	0.0
TM4 2010	100 %	81.6	2.3	0.0	14.6	0.2	1.1	0.0	0.0	0.2	0.0
T 4 2009	100 %	89.1	3.3	0.0	6.6	0.3	0.5	0.0	0.1	0.1	0.0
T 2008	100 %	79.77	4.55	0.00	13.89	0.65	0.93	0.15	0.05	0.00	0.02
T 2007	100 %	79.77	4.55	0.00	13.89	0.65	0.93	0.15	0.05	0.00	0.02
T 2006	100 %	83.90	4.40	0.03	10.21	0.33	0.75	0.04	0.07	0.12	0.14
T 2005	100 %	88.71	3.51	0.06	6.67	0.56	0.25	0.56	0.06	0.02	0.00
T 2004	100 %	93.78	3.15	0.04	2.66	0.01	0.04	0.03	0.11	0.06	0.13

Source: Business organizations in percentage according to legal organization form from T 2004 to TM4 2015. ask.rks-gov.net/regjistri-statistikor-i-bizneseve/publikim

5. Causes of domination of the legal form of individual enterprises in relation to other formations

The phenomenon of the legal form domination of individual enterprises in the Republic of Kosovo from 2000 to 2015 in relation to the other forms is a result of the influence of some specific factors. Referring to official data presented above, compared and commented in relation to the legislative base over the years, and interviews with officials of the Tax Administration of Kosovo, we believe that the reasons should be found as follows: legislative transition and lack of an information system for advantages and disadvantages of business formations and lack of systematic legal solutions (organic) for fiscal mitigation and financial reporting of the individual enterprise in relation to other business formations, etc. These reasons should be analyzed according to two time periods associated with the legal basis.

a) Legislative transition and lack of information system in advantage and disadvantage of business formations

In the early 2000s until the beginning of 2008 in our country there was no special mechanism that would do a reliable explanation of the key concepts of the Law on Business Organizations which regulates business activities in the country. The main objective of this mechanism should be to provide closer knowledge concerning the establishment, operation and regular and efficient dissolution of companies, as well as matters pertaining to these companies in general. This has led to losing the attention required from potential founders to commit to various types of business organizations, reasons why to chose one structure over the other, as well as other important issues that legal professionals will encounter in their practice.

In this context, the situation of the 90s of XX century should be considered, when the Kosovo was in classic occupation of Serbia and consequently under tremendous legal, political and economic pressure and stagnation of this system. After the War of 1999, under the administration of UNMIK - the country undergoes a new legal order to regulate social life in Kosovo, including those of business nature. (*UNMIK Regulation 2001/6 on Business Organizations*)

A challenge on it own was registration of business companies which was greatly differed from the previous systems. Before the last war, traditionally, business registration was done in the Municipal Courts of the country. However, after the War of 1999, this process was regulated with a regulation for the provision of temporary registration of businesses in Kosovo being transferred to a special department of UNMIK - UNMIK in Prishtina. Registration was regulated according to the provisions of Article 1.2 and was considered "temporary" (*UNMIK Regulation 2000/8*). Actually it was the time of business activities operating through unregistered business companies, business transactions taking place in simple forms, such as individual businesses or collective organizations (general partnerships) and not benefiting from the advantages offered by more sophisticated forms of organization. Business representatives did not clearly understand the new forms of organization and the majority of business activities were not developed as part of the legitimate economy; business representatives, under the influence of the previous system, were reluctant to accept changes in the legal framework and continued with old practices, etc. Under these circumstances and the legal basis of UNMIK, a priority was to change this situation through legalization i.e. formalization of business activities in any legal form, whereas it was much less important to inform the business founders about the advantages or disadvantages of the provided legal formations. Under the influence of these circumstances, normally the simplest and "safest" form of registration and operation was considered the individual business-enterprise. Individual enterprise on the level of business development at that time was identical with legal forms of the former Serbian system called "Independent, craftsmen or trade shop or enterprise". This can proved with the fact that from 2000 and onwards some of these business organization still have the company registered with abbreviations "N.P.T., D.P.Z.," etc. According to the new provisions of the Law on business organizations it was not necessary at all because the trade name, the firm does not determine its form.

With the positive developments manifested by transformations from a centrally economy to a market economy, it was necessary to change the legal basis as well in order to ensure the development of new economic concepts, which until then it was unsustainable and complex. The declaration of independence on 17 February 2008 was a new moment not only for the country but also for changes that should have been made within the legal system. This included also the segment for the regulation of companies. In order to eliminate several problems, on 17 May 2008, the Assembly approved the Law on business organizations no. 02/L-123. Current Law on Business Organizations, as amended and supplemented several times until now, has managed to provide a detailed set of rules that regulate private relationships between parties in the business community. This legal act has provided a clear procedure for registration for those who wish to conduct certain businesses in Kosovo. Subjects as business founders are offered sufficient opportunities to select the appropriate form of organization that best suits their business needs.

Despite these positive changes, even after 8 years problems with practice of doing business in the past are not sufficiently eliminated, because the business community is not familiar enough with the current law. On the other hand, despite these advances, the phenomenon of change in the percentage of individual enterprises in relation to other legal forms remains still low. It turns out that, especially after 2010, the legal framework and information system can not be considered an obstacle to remain in this level of the number of individual enterprises, irrespective of the advantages and disadvantages it contains. By researching the causes of this phenomenon, in this time period, we think they should be required to not synchronize the systematic legislation that regulates the scope of taxes, fees and financial reports which are elaborated below.

b) Legal solutions for tax mitigations and financial reporting of individual enterprise in relation to other business formations

From the above approach it is estimated that the number of individual enterprises registered in Kosovo in the period 2000-2008 was higher in percentage. This phenomenon was a result of circumstances of a social - economic and legal transition, lack of information that founders could have had advantages and a disadvantage of certain legal forms, and inadequate administration activities from UNMIK that their registration could be done and transformed in relation to their business volume, power and turnover. Meanwhile, in 2008, based on official data presented in the above tables, a gradual trend decline of percentage of individual enterprises is identified from 93.78% in 2004 to 79.74% in 2008. However, with the approval of Law for business organizations in May 2008, this trend changes and in 2009, a fast increase to 89.1% is noted.

Logically the question is raised of what are the causes of this trend and what were influential factors for the founders of companies to have such a reaction? In our opinion this situation occurred due to three factors. The first had to do with the "traditional" hesitation the potential founders have whenever a legal transformation occurs, although they are more qualitative, in order for them to establish or transform their business organizations in compliance with their economical power and volume. The second is related to strengthening of rules for financial reporting, which irrespective of the business volume, they rank individual enterprises with much less and easier liabilities, and the third one with no synchronization of law on business organizations with systemic fiscal legislation.

Lack of legislative synchronization in this important segment of social- economic life by not enforcing founders to change the legal business form due to the business turnover volume, resulted with motivating potential founders to register or to maintain the form of individual enterprise. This legal solution today enables an easier accommodation regarding financial reporting obligations unlike other legal forms. This is proved by the fact that the Law on accounting, financial reporting and auditing, does not enforce them to submit documents at Tax Administration Institution for financial records such as: balance sheet, cash flow and changes in equity - movements of capital. (*Law on accounting, financial reporting and auditing*). This formation is enforced to submit only the document, respectively income statement. (*Law for ATK and procedures*)

One of the reasons with an impact on the occurrence of this phenomenon we are dealing here are technical hindrances set by the Agency for Registration of Businesses (ABRK) in the period 2010 - 2014, which made it disabled individual enterprises to transform into various legal forms forcing them to initially liquidate and then to register as a new company in another form. These obstacles are over passed under a memorandum between ARBK and KTA.

4. Conclusions

The function of business organizations is based on the realization and fulfillment of goals and social requirements within a particular organization. Kosovo after the war of 1999 has undergone through a complex phase of legislative transformation. Initially under the administration and governing authority of UNMIK, towards liberalization of the economic system, issuance of a series of systematic laws for the establishment and organization of business organizations is considered a priority. In the context of circumstances at that time, UNMIK Regulations were halved versions adopted according to western law models for business organizations, but which actually offered a new start for establishing a legal basis on this field. However, there were great deficiencies. Those shortcomings that characterized those rules with legal force imposed the need for drafting new acts for business organizations in the country. The overall legal acts, after UNMIK administration, regulating the legal structure and business activities of business organizations in Kosovo now provide detailed and clear instructions for a company that wants to conduct business in the Republic of Kosovo.

The Law on business organizations is based on the Austrian-German model. This unique model compared with other countries in our region, was selected by law making institutions this legislatures is claiming that is compatible with most laws on commercial companies in Western Europe. According to information that we have made this action is intended to create a suitable environment for foreign investment forgetting that this legislation should first regulate business organizations in the country and then meet and synchronize other criteria. One of the inherited namely imposed problems that almost no one is pointing out is the title of the law. This is because in this way it is not only comprehensive but ultimately it causes uncertainty. At the law title, the word "business" gives you the understanding that the law applies only to business organizations i.e. business enterprises. These doubts occur just at the beginning of the title by imposing the perception that this law regulates only the functioning of business organizations and not those non-business organizations which could also be manufacturing activities, services, construction, etc .. It is imperative that the title of the law to be changed in order to be more inclusive for all enterprises regardless of whether they are individual, business, product or service organizations etc .. The most convenient and comprehensive title would be "Law on Enterprises".

One of the interesting phenomenons that characterized the development of business formations in general, from 2000 until now, is the dominance of the large number, respectively high percentage of individual enterprise in relation to other legal forms. Referring to official data provided by the Kosovo Statistics Agency, it is concluded that the number of these business organizations was from 93.78% in 2004 to 76.4 at the end of 2015. In fact, this big number does not comply to the organizational structure, volume and flow of activities of these enterprises. The causes of this percentage are divided into two time stages which have their influencing factors. In the first stage (1999-2008), known as the time of UNMIK administration was characterized by the dominance of two factors. The first had to do with the installation of the economic system on the basis of the market economy and the

second creating a completely new legislative base that would ensure the development of social - economic life. The new socio-economic and legal system differed entirely from the former systems when Kosovo has historically been very discriminatory to members of the Albanian population. The main challenge of this administration was formalization of exercising business activities, which in the early years after the war it was practices entirely outside the law. Despite the issuance of regulations with legal power, which generally had elements of Western laws, they lacked the institutional mechanisms to initially inform founders about the advantages and disadvantages of each legal form depending on the organizational level, volume and power of business turnover. On the other hand, formalization of business organizations by founders by registering individual enterprise was initially compatible with the level of their business, and secondly, a form whicha they considered similar to former individual enterprises of the previous system of so-called "N.P.T. , D.P.T., "etc ., The second stage, after the country's independence in 2008, even after completing the legislation in the business organization scope and creation of the Business Registration Agency (KBRA) until 2015, did not bring any significant change to this percentage. This period varies also with the domination of some other factors that relate to financial reporting, in which case individual companies are exempted from a range of reporting actions. In addition, an influential factor was also the barriers that were present from 2010 - 2014 with ARBK not allowing business organizations to transform from one to another legal form. It possible to do this first by ceasing or liquidating a certain business organization and then registering it in a new form. In 2014 this obstacle was eliminated and it is estimated that this trend will change in order to adapt the legal forms of business organization to the volume and level of their business turnover.

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