

Dragana Gnjatović
Univerzitet u Kragujevcu,
Fakultet za hotelijerstvo
i turizam u Vrnjačkoj Banji
dragana_gnjatovic@yahoo.com

PRIZNANJE PRAVA SVOJINE NA OBJEKTIMA REHABILITACIONIH CENTARA U BANJAMA I KLIMATSKIM MESTIMA SRBIJE SUDSKIM PUTEM

Prevod
obezbedio
autor

Ovaj rad je deo projekta br. 179066 „Unapređenje konkurentnosti javnog i privatnog sektora umrežavanjem kompetencija u procesu evropskih integracija Srbije“ koji finansira Ministarstvo prosvete, nauke i tehnološkog razvoja Republike Srbije

Rezime

U radu se analizira problem određenja titulara prava svojine na specijalnim bolnicama i zavodima za rehabilitaciju u banjskim i klimatskim mestima Srbije. Ove specijalizovane zdravstvene ustanove izgrađene su najvećim delom tokom 1970-ih i 1980-ih, sredstvima doprinosa za obavezno penzijsko i invalidsko osiguranje. Bile su u društvenom vlasništvu do 1996. godine, kada su preimenovane u državnu svojinu. U skladu sa Zakonom o privatizaciji iz 2001. godine, njih dvanaest je 2008. godine proglašeno „subjektima privatizacije“. Međutim, postupak njihove privatizacije još uvek je u fazi analize i priprema zato što je Republički fond penzijskog i invalidskog osiguranja (PIO Fond) pokrenuo sudske sporove da bi dokazao da država nije njihov vlasnik i da ih, stoga, ne može privatizovati. U radu se polazi od hipoteze da su različita stanovišta o titularu prava svojine na banjskim rehabilitacionim centrima posledica kako specifičnosti društveno-svojinskih ovlašćenja koja su postojala u vreme njihove izgradnje tako i nedorečenosti relevantnih privredno-sistemskih propisa kojima je tokom proteklih decenija ekonomske tranzicije bila regulisana materija vlasničke transformacije društvene, a zatim i državne u privatnu svojinu. Cilj rada je da ukaže na značaj izvora finansiranja investicija kao kriterijuma na osnovu kojeg se sudskim putem danas utvrđuje pravo svojine PIO Fonda na nepokretnostima banjskih rehabilitacionih centara.

Ključne reči: pravo svojine, izvori investicija, društveni investicioni fondovi, PIO Fond, banjski RH centri, privatizacija, Srbija

JURIDICAL RECOGNITION OF PROPERTY RIGHTS OVER THE FACILITIES OF REHABILITATION CENTERS IN THE SPA AND CLIMATIC SITES OF SERBIA

Dragana Gnjatović
University of Kragujevac,
School for Hotel Management
and Tourism in Vrnjacka Banja
dragana_gnjatovic@yahoo.com

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the author

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Summary

The paper analyzes the problem of determining the title holder of property rights over specialized hospitals and rehabilitation centers in the spa and climatic sites of Serbia. These healthcare institutions were built mostly in the 1970s and 1980s, by means of contributions for compulsory pension and disability insurance. They were socially owned until 1996, when they were renamed state property. In accordance with the 2001 Law on Privatization, twelve of them were declared "privatization entities" in 2008. However, the process of their privatization is still in the phase of analysis and preparation because the Pension and Disability Insurance Fund of the Republic of Serbia (PIO Fund) has initiated litigation to prove that the State is not their owner and therefore cannot privatize them. The paper starts from the hypothesis that different views about the title holder of the property rights over the spa rehabilitation centers are due to the specificity of the social-property powers that existed at the time of the construction of these centers, as well as due to the ambiguities of relevant economic-system regulations concerning the transformation of the social property, and then the state property into private property during the decades of economic transition. The aim of the paper is to highlight the significance of the source of investment financing as a criterion based on which the right of ownership of the PIO Fund over the facilities of spa rehabilitation centers is being established by the court today.

Keywords: property rights, sources of investment financing, social investment funds, PIO Fund, spa rehabilitation centers, privatization, Serbia

Uvod

U Republici Srbiji nalaze se brojna banjska područja koja obiluju raznovrsnim prirodnim lekovitim činiocima i zdravom, blagotvornom klimom. Bogatstvo termalnih i mineralnih voda omogućilo je da se razvije više specifičnih balneološko-rehabilitacionih banjskih područja. Značajan deo ovih područja je dobro opremljen za sve vrste balneoterapije [Strategija upravljanja vodama na teritoriji Republike Srbije do 2034. godine, Službeni glasnik Republike Srbije, br. 3, 2017].

Banjsko područje definisano je Zakonom o banjama [Službeni glasnik Republike Srbije br. 80/1992, 67/1993]. Prema ovom zakonu, „banja je područje na kome postoji i koristi se jedan ili više prirodnih lekovitih faktora, i koje ispunjava uslove u pogledu uređenosti i opremljenosti za njihovo korišćenje“. Ovi uslovi su ispunjeni „ako na odgovarajućem području postoji organizovana zdravstvena služba, objekti i uređaji za korišćenje prirodnog faktora, objekti za smeštaj i boravak posetilaca i odgovarajući komunalni objekti“. Na teritoriji Republike Srbije, danas se nalazi 30 banjskih područja koja su, na osnovu Zakona o banjama, stekla status banjskih ili klimatskih mesta [Uredba o uslovima i načinu privlačenja direktnih investicija, Službeni glasnik Republike Srbije, br. 37/2018].

U većini banjskih područja Srbije izgrađene su, i funkcionišu kao organizovana zdravstvena služba, zdravstvene ustanove koje su prema Zakonu o zdravstvenoj zaštiti definisane kao specijalne bolnice i zavodi za rehabilitaciju, poznate kao rehabilitacioni (RH) centri [Službeni glasnik Republike Srbije, br. 106/2015]. U okviru zdravstvenog sistema Srbije, danas aktivno funkcionišu RH centri u 19 od 30 banjskih odnosno klimatskih mesta. Ove zdravstvene ustanove raspolažu fondom od 3.420 postelja za rehabilitaciju.¹ RH centri, kao specijalizovani modaliteti zdravstvenih ustanova, naročito su razvijani tokom 1970-ih i 1980-ih, u periodu intenzivne izgradnje objekata namenjenih produženom lečenju

i rehabilitaciji strogo određenih kategorija bolesnika [Republička komisija za fizikalnu medicinu i rehabilitaciju i balneoklimatologiju, 2007]. Oni su odigrali ključnu ulogu u ukupnom razvoju banjskih područja Srbije u kojima su locirani. Upravo zahvaljujući ovim specijalizovanim ustanovama za rehabilitaciju, koje su osposobljene da pruže kompleksan fizio-rehabilitacioni tretman, banje su tokom vremena postale nosioci zdravstvenog turizma [Milićević, 2015].

Specifičnosti finansiranja izgradnje RH centara

Izgradnja banjskih RH centara bila je realizovana u okviru ekonomskog sistema zanovanog na nevlasničkom konceptu društveno-svojinskih odnosa. Ovaj koncept je proistekao iz načela Ustava FNRJ iz 1953, odnosno SFRJ iz 1963. i 1974, prema kojem niko nije imao pravo svojine, već samo pravo korišćenja društvenih sredstava nad kojima nisu postojala klasična, u ekonomskom smislu uobičajena ovlašćenja. Društvena svojina je obuhvatala sva sredstva za proizvodnju, proizvode i zaradu u društvenom sektoru, prirodna bogatstva i objekte u opštoj upotrebi. Titular prava društvene svojine nije mogao da bude ni pojedinac ni grupa građana ni preduzeće niti država. U tom smislu, i specijalizovane zdravstvene ustanove izgrađene tokom 1970-ih i 1980-ih u banjskim područjima bile su u društvenoj svojini.

Društveno-ekonomski sistem FNRJ, odnosno SFRJ bio je tako koncipiran da je država (na saveznom, republičkom i lokalnom nivou) politikom centralizovanog prikupljanja sredstava i planske alokacije investicija uticala na tokove privrednog i socijalnog razvoja. Na taj način je jedan jasno određeni deo društvene svojine bio stvoren sredstvima za investicije koja su prikupljana prinudnim putem, a ne posredstvom tržišnog mehanizma. Instrumenti centralizovanog prikupljanja sredstava i planske alokacije kapitalnih investicija bili su državni budžet i društveni investicioni fondovi. Način

1 Pored onih koje su locirane u banjskim odnosno klimatskim mestima, na spisku specijalnih bolnica za rehabilitaciju Ministarstva zdravlja Republike Srbije nalazi se i Institut za rehabilitaciju, Beograd koji raspolaže sa 380 postelja za rehabilitaciju [Uredba o planu mreže zdravstvenih ustanova, Službeni glasnik Republike Srbije br. 13/2018].

Introduction

In the Republic of Serbia there are numerous spa areas abundant with diverse natural healing factors and a healthy, beneficial climate. The richness of thermal and mineral waters has enabled the development of specific balneology and rehabilitation spa areas. A significant number of these areas are well equipped for all types of balneotherapy [Water Management Strategy on the Territory of the Republic of Serbia until 2034, Official Gazette of the Republic of Serbia, no. 3/2017].

A spa area is defined by the Law on Spas [Official Gazette of the Republic of Serbia no. 80/1992, 67/1993]. According to this law, "a spa is an area in which one or more natural healing factors exist and are in use, and which meets the requirements for the regulation and equipment for their use". These conditions are met "if there are the organized healthcare services, facilities and devices for the use of the natural healing factors, facilities for accommodation and stay of the visitors, and the appropriate communal facilities". On the territory of the Republic of Serbia, today there are 30 spa areas that have, according to the Law on Spas, acquired the status of spa or climatic sites [Regulation on the Conditions and Methods of Attracting Direct Investments, Official Gazette of the Republic of Serbia, no. 37/2018].

Defined by the Law on Healthcare as specialized hospitals and rehabilitation centers (Official Gazette of the Republic of Serbia, no. 106/2015), such healthcare institutions have been built and have been functioning as an organized healthcare service in most of the spa areas in Serbia. Within the healthcare system of Serbia, such centers actively function in 19 out of 30 spa and climatic sites. They are equipped with 3,420 beds for rehabilitation.¹ These specialized modalities of healthcare institutions were especially developed in the 1970s and 1980s, during the period of intensive construction of facilities intended for the prolonged treatment and rehabilitation

of the strictly defined categories of patients [Commission for Physical Medicine and Rehabilitation and Balneoclimatology of the Republic of Serbia, 2007]. They played a key role in the overall development of the areas in which they are located. Thanks to these specialized rehabilitation institutions, which are capable of providing a complex physiotherapeutic treatment, the spas have become the bearers of the health tourism over time [Milićević, 2015].

Specific Features of Financing the Construction of Rehabilitation Centers

The construction of spa rehabilitation centers was realized within the economic system based on the non-proprietary concept of social property. This concept was derived from the principles of the FPRY Constitution of 1953 and the SFRY Constitution of 1963 and 1974, according to which no one had the right to own property, but only the right to use social assets over which there were no powers typical in economic terms. Social property encompassed all means of production, products and income generated in the social sector, as well as the natural resources and facilities in general use. The title holder of the social property rights could not be an individual or a group of citizens, a company or the State. In this sense, the specialized rehabilitation healthcare institutions built during the 1970s and 1980s in the spa areas were also socially owned.

The socio-economic system of the FPRY, i.e. the SFRY, was so conceived that the State (at the federal level, the level of federal units and local communities) influenced the directions of economic and social development through centralized fundraising and planned investment allocation. In this way, a clearly defined part of the social property was created by means of investments that were collected in a compulsory way, not through the market mechanism. The instruments of centralized fundraising and planned allocation of capital

1 On the list of specialized hospitals and rehabilitation centers of the Ministry of Health of the Republic of Serbia, in addition to those located in spa or climatic sites, there is also the Institute for Rehabilitation, Belgrade, which is equipped with 380 beds for rehabilitation [Regulation on the Plan of the Health Institutions Network, Official Gazette of the Republic of Serbia, no. 13/2018].

prikupljanja sredstava doprinosa za penzijsko i invalidsko osiguranje i investiranja viškova ovih sredstava u izgradnju banjskih lečilišta odgovarao je načinu na koji su u to vreme funkcionisali društveni investicioni fondovi.

Društveni investicioni fondovi postojali su na svim nivoima vlasti: Opšti investicioni fond na nivou savezne države i republički, sreski i opštinski investicioni fondovi na odgovarajućim nivoima. Prikupljanje sredstava u društvene investicione fondove imalo je karakter prinude. Prihodi Opšteg investicionog fonda bili su: kamata na poslovni fond samoupravnih privrednih preduzeća, deo rudničkog doprinosa i deo doprinosa iz dohotka. Preostali delovi ovih doprinosa bili su prihodi republičkih, sreskih i opštinskih društvenih investicionih fondova.

U periodu 1952-1964, kapitalne investicije bile su pretežno finansirane posredstvom društvenih investicionih fondova, a neposredno iz budžeta bio je finansiran samo njihov manji deo. Kapital društvenih investicionih fondova bio je plasiran pod daleko povoljnijim uslovima od komercijalnih, kao bespovratni transfer, dakle, bez obaveze vraćanja [Gnjatović, 1994]. Od ukupnih sredstava kojima su raspolagali ovi fondovi u pomenutom periodu, sredstva Opšteg investicionog fonda činila su 71%, sredstva republičkih fondova 17%, a sredstva lokalnih investicionih fondova 12% [Bjelogrić, 1973]. Pri tome, iz Opšteg investicionog fonda finansirane su prvenstveno privredne investicije, a iz republičkih, sreskih i opštinskih društvenih investicionih fondova uglavnom neprivredne i neproizvodne investicije. Neprivrednim i neproizvodnim investicijama bila su obuhvaćena sva kapitalna ulaganja u tzv. vanprivredne delatnosti. Naime, u ekonomskom sistemu samoupravnog socijalizma, zasnovanom na materijalnom

principu proizvodnje, postojala je jasna podela na privredne i neprivredne delatnosti, pri čemu se smatralo da samo privredne delatnosti doprinose stvaranju nacionalnog dohotka. Zdravstvena i socijalna zaštita spadale su u vanprivredne delatnosti, tako da su i ulaganja u izgradnju, rekonstrukciju i adaptaciju zdravstvenih ustanova bila tretirana kao neprivredne investicije.²

Počev od 1965. godine, investicije su finansirane manjim delom iz budžetskih sredstava i društvenih investicionih fondova, a većim delom iz sredstava privrede i stanovništva, posredstvom bankarskog sistema, na kredit.³ Iako se tokom 1970-ih razvija poslovno bankarstvo, i dalje je najvažnije investicione odluke u zemlji donosila država. Razlika je bila samo u tome što se proces odlučivanja u oblasti investicija sve više prenosio sa federacije na republike i opštine. Pri tome, banke nisu samostalno odlučivale, na osnovu kriterija rentabilnosti, koje će projekte finansirati. Prioritete u finansiranju odabirali su republički i lokalni organi vlasti [Gnjatović, 2007].

Objekti specijalnih bolnica i zavoda za rehabilitaciju, građeni tokom 1970-ih i 1980-ih, pripadali su objektima u društvenoj svojini koji su bili realizovani na način na koji su bile realizovane investicije republičkih društvenih investicionih fondova. Izgrađeni su bespovratnim sredstvima, prikupljenim na nivou Republike Srbije prinudnim putem, a ne posredstvom tržišnog mehanizma. Izvori sredstava za investiranje bili su viškovi doprinosa za obavezno penzijsko i invalidsko osiguranje zaposlenih u Srbiji, a njihova namena je bila planski definisana odlukama republičkih ustanova - pravnih prethodnika PIO Fonda.

Pravni prethodnici PIO Fonda bile su: Republička zajednica socijalnog osiguranja

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- 2 Kao privredne, bile su utvrđene sledeće delatnosti: Industrija i rudarstvo; Poljoprivreda i ribarstvo; Šumarstvo; Vodoprivreda; Građevinarstvo; Saobraćaj i veze; Trgovina; Ugostiteljstvo i turizam; Zanatstvo i lične usluge; Stambeno-komunalne delatnosti i uređenje naselja i prostora; Finansijske, tehničke i poslovne usluge. Neprivredne delatnosti bile su kategorizovane kao: Istraživačko-razvojne usluge; Advokatske usluge; Obrazovanje, nauka, kultura i informacije; Zdravstvena i socijalna zaštita; Društveno-političke zajednice, samoupravne interesne zajednice i društveno-političke organizacije. Odluka o utvrđivanju privrednih i vanprivrednih delatnosti [Službeni list SFRJ, br. 14/1977 i 18/1980].
- 3 Uporedo sa gašenjem društvenih investicionih fondova, počeo je da funkcioniše Fond Federacije za kreditiranje bržrg razvoja privredno nedovoljno razvijenih republika i pokrajina. Prikupljanje sredstava i u ovaj Fond imalo je karakter prinude. Prihod Fonda poticao je od obaveznog izdvajanja dela dohotka samoupravnih preduzeća iz svih delova zemlje. Posle donošenja Zakona o udruženom radu 1976, Fond je ostvarivao prihode posredstvom obaveznog udruživanja sredstava. Bio je to obavezan zajam Fondu, koji su, u određenim proporcijama od svog dohotka, izdvajala privredna preduzeća [Čolanović, Šefer, 1991].

investments were the central government budget and social investment funds. The method of collecting funds for contributions for pension and disability insurance and investing surpluses from these funds in the construction of spa healthcare resorts was in line with the manner in which social investment funds operated at that time.

Social investment funds existed at all levels of government: the General Investment Fund at the federal state level, the Federal Unit Investment Funds and Municipal Investment Funds at the levels of federal units and local communities, respectively. Collecting money for social investment funds was of compulsory character. The revenues of the General Investment Fund were: interest on the assets of self-managed economic enterprises, part of the mine tax and part of the business income tax. The remaining parts of these taxes were the revenues of social investment funds at the level of federal units and local communities.

In the period from 1952 to 1964, capital investments were mainly financed through social investment funds, and only a small part was financed directly from the central government budget. The money collected in social investment funds was placed under far more favorable conditions than commercial ones, as a non-refundable transfer, therefore, without the obligation of repayment [Gnjatović, 1994]. Of the total sum of money collected in these funds in the aforementioned period, 71% was the revenue of the General Investment Fund, 17% was the revenue of federal units' investment funds and 12% was the revenue of municipal investment funds [Bjelogrlić, 1973]. In addition, the assets of the General Investment Fund were primarily used to finance productive investments, and the federal units' investment

funds and municipal investment funds were mostly used to finance non-industrial and non-productive investments. Non-industrial and non-productive investments included all capital investments in the so-called non-productive activities. Namely, in the economic system of self-managed socialism, based on the material principle of production, there was a clear division into productive and non-productive activities, whereby only productive activities were considered to contribute to the creation of national income. Healthcare and social protection were considered to be non-productive activities, so investments in the construction, reconstruction and adaptation of healthcare institutions were treated as non-productive investments.²

Beginning with 1965, capital investments were to a lesser extent financed from the central government budget and social investment funds, and to a larger extent from business and personal deposits, through the banking system, on credit.³ Although the commercial banking system was already developed in the 1970s, the most important investment decisions were still being made by the State. The only difference was that the decision-making process in the field of investment was increasingly transferred from the Federation to the federal units and municipalities. In doing so, the banks did not decide independently, on the basis of the profitability criteria, which projects should be financed. The priorities in financing were selected by the authorities of the federal units and local communities [Gnjatović, 2007].

The investments in facilities of specialized hospitals and rehabilitation centers, built during the 1970s and 1980s, were realized in the manner of socially-owned capital investments from the federal units' investment funds. These facilities

2 The following activities were identified as productive ones: Industry and Mining; Agriculture and Fishing; Forestry; Water Management; Construction; Transport and Communications; Trade; Catering and Tourism; Craft and Personal Services; Housing and Communal Activities; Financial, Technical and Business Services. Non-productive activities were: Research and Development Services; Solicitor Services; Education, Science, Culture and Information; Healthcare and Social Protection; Socio-Political Associations, Self-Managing Associations and Socio-Political Organizations. [Decision on Determining Productive and Non-Productive Activities, Official Gazette of the SFRY, no. 14/1977 and 18/1980].

3 Along with the disappearance of social investment funds, the Federation Fund for Crediting to the Faster Development of Economically Underdeveloped Republics and Provinces has been operational. Fundraising in this Fund was also characterized with the coercion. The Fund's income arose from compulsory allocation of a part of the income of self-management companies from all parts of the country. After the adoption of the Law on the Associated Labor in 1976, the Fund realized revenues through compulsory pooled funds. It was a mandatory loan to the Fund, which had been provided by enterprises in certain proportion of their income [Čolanović, Šefer, 1991].

(1965-1972), Republička zajednica penzijskog i invalidskog osiguranja (1972-1977) i Republička samoupravna interesna zajednica penzijskog i invalidskog osiguranja radnika (1977-1993). Zatim su, na osnovu Zakona o penzijskom i invalidskom osiguranju [Službeni glasnik Republike Srbije br. 27/1992], od Republičke samoupravne interesne zajednice penzijskog i invalidskog osiguranja radnika nastali 1993. godine, kao posebna pravna lica: Republički fond za penzijsko i invalidsko osiguranje zaposlenih, Republički fond za penzijsko i invalidsko osiguranje samostalnih delatnosti i Republički fond za penzijsko i invalidsko osiguranje zemljoradnika. Konačno, u okviru reforme obaveznog osiguranja, 2003. godine usvojen je novi Zakon o penzijskom i invalidskom osiguranju [Službeni glasnik Republike Srbije br. 34/2003], a njegovim izmenama i dopunama iz 2006. godine [Službeni glasnik Republike Srbije br. 63/2006], počev od 1. januara 2008. godine prestala su da postoje tri republička fonda za penzijsko i invalidsko osiguranje, a njihove funkcije su objedinjene u Republički fond za penzijsko i invalidsko osiguranje (PIO Fond).

Članovima 70. i 71. Zakona o penzijskom i invalidskom osiguranju iz 1972. godine [Službeni glasnik Republike Srbije br. 51/1972], Republička zajednica penzijskog i invalidskog osiguranja bila je obavezna da kontinuirano unapređuje zaštitu osiguranika i u tom smislu ovlašćena da odlučuje o investiranju viškova sredstava doprinosa, na osnovu prethodno utvrđenih planova i programa koje je usvajala Skupština zajednice. Mogućnosti za planiranje izgradnje, rekonstrukcije i adaptacije zdravstvenih centara za rehabilitaciju osiguranika bile su stvorene zahvaljujući većem prilivu sredstava doprinosa od odliva ovih sredstava za alimentiranje penzija. U uslovima ubrzane industrijalizacije, broj zaposlenih je konstantno rastao. U Republici Srbiji, broj zaposlenih na 1000 stanovnika povećao se od 1952. do 1989. godine sa 87 na 264 [Savezni zavod za statistiku, 1986, 1990]. Primenom pay-as-you-go (PAYG) sistema, sredstva prikupljena doprinosima za obavezno penzijsko i invalidsko osiguranje prevazilazila su potrebe vezane za finansiranje penzija. Tokom 1970-ih i u prvoj polovini 1980-ih, viškovi sredstava doprinosa

iznad potreba finansiranja penzija bili su rezultat relativno povoljnog koeficijenta zavisnosti koji pokazuje odnos broja zaposlenih koji su uplaćivali doprinose za obavezno penzijsko i invalidsko osiguranje i broja penzionera čije su penzije bile finansirane ovim sredstvima. Početkom 1970-ih, odnos broja zaposlenih i broja penzionera bio je 3,5: 1. Ovaj odnos će se održati do sredine 1980-ih, da bi zatim došlo do njegovog postepenog pogoršanja, tako da je ovaj odnos početkom 1990-ih iznosio 2,5: 1 [Petraković, 2007]. Počev od 1990-ih, sredstva doprinosa za penzijsko i invalidsko osiguranje više neće biti dovoljna za finansiranje penzija, tako da će se one, kontinuirano, delimično finansirati iz državnog budžeta.

Tokom 1970-ih i 1980-ih, viškovima doprinosa za obavezno penzijsko i invalidsko osiguranje finansirana je izgradnja objekata specijalnih bolnica i zavoda za rehabilitaciju, kliničkih centara, domova zdravlja, gerontoloških ustanova, specijalnih škola za invalidnu decu, vodovodnih i kanalizacionih objekata, zaštitinih radionica za zapošljavanje invalidnih lica. Radi se o kapitalnim investicijama čija se vrednost, preračunata u cene iz 2011. godine, procenjuje na više milijardi evra. Pri tome, vrednost kapitalnih investicija u izgradnju objekata specijalnih bolnica i zavoda za rehabilitaciju procenjuje se na oko 500 miliona evra [Radna grupa za restrukturiranje PIO Fonda, 2012].

Republičke ustanove - pravni prethodnici PIO Fonda namenski su investirale viškove sredstava doprinosa u izgradnju objekata rehabilitacionih centara, u skladu sa programima unapređenja materijalnih uslova za prevenciju, rehabilitaciju i invalidsku zaštitu osiguranika. Izgradnja objekata RH centara pripadala je kategoriji vanprivrednih investicija koje su bile u ingerenciji institucija na republičkom nivou. U tom smislu, moguće je zaključiti da su, u domenu finansiranja kapitalnih investicija u banjskim područjima, republičke ustanove - pravni prethodnici PIO Fonda funkcionisale kao svojevrsni republički društveni fondovi vanprivrednih investicija posebne namene.

Pored realizovanih kapitalnih investicija, u banjskim i klimatskim mestima danas se nalaze i određeni nedovršeni i zapušteni objekti zato

were financed with non-refundable monetary assets collected at the level of the Republic of Serbia through compulsory fundraising, not through the market mechanism. The sources of these investments were the surpluses generated from the contributions for compulsory pension and disability insurance of employees in Serbia. Their purpose was planned and defined by the decisions of the institutions of the Republic of Serbia that were the legal predecessors of the PIO Fund.

The predecessors of the PIO Fund in the Republic of Serbia were: the Social Security Association (1965-1972), the Pension and Disability Insurance Association (1972-1977) and the Self-Management Association of the Workers' Pension and Disability Insurance (1977-1993). On the basis of the Law on Pension and Disability Insurance [Official Gazette of the Republic of Serbia no. 27/1992], in 1993, three legal entities emerged from the Self-Management Association of the Workers' Pension and Disability Insurance, i.e. the Pension and Disability Insurance Fund of Employees, the Pension and Disability Insurance Fund of the Self-Employed and the Pension and Disability Insurance Fund of Farmers. Finally, within the framework of the compulsory insurance reform, in 2003, the new Law on Pension and Disability Insurance was adopted [Official Gazette of the Republic of Serbia no. 34/2003], and with its Amendments from 2006 [Official Gazette of the Republic of Serbia no. 63/2006], as of 1 January 2008, three separate funds for pension and disability insurance ceased to exist, their functions having been integrated into the Pension and Disability Insurance Fund of the Republic of Serbia (PIO Fund).

In accordance with Articles 70 and 71 of the Law on Pension and Disability Insurance of 1972 [Official Gazette of the Republic of Serbia no. 51/1972], the Pension and Disability Insurance Association was obliged to continuously improve the protection of the insured and in that sense empowered to decide on investing surplus funds of the contributions, based on the previously established plans and programs adopted by the Association's Assembly. The possibilities for planning the construction, reconstruction and adaptation of healthcare centers for the rehabilitation of insured persons were created thanks to the inflow of funds for

the alimony of pensions being higher than its outflow. In the conditions of accelerated industrialization, the number of employees was growing steadily. In the Republic of Serbia, from 1952 to 1989, the number of employees per 1000 inhabitants increased from 87 to 264 [Federal Statistical Office, 1986, 1990]. Owing to the application of the pay-as-you-go (PAYG) system, the funds raised by the contributions for compulsory pension and disability insurance exceeded the needs related to the financing of pensions. During the 1970s and the first half of the 1980s, the surplus contributions exceeding the needs of pension funding were the result of a relatively favorable coefficient of dependency, showing the ratio of the number of employees who paid contributions for compulsory pension and disability insurance and the number of pensioners whose pensions were financed by these funds. At the beginning of the 1970s, the ratio of the number of employees and the number of pensioners was 3.5: 1. This ratio endured until the mid-1980s, with a gradual deterioration, standing at 2.5: 1 in the early 1990's [Petraković, 2007]. Starting from the 1990s, the pension and disability insurance contributions were no longer enough to finance the pensions, so they had to be partly financed from the central government budget.

During the 1970s and 1980s, the construction of facilities of specialized hospitals and rehabilitation centers, medical centers, gerontology institutions, specialized schools for the disabled children, water supply and sewerage facilities and protective workshops for the employment of the disabled persons were financed by the surpluses of the contributions for compulsory pension and disability insurance. In sum, the value of these capital investments, converted into 2011 prices, has been estimated at several billion EUR. Specifically, the value of capital investments in the construction of facilities of specialized hospitals and rehabilitation centers in the spa areas has been estimated at around EUR 500 million [Working Group for the Pension Fund Restructuring, 2012].

The institutions of the Republic of Serbia - the legal predecessors of the PIO Fund have invested the surpluses of the contributions for compulsory insurance in the construction of rehabilitation centers, in accordance with the

što je, krajem 1980-ih, Republička samoupravna interesna zajednica penzijskog i invalidskog osiguranja bila prinuđena da zaustavi finansiranje njihove izgradnje. Finasiranje ovih objekata je bilo zaustavljeno *Zakonom o privremenoj zabrani raspolaganja društvenim sredstvima za neprivedne i neproizvodne investicije* u drugom polugodištu 1986. godine i u 1987. godini [Službeni list SFRJ br. 034/1986]. Na taj način je bila prekinuta realizacija programa stvaranja materijalne osnove za prevenciju invalidnosti i rehabilitaciju radnika. Ovaj zakon je bio donet u sklopu mera smanjivanja javne potrošnje kao uslova za prevazilaženje tada teško narušene makroekonomske stabilnosti u zemlji [Gnjatović, 2007].

Problem definisanja oblika svojine na RH centrima u procesu vlasničke transformacije

Proces vlasničke transformacije u Republici Srbiji traje već tri decenije i još uvek nije dovršen. Kao što je to bio slučaj i u drugim ekonomijama u tranziciji, praćen je mnogim nedoumicama i lutanjima institucionalnog karaktera [Sukharev, 2015]. Ovaj proces je započeo u periodu 1988-1990, na osnovu saveznog Zakona o preduzećima [Službeni list SFRJ, br. 77/1988, 40/1989, 46/1990, 61/1990] i saveznog Zakona o društvenom kapitalu [Službeni list SFRJ, br. 84/1989, 46/1990]. Zakonom o preduzećima, bila je otvorena mogućnost osnivanja preduzeća u društvenoj, zadružnoj, privatnoj, mešovitoj i državnoj svojini. Svi ovi oblici svojine bili su zajamčeni članom 56. Ustava Repulike Srbije [Službeni glasnik Republike Srbije, br. 1/1990].

Savezni zakon o društvenom kapitalu bio je u primeni do sredine 1991, kada je bila onemogućena njegova dalja operacionalizacija usled državno -političke krize. Proces transformacije društvene svojine bio je tada nastavljen na osnovu republičkog Zakona o uslovima i postupku pretvaranja društvene svojine u druge oblike svojine [Službeni glasnik Republike Srbije, br. 48/1991, 48/1994, 51/1994]. Ovim zakonom, Republika Srbija se opredelila za dalju koegzistenciju društvene sa ostalim oblicima svojine. Privatizacija društvene svojine primarno se zasnivala na modelu delimične privatizacije izdavanjem

internih deonica radi dokapitalizacije i prodaje preduzeća zaposlenima. O delimičnoj privatizaciji odlučivali su autonomno zaposleni u preduzećima.

Zakonom o sredstvima u svojini Republike Srbije [Službeni glasnik Republike Srbije, br. 53/1995, 54/1996, 32/1997], konstituiše se državna svojina „nad prirodnim bogatstvima, dobrima u opštoj upotrebi, sredstvima državnih organa i organizacija i organa teritorijalnih jedinica, kao i nad sredstvima javnih preduzeća i ustanova čiji je osnivač Republika ili teritorijalne jedinice, osim nad sredstvima koja *koriste* organizacije obaveznog socijalnog osiguranja.“ Moguće je zaključiti da je, upotrebljavajući ovakvu formulaciju, zakonodavac iz obuhvata državne imovine izričito izostavio imovinu koju je koristio PIO Fond i potvrdio da ona ostaje u društvenoj svojini.

Nakon donošenja Zakona o sredstvima u svojini Republike Srbije 1995. godine, sve ustanove zdravstvenog sistema bile su preimenovane iz društvenog u državno vlasništvo, tako što je Republika Srbija na njima uknjižila pravo svojine u javnim knjigama. Među ovim ustanovama našli su se i rehabilitacioni centri locirani u banjanskim i klimatskim mestima, bez obzira na to što su pomenutim zakonom iz obuhvata državne svojine bila izostavljena sredstva koja su koristile organizacije obaveznog socijalnog osiguranja.

Privatizacija društvene svojine, koja se zasnivala na emitovanju internih deonica, *de facto* je bila izvršena besplatno. U uslovima visoke inflacije tokom 1992. i hiperinflacije 1993, kupci deonica su bili stimulisani da isplate dug u celini pre njegove obavezne revalorizacije koja je zakonom bila predviđena na kraju svake kalendarske godine. Na taj način, bila je ostvarena velika dužnička dobit na strani kupaca deonica, a preduzeća prodavana u bescenje. Zbog toga je izvršena revizija svih privatizacija, retroaktivno, od 1. januara 1990. godine.

Da bi se obnovio i ubrzao proces privatizacije, tokom 1997. godine usvojen je Zakon o svojinskoj transformaciji [Službeni list SRJ, br. 29/1997]. Na osnovu ovog zakona, omogućena je privatizacija pravnih subjekata kako u društvenoj tako i u državnoj svojini. Uspešna preduzeća u društvenoj ili mešovitoj

programs for improving the material conditions for prevention, rehabilitation and disability protection of the insured. The construction of rehabilitation centers belonged to the category of non-productive investments that were under the jurisdiction of the institutions at the federal units' level. In this regard, it can be concluded that in the domain of financing capital investments in the spa areas, the institutions of the Republic of Serbia - the legal predecessors of the PIO Fund functioned as a kind of federal social funds of non-productive investments for special purposes.

In addition to the realized capital investments, there are some unfinished and abandoned facilities at the spa and climatic sites today because, in the late 1980s, the Republic Self-Management Association of Pension and Disability Insurance was forced to stop funding their construction. The financing of these facilities was stopped by the Law on Temporary Prohibition of Disposal of Social Assets for Non-Industrial and Non-Productive Investments in the Second Half of 1986 and in 1987 [Official Gazette of SFRY no. 034/1986]. Thereby, the realization of the program of creating a material basis for the prevention of disability and rehabilitation of workers was interrupted. This law was adopted as a measure of reducing public spending as the condition for overcoming the seriously disturbed macroeconomic stability in the country at the time [Gnjatović, 2007].

The Problem of Defining the Form of Property of the Rehabilitation Centers in the Ownership Transformation Process

The process of ownership transformation in the Republic of Serbia lasts for three decades and has not yet been completed. As was the case in other transition economies, it has been accompanied by many dilemmas and ambiguities of institutional character [Sukharev, 2015]. This process started in the period from 1988 to 1990, based on the federal Law on Enterprises [Official Gazette of SFRY, no. 77/1988, 40/1989, 46/1990, 61/1990] and the Federal Law on Social Capital [Official Gazette of SFRY, no. 84/1989, 46/1990]. The Law on

Enterprises gave the possibility of establishing a company in the social, cooperative, private, mixed and state ownership. All these forms of ownership were guaranteed by Article 56 of the Constitution of the Republic of Serbia [Official Gazette of the Republic of Serbia, no. 1, 1990].

The Federal Law on Social Capital was in force until mid-1991, when its further enforcement was interrupted by the political crisis. The process of social ownership transformation in the Republic of Serbia was then continued on the basis of the Law on the Conditions and Procedure for Transforming Social Ownership into Other Forms of Ownership [Official Gazette of the Republic of Serbia, no. 48/1991, 48/1994, 51/1994]. By this law, the Republic of Serbia opted for further coexistence of social ownership with other forms of ownership. The privatization of social ownership was primarily based on the partial privatization model by means of issuing internal shares for recapitalization and selling companies to the employees. Those employed in the enterprises were the ones who decided autonomously on the partial privatization.

The Law on Assets in the Property of the Republic of Serbia [Official Gazette of the Republic of Serbia, no. 53/1995, 54/1996, 32/1997], constitutes state ownership "over natural resources, goods in general use, means of state authorities and organizations and authorities of territorial units, as well as funds of public enterprises and institutions founded by the State or territorial units, except for funds used by the organizations of compulsory social security." It can be concluded that, using this formulation, the legislator explicitly exempted the assets used by the Pension Fund from the scope of the state property and confirmed that those assets remain to be socially owned.

After the adoption of the 1995 Law on Assets in the Property of the Republic of Serbia, all institutions of the healthcare system were renamed from social to state property, and the Republic of Serbia registered ownership over them in the public books. These institutions also included rehabilitation centers located in spa and climatic sites, despite the fact that the aforementioned law left out the funds used by compulsory social security organizations from the scope of the state property.

(društvenoj i privatnoj) svojini odlučivala su autonomno o eventualnoj privatizaciji neprivatizovanog dela kapitala, dok se privatizacija tzv. velikih društvenih preduzeća odvijala prema posebnom programu Vlade Republike Srbije [Đuričin, 1997]. Odluku o privatizaciji javnih preduzeća i ustanova koje su već bile podržavljene na osnovu Zakona o sredstvima u svojini Republike Srbije iz 1995. godine, donosila je Vlada Republike Srbije kao njihov vlasnik.

Privatizacija, koja se pretežno odvijala po modelu podele besplatnih akcija zaposlenima i prodaji akcija po povlašćenoj ceni prvenstveno zaposlenima a zatim i širem krugu zainteresovanih građana, dala je relativno skromne rezultate. Interesovanje za ovaj model privatizacije je bilo kratkotrajno zato što se širio jaz između zvaničnog kursa dinara koji je primenjivan u vrednovanju akcija i realnog deviznog kursa [Drašković, 2010; I. Vujačić, J. P. Vujačić, 2011].

U nameri da se ubrza vlasnička transformacija, usvojen je 2001. godine Zakon o privatizaciji [Službeni glasnik Republike Srbije, br. 38/2001] kojim je bila propisana privatizacija kapitala u društvenoj i državnoj svojini. Ovim zakonom, u privredni sistem Republike Srbije uveden je pojam "subjekata privatizacije". Tim pojmom bila su obuhvaćena sva preduzeća u društvenoj i mešovitoj (društvenoj i privatnoj) svojini kao i ona preduzeća i ustanove u državnom vlasništvu za koje bi bila doneta odluka da budu privatizovane. Bilo je predviđeno da se proces privatizacije završi u roku od četiri godine. Utemeljen na filozofiji da su privatna preduzeća po definiciji efikasnija od društvenih i državnih, ovaj zakon je u privredni sistem Republike Srbije uveo princip obaveznosti privatizacije društvenih preduzeća [Drašković, 2010]. Sva društvena preduzeća postala su „subjekti privatizacije“ iako je na snazi još uvek bio Ustav iz 1990. godine koji je jamčio društvenu svojinu. Tek Ustavom iz 2006. godine [Službeni glasnik Republike Srbije, br. 98/2006] društvena svojina je u formalno-pravnom smislu bila ukinuta. Naime, član 86. Ustava Republike Srbije iz 2006. godine ne prepoznaje društvenu svojinu, već samo privatnu, zadružnu i javnu svojinu. Pojmom javne svojine su obuhvaćena prava

svojine države (Republike Srbije), prava svojine autonomne pokrajine i prava svojine jedinica lokalne samouprave [Član 86. Ustava Republike Srbije, 2006]. Društvena svojina se u ovom članu Ustava pominje utoliko što se nalaže njeno pretvaranje u privatnu svojinu „pod uslovima, na način i u rokovima predviđenim zakonom.“

Proces vlasničke transformacije nije završen u prvobitno predviđenom roku od četiri godine, a sam Zakon o privatizaciji iz 2001. godine bio je u primeni do 2014. godine. Doživeo je mnogobrojne izmene i dopune [Službeni glasnik Republike Srbije, br. 18/2003, 45/2005, 123/2007, 30/2010, 93/2012, 119/2012 i 51/2014]. Ovim zakonom, bilo je ukinuto radničko deoničarstvo, a vlasnička transformacija „subjekata privatizacije“ se bazirala na prodaji preduzeća u društvenoj i državnoj svojini posredstvom javnog tendera ili javne licitacije. Javni tender, kao metod prodaje društvenog i državnog kapitala odnosno imovine prikupljanjem najpovoljnije ponude, primenjivan je kod većih, strateški važnih preduzeća, sa većim brojem zaposlenih radnika, gde je od posebnog značaja bila socijalna komponenta. Javnu aukciju, kao metod privatizacije preduzeća javnim nadmetanjem kupaca u skladu sa unapred utvrđenim uslovima prodaje, sprovodila je Agencija za privatizaciju. Agencija za privatizaciju je odobravalala program privatizacije, pripremala aukciju, objavljivala javni poziv za učešće na aukciji i imenovala Komisiju za aukciju. Kupci su mogli biti domaća i strana pravna i fizička lica, uključujući i zaposlene ili grupe zaposlenih u preduzeću koje se privatizuje. Kupac preduzeća postajao bi onaj koji bi prvi ponudio najvišu cenu. Upravo ovakav model privatizacije trebalo je da bude primenjen na dvanaest banjskih RH centara kada su odlukom Vlade Republike Srbije 2008. godine postali „subjekti privatizacije“.

U vreme važenja Zakona o privatizaciji iz 2001. godine, usvojen je i Zakon o javnoj svojini [Službeni glasnik Republike Srbije, br. 72/2011], sa kojim je prestalo važenje Zakona o sredstvima u svojini Republike Srbije iz 1995. godine. U skladu sa Ustavom Republike Srbije iz 2006. godine, Zakonom o javnoj svojini iz 2011. godine uvedena su tri oblika javne svojine: državna (Republike Srbije), pokrajinska i opštinska

The privatization of the social property, which was based on the issuing of internal shares, was *de facto* conducted free of charge. In conditions of high inflation in 1992 and hyperinflation in 1993, shareholders were stimulated to pay off the total debt before its obligatory revaluation, which was legally prescribed at the end of each calendar year. Thereby, large gains were made on the part of the buyers of the shares, while the enterprises were sold for nothing. Therefore, the revision of all privatizations was carried out, retroactively, since 1 January 1990.

In order to restore and accelerate the privatization process, the Law on Ownership Transformation was adopted in 1997 [Official Gazette of FRY, no. 29/1997]. This law enabled the privatization of legal entities in both social and state ownership. Successful enterprises in social or mixed (social and private) ownership decided autonomously on the possible privatization of non-privatized capital, while the privatization of the so-called large social enterprises took place according to the special program of the Government of the Republic of Serbia [Đuričin, 1997]. The decisions on the potential privatization of public companies and institutions that were already nationalized on the basis of the 1995 Law on Assets in the Property of the Republic of Serbia were made by the Government of the Republic of Serbia as their owner.

The privatization, mostly conducted according to the model of distributing the shares to the employees and selling them at a preferential price primarily to the employees and then to a wider circle of interested citizens, yielded relatively modest results. The interest in this privatization model was short-lived due to the increasing gap between the official exchange rate of the dinar that was applied in the valuation of shares and the real exchange rate [Dražković, 2010; I. Vujačić, J.P. Vujačić, 2011].

With the intention to accelerate the ownership transformation, the Law on Privatization was adopted in 2001 [Official Gazette of the Republic of Serbia, no. 38/2001], which prescribed the privatization of socially owned and state owned capital. This law introduced the term "privatization entities" into the economic system of the Republic of Serbia. This concept covered all companies in the social and mixed

(social and private) ownership, as well as those state-owned enterprises and institutions that would undergo privatization according to the relevant decision. The privatization process was planned to be completed within four years. Based on the philosophy that the privately-owned enterprises by definition are more effective than the socially-owned and state-owned ones, this law introduced the principle of mandatory privatization of socially-owned enterprises into the economic system of the Republic of Serbia [Dražković, 2010]. All socially-owned enterprises became "privatization entities", although the 1990 Constitution, which guaranteed the existence of social property, was still in force. It was not until the Constitution of 2006 [Official Gazette of the Republic of Serbia, no. 98/2006] that social ownership was abolished in the formal and legal sense. Namely, Article 86 of the 2006 Constitution of the Republic of Serbia does not recognize social property, but only private, cooperative and public property. The concept of public property includes the ownership rights of the State (the Republic of Serbia), the ownership rights of autonomous province and the ownership rights of local communities [Article 86 of the Constitution of the Republic of Serbia, 2006]. Social property is mentioned in this article of the Constitution insofar as its transformation into private property is required "under the conditions, in the manner and within the deadlines stipulated by the law".

The ownership transformation process was not completed in the originally anticipated four-year period, and the 2001 Law on Privatization was in force until 2014. Meanwhile, this law underwent numerous amendments [Official Gazette of the Republic of Serbia 18/2003, 45/2005, 123/2007, 30/2010, 93/2012, 119/2012, 51/2014]. By this law, the insider employee privatization was abolished, and the ownership transformation of the "privatization entities" was based on the sale of socially-owned and state-owned enterprises through a public tender or public bidding. The public tender, as a method of selling socially-owned and state-owned capital or assets by collecting the most favorable bid, was applied in larger, strategically important enterprises, with a larger number of employees, where the social

odnosno gradska. Članom 3. Zakona definisano je da se „javnom svojinom ne smatraju stvari organizacija obaveznog socijalnog osiguranja“. Dakle, i ovim zakonom, kao i Zakonom o sredstvima u svojini Republike Srbije iz 1995. godine, imovina PIO Fonda bila je izuzeta iz obuhvata državne imovine. Razlika je postojala samo u domenu definisanja ovlašćenja titulara prava svojine. Naime, za razliku od rešenja u Zakonu o sredstvima u svojini Republike Srbije iz 1995. godine, gde se govori o organizacijama obaveznog socijalnog osiguranja kao o *korisnicima* sredstava koja ne ulaze u obuhvat državne svojine, Zakonom o javnoj svojini iz 2011. godine organizacije obaveznog socijalnog osiguranja se tretiraju kao *vlasnici* sredstava koja ne ulaze u obuhvat državne svojine. Jer, u članu 3. Zakona o javnoj svojini, ne pominje se više pravo korišćenja koje je bilo osnovno ovlašćenje u režimu društvene svojine već se kaže da se javnom svojinom ne smatraju *stvari organizacija obaveznog socijalnog osiguranja*. Tako je PIO Fondu posredno bilo prvi put zakonom priznato pravo titulara svojine.

Kontroverze oko privatizacije banjskih RH centara

Nakon usvajanja Zakona o sredstvima u svojini Republike Srbije 1995. godine, banjski RH centri su nastavili da funkcionišu kao deo mreže zdravstvenih ustanova, samo ne više u društvenoj već u državnoj svojini. Do 2006. godine, kada su se u sredstvima javnog informisanja pojavile najave o tome da se priprema masovna privatizacija specijalnih bolnica i zavoda za rehabilitaciju, podržavanje ovih specijalizovanih zdravstvenih ustanova nije bilo osporavano.

O masovnoj privatizaciji rehabilitacionih centara u banjama i klimatskim mestima Srbije počelo je da se govori u sklopu realizacije mera racionalizacije zdravstva koje se tokom 1990-ih i 2000-ih suočilo sa problemom nedostatka finansijskih sredstava. U vremenu od 1990. do 2000. godine, posteljni fond u rehabilitacionim centrima koje priznaje da finansira Ministarstvo zdravlja bio je redukovano sa 7000 na 4000, da bi 2006. godine, realizacijom Uredbe o planu mreže zdravstvenih ustanova [Službeni glasnik Republike Srbije, br. 046, 2006] ovaj fond bio

sveden na 3500 postelja. Komisija za fizikalnu medicinu i rehabilitaciju i balneoklimatologiju Ministarstva zdravlja je tada upozorila da bi svaka dalja redukcija postelnog fonda finansiranog iz Fonda zdravstva Srbije "ugrozila prava svih grupa ljudi sa invaliditetom na principima punog učešća, jednakosti u mogućnosti pristupa rehabilitaciji onih kojima je potrebna" [Komisija za fizikalnu medicinu i rehabilitaciju i balneoklimatologiju, 2007].

Tokom realizacije pomenute Uredbe, iz Ministarstva zdravlja usledilo je objašnjenje da će problem viška kapaciteta u banjskim rehabilitacionim centrima biti prevaziđen sprovođenjem postupka privatizacije ovih ustanova [Dnevni list „Politika“, 15.12.2007]. O tome kako sprovesti postupak privatizacije, stručno mišljenje tada je dala Republička komisija za fizikalnu medicinu i rehabilitaciju i balneoklimatologiju, u dokumentu pod nazivom *Prilog državnoj strategiji privatizacije zdravstvenih ustanova u oblasti fizikalne medicine i rehabilitacije* [2007]. U ovom dokumentu je, između ostalog, istaknuto da je neophodno da banjska lečilišta sačuvaju svoju osnovnu funkciju rehabilitacionih centara, da je moguća privatizacija samo onih banjskih lečilišta koja nisu specijalizovana za rehabilitaciju i lečenje teških bolesnika i da „država mora usloviti kupca državnim strategijom privatizacije zdravstvenih ustanova u oblasti fizikalne medicine i rehabilitacije“. Međutim, ovakva državna strategija nije bila sačinjena, tako da se o strateškim opredeljenjima vezanim za ciljeve i pravce privatizacije banjskih rehabilitacionih centara moglo saznati samo iz sporadičnih izjava Agencije za privatizaciju. Jedna od takvih izjava bila je na tragu mišljenja Republičke komisije za fizikalnu medicinu i rehabilitaciju i balneoklimatologiju, jer je rečeno da "centri u kojima se leče teški bolesnici neće biti nuđeni na prodaju" [Dnevni list "Glas javnosti", 26.9.2007].

Suprotstavljajući se mišljenju da problem viška kapaciteta u banjskim rehabilitacionim centrima treba rešavati kroz postupke privatizacije, PIO Fond je pokrenuo 29 sudskih sporova radi dokazivanja da su banjski rehabilitacioni centri svojina Fonda, odnosno da nisu u državnom vlasništvu pa ih zato Republika Srbija ne može privatizovati. Prvi sudski sporovi su bili pokrenuti 2007. godine, odmah nakon što

component was of particular importance. Public auction, as a method of privatization in accordance with the pre-determined conditions of sale, was carried out by the Privatization Agency. The Privatization Agency approved the privatization program, prepared the auction, announced a public invitation to participate in the auction and appointed an auction commission. Buyers could be domestic and foreign, legal entities or natural persons, including employees or groups of employees in the privatized enterprise. The buyer of the enterprise was the one who first offered the highest price. It is this kind of a privatization model that was supposed to be applied to the twelve spa rehabilitation centers when, in 2008, the Government of the Republic of Serbia proclaimed them "privatization entities".

While the 2001 Law on Privatization was in force, the Law on Public Property was adopted [Official Gazette of the Republic of Serbia, no. 72/2011], superseding the 1995 Law on Assets in the Property of the Republic of Serbia. In accordance with the 2006 Constitution of the Republic of Serbia, the 2011 Law on Public Property introduced three forms of public property: the property of the State (the Republic of Serbia), the property of autonomous provinces and the property of local communities. Article 3 of this Law defines that "the organization of compulsory social security is not considered a public property". Thus, this law, as well as the 1995 Law on Assets in the Property of the Republic of Serbia, exempted the assets of the Pension Fund from the scope of the state property. The difference existed only in the domain of defining the title holder.

Namely, unlike the stipulation of the 1995 Law on Assets in the Property of the Republic of Serbia, which referred to the organizations of compulsory social insurance *as the users* of funds that were not included in the coverage of the state property, the 2011 Law on Public Property treated the organizations of compulsory social insurance *as the owners* of the estate that was exempted from the coverage of the state property. This because Article 3 of the 2011 Law on Public Property no longer contains the reference to the right of usage which was the basic power in the regime of social property, but it says instead that *the assets of the organizations*

of compulsory social security are not considered public property. Thus, the power of the PIO Fund as the title holder was for the first time indirectly recognized by the law.

Controversies Concerning the Privatization of the Spa Rehabilitation Centers

After the adoption of the 1995 Law on Assets in the Property of the Republic of Serbia, the spa rehabilitation centers continued to operate within the network of medical healthcare institutions, not any more as socially-owned but as state-owned property. Until 2006, when the media information on the preparations for mass privatization of the spa centers appeared, the transition of these specialized healthcare institutions to state ownership was not questioned.

The mass privatization of rehabilitation centers in spa and climatic sites of Serbia began to be addressed as part of the implementation of healthcare rationalization measures. During the 1990s and the 2000s, the healthcare was faced with the lack of financial resources. In the period from 1990 to 2000, the number of beds in rehabilitation centers admittedly financed by the Ministry of Health was reduced from 7,000 to 4,000, while in 2006, after the implementation of the Decree on the Plan of the Healthcare Institutions Network [Official Gazette of the Republic of Serbia, no. 046, 2006] this number was reduced to 3,500 beds. The Commission for Physical Medicine and Rehabilitation and Balneoclimatology of the Ministry of Health then warned that any further reduction of the number of beds financed by the Health Fund of Serbia "would endanger the rights of all groups of people with disabilities on the principles of full participation, equality in access to rehabilitation of those who need it" [Commission for Physical Medicine and Rehabilitation and Balneoclimatology, 2007].

During the implementation of the said regulation, the Ministry of Health gave the explanation that the problem of excess capacity in spa rehabilitation centers would be overcome by implementing the privatization of these institutions [Daily newspaper "Politika", December 15, 2007]. On how to conduct the

je Ministarstvo zdravlja putem sredstava javnog informisanja iniciralo privatizaciju.

Ministarstvo ekonomije i regionalnog razvoja, tada zaduženo za privatizaciju, je 16. januara 2008. godine uputilo Vladi Republike Srbije predlog privatizacije dvanaest rehabilitacionih centara (Tabela 1). Ovaj predlog je Vlada prihvatila 21. februara 2008. godine [Službeni glasnik Republike Srbije br. 022/2008].

Tabela 1 Specijalne bolnice i zavodi za rehabilitaciju, proglašeni „subjektima privatizacije“ 2008. godine

Specijalne bolnice i zavodi za rehabilitaciju	Banjsko ili klimatsko mesto
„Gejzir“	Sijerinska Banja
„Sokobanja“	Soko Banja
„Zlatibor“	Čajetina
„Vranjska Banja“	Vranjska Banja
„Niška Banja“	Niška Banja
„Ribarska Banja“	Ribarska Banja
„Banja Koviljača“	Banja Koviljača
„Bujanovac“	Bujanovačka Banja
„Termal“	Banja Vrdnik
„Žubor“	Kuršumlijska Banja
„Merkur“	Vrnjačka Banja
„Zlatar“	Nova Varoš

Izvor: Službeni glasnik Republike Srbije, br. 022/2008.

Da bi se obustavili sudski sporovi, Vlada Republike Srbije je, zatim, inicirala vansudsko rešenje. Vlada je preporučila Ministarstvu za ekonomiju i regionalni razvoj da pre pokretanja postupka privatizacije, sa PIO Fondom sporazumno uredi pitanje prava svojine na nepokretnostima dvanaest banjskih RH centara, proglašanih „subjektima privatizacije“ [Radna grupa za restrukturiranje PIO Fonda, 2012]. Do sporazuma, međutim, nije došlo. Od tada, ovi RH centri su poslovali, sa različitim uspešnošću, u uslovima imovinsko-pravne nesigurnosti zbog neizvesnosti o tome da li će i kada biti sproveden postupak njihove privatizacije.

Prvenstveno u nameri da se stvore uslovi za ekonomski razvoj i očuva socijalna stabilnost kroz otvaranje novih ili očuvanje postojećih radnih mesta, 2014. godine je usvojen novi Zakon o privatizaciji [Službeni glasnik Republike Srbije, br. 83/2014, 46/2015, 112/2015 i 20/2016]. Članom 36 (s2) ovog zakona, ukinuta je Agencija za privatizaciju, a njene poslove je od 1.2.2016. godine preuzela Agencija za

vođenje sporova u postupku privatizacije. Dakle, Agencija za privatizaciju je aktivno funkcionisala do 31.1.2016. godine.

Zakon o privatizaciji iz 2014. godine omogućio je domaćim i stranim investitorima i strateškim partnerima da učestvuju u privatizaciji preostalog društvenog i javnog kapitala i imovine „subjekata privatizacije“. Privatizacija se sprovodi modelima prodaje kapitala, prodaje imovine, strateškim partnerstvom i prenosom kapitala bez naknade. Prodaja kapitala i imovine, kao i ulaganje u strateško partnerstvo vrši se javnim prikupljanjem ponuda dok prenos kapitala bez naknade podrazumeva prenos kapitala zaposlenima ili strateškim investitorima, u skladu sa zakonskim rešenjima vezanim za privlačenje direktnih investicija [Gnjatović, 2016].

Zakonom o privatizaciji iz 2014. godine, banjski rehabilitacioni centri nisu bili isključeni iz procesa vlasničke transformacije. Zbog toga je Agencija za privatizaciju zaključila da postupak njihove privatizacije treba da bude sproveden u skladu sa odredbama ovog zakona [Agencija za privatizaciju, 2015]. Posle prestanka rada Agencije, Ministarstvo privrede Republike Srbije, sada zaduženo za privatizaciju, je prihvatilo ovakvo stanovište, pa su specijalne bolnice i zavodi za rehabilitaciju nastavili da figuriraju kao „subjekti privatizacije“ [Ministarstvo privrede, 2018].

Bespovratna novčana ulaganja kao pravni osnov za utvrđenje prava svojine

Pravni osnov za tužbe protiv države PIO Fond je našao u Zakonu o sredstvima u svojini Republike Srbije iz 1995, odnosno Zakonu o javnoj svojini iz 2011. godine, kojima su sredstva organizacija obaveznog socijalnog osiguranja bila izuzeta iz obuhvata državne svojine. Samim tim, PIO Fond je odluke o uknjižbi rehabilitacionih centara kao ustanova u vlasništvu Republike Srbije smatrao nezakonitim. Pravni osnov za dokazivanje prava svojine na ovim nepokretnostima PIO Fond je našao u ovlašćenjima koja su već pomenutim članovima 70. i 71. Zakona o penzijskom i invalidskom osiguranju iz 1972. godine bila data

privatization process, expert opinion was then given by the Commission for Physical Medicine and Rehabilitation and Balneoclimatology of the Ministry of Health, in a document entitled *Contribution to the State Strategy for Privatization of Healthcare Institutions in the Field of Physical Medicine and Rehabilitation* [2007]. This document, among other things, emphasized that it was necessary for spa health resorts to preserve their basic function of rehabilitation centers, that it was possible to privatize only those spa centers that were not specialized for the rehabilitation and treatment of serious patients, and that "the State must condition the buyer to comply with the Strategy for Privatization of Healthcare Institutions in the Field of Physical Medicine and Rehabilitation." However, such Strategy was not written, so that the strategic framework related to the goals and directions for the privatization of the spa rehabilitation centers could be learned about only from the sporadic statements of the Privatization Agency. One of such statements was in line with the opinion of the Commission for Physical Medicine and Rehabilitation and Balneoclimatology, as it said that "Centers in which seriously ill patients are being treated will not be offered for sale" [Daily newspaper "Glas javnosti", September 26, 2007].

Contradicting to the opinion that the problem of excess capacity in the spa rehabilitation centers should be solved through privatization procedures, the PIO Fund initiated 29 litigations to prove that the spa rehabilitation centers are property of the Fund, i.e. that they are not in the state ownership and therefore the Republic of Serbia cannot privatize them. The first litigations were launched in 2007, immediately after the Ministry of Health initiated privatization through the media.

On 16 January 2008, the Ministry of Economy and Regional Development, then in charge of privatization, made a proposal to the Government of the Republic of Serbia for the privatization of twelve spa rehabilitation centers (Table 1). This proposal was accepted by the Government on 21 February 2008 [Official Gazette of the Republic of Serbia no. 022/2008].

Table 1 Specialized hospitals and rehabilitation centers, proclaimed "privatization entities" in 2008

Specialized hospitals and rehabilitation centers	Spa and climatic sites
„Gezir“	Sijerinska Banja
„Sokobanja“	Soko Banja
„Zlatibor“	Čajetina
„Vranjska Banja“	Vranjska Banja
„Niška Banja“	Niška Banja
„Ribarska Banja“	Ribarska Banja
„Banja Koviljača“	Banja Koviljača
„Bujanovac“	Bujanovačka Banja
„Termal“	Banja Vrdnik
„Žubor“	Kuršumlijska Banja
„Merkur“	Vrnjačka Banja
„Zlatar“	Nova Varoš

Source: Official Gazette of the Republic of Serbia, no. 022/2008

In order to suspend litigation, the Government of the Republic of Serbia then initiated an out-of-court settlement. The Government recommended to the Ministry of Economy and Regional Development, prior to setting on the privatization procedure, to agree with the PIO Fund on the issue of property rights over the facilities of the twelve spa rehabilitation centers, proclaimed "privatization entities" [Working Group for Restructuring of the Pension Fund, 2012]. However, the agreement was not reached. Since then, these rehabilitation centers have been operating, with varying success, under the conditions of insecurity regarding the property rights due to uncertainty as to whether and when the procedure of their privatization will be carried out.

Primarily in the intention to create the conditions for economic development and preserve social stability through the preservation of existing jobs and the opening of new ones, the new Law on Privatization was adopted in 2014 [Official Gazette of the Republic of Serbia, no. 83/2014, 46/2015, 112/2015, 20/2016]. Article 36 (s2) of this Law abolished the Privatization Agency, and as of 1 February 2016, its activities have been taken over by the Agency for the Settlement of Privatization Procedure Disputes. Therefore, the Privatization Agency operated actively until 31 January 2016.

The 2014 Privatization Law enabled domestic and foreign investors and strategic partners to participate in the privatization of the remaining socially-owned and state-owned capital and

njegovom pravnom prethodniku, Republičkoj zajednici penzijskog i invalidskog osiguranja, da iz viškova doprinosa finansira unapređenje materijalne osnove za zaštitu osiguranika. PIO Fond je nadležnim sudovima pružio dokaze o tome da su na osnovu ovih ovlašćenja sačinjavani srednjoročni planovi i programi investicija u banjskim područjima, koji su bili realizovani nakon što bi ih usvojila Skupština zajednice. Takođe, za svaku od planiranih investicija, PIO Fond je podneo relevantnu dokumentaciju o njenoj realizaciji [Radna grupa za restrukturiranje PIO Fonda, 2012]. Dakle, PIO Fond je ustvrdio da bi za utvrđenje prava svojine na nepokretnostima specijalnih bolnica i zavoda za rehabilitaciju sud trebalo da se rukovodi činjenicom o tome čijim su sredstvima ove nepokretnosti bile građene.

Država je odgovorila osporavanjem argumentacije PIO Fonda o bespovratnim novčanim ulaganjima kao osnovi za utvrđenje prava svojine. Država nije negirala da su banjski rehabilitacioni centri bili građeni viškovima doprinosa za penzijsko i invalidsko osiguranje. Ono što je za nju bilo sporno je činjenica da su sredstva doprinosa bila ulagana bez obaveze vraćanja. Prema tvrđenju države, davanjem bespovratnih sredstava, pravni prethodnici PIO Fonda su ulazili u poslovni odnos koji nije imao za cilj sticanje svojine [Dnevni list „Večernje novosti“, 19.3.2007]. Drugim rečima, država je bila na stanovištu da ulaganja bez obaveze vraćanja u izgradnju rehabilitacionih centara iz sredstava doprinosa treba tretirati kao poklonjena. Jasno je da su ovakvim stanovištem bile apstrahovane privredno-sistemske specifičnosti finansiranja investicija u okviru ekonomskog sistema zasnovanog na nevlasničkom konceptu društvene svojine. Jedna od tih specifičnosti je bila da društvena pravna lica nisu mogla, na osnovu pravnog posla, da stiču svojinu, tako da u konkretnom slučaju nije moglo biti ni poklonodavca niti poklonoprimalca.

Nakon višegodišnjih sporenja, sve do najviših sudskih instanci, presude se donose u korist tužioca: PIO Fonda. Jednu takvu pravosnažno konačnu presudu doneo je 22.1.2015. godine Vrhovni kasacioni sud [Rev 295/2014, stvarno pravo, utvrđenje prava svojine]. Ovom presudom, PIO Fondu je priznato pravo svojine na objektima konkretnog banjskog

rehabilitacionog centra po osnovu novčanih ulaganja u njihovu izgradnju. U obrazloženju presude, posebno se navode specifičnosti ovih novčanih ulaganja u okviru ekonomskog sistema zasnovanog na društvenoj svojini. Ističe se da su sredstva doprinosa bila trošena planski i imala strogo namenski karakter. Takođe, upućuje se na odredbe Zakona o sredstvima u svojini Republike Srbije iz 1995. godine i Zakona o javnoj svojini iz 2011. godine, kojima se sredstva organizacija obaveznog socijalnog osiguranja izuzimaju iz obuhvata državne svojine.

„U skladu sa zakonskim i statutarnim ovlašćenjima Skupština zajednice (pravnog prethodnika tužioca, prim. D. G.) je 15.07.1975. godine donela Program razvoja i unapređenja invalidske zaštite i stvaranja materijalnih uslova za prevenciju invalidnosti, rehabilitaciju i zapošljavanje invalida rada u periodu od 1976. do 1980. godine. Na osnovu odluke skupštine pravnog prethodnika tužioca zaključeni su posebni ugovori u kojima je bilo navedeno da se novčana sredstava u opredeljenoj visini dodeljuju bez obaveze vraćanja, ali uz obavezu da budu utrošena namenski sa posledicom da u slučaju kršenja te obaveza budu vraćena zajedno sa kamatom. Prema tome, ulaganje tužiočevih novčanih sredstava je izvršeno strogo namenski, isključivo u cilju prevencije invalidnosti i rehabilitacije tužiočevih osiguranika.

... Prema utvrđenom i nespornom činjeničnom stanju sporni objekti izgrađeni su isključivo učešćem uloženi tužiočevih sredstava ... Uložena sredstva ... predstavljaju sredstva tužiočevih osiguranika u smislu odredaba Zakona o penzijskom i invalidskom osiguranju i Zakona o doprinosima za obavezno socijalno osiguranje.

... Sredstva koja koriste organizacije obaveznog socijalnog osiguranja, kao ni stvari stečene na osnovu tih sredstava nisu mogli predstavljati sredstva Republike Srbije, kako je to bilo izričito propisano odredbom člana 1. tačka 2) podtačka (3) Zakona o sredstvima u svojini Republike ... Odredbom člana 3. stav 2. sada važećeg Zakona o javnoj svojini, ... je propisano da se pod javnom svojinom ne smatraju stvari obaveznog socijalnog osiguranja.“

U presudi Vrhovnog kasacionog suda se zaključuje da je tužbeni zahtev PIO Fonda osnovan u odnosu na pravo svojine na objektima predmetnog banjskog rehabilitacionog centra, imajući u vidu poreklo namenski uloženi i iskorišćeni sredstava za njihovu izgradnju,

assets of "privatization entities." Privatization is carried out through the models of sale of capital, sale of assets, strategic partnership and transfer of capital free of charge. The sale of capital and assets, as well as the engagement in a strategic partnership, is carried out by the public collection of offers, while the transfer of capital, without compensation, entails the transfer of capital to the employees or strategic investors, in accordance with the legal provisions for attracting direct investments [Gnjatović, 2016].

The 2014 Privatization Law did not exempt spa rehabilitation centers from the ownership transformation process. Therefore, the Privatization Agency concluded that the procedure for their privatization should be carried out in accordance with the provisions of this Law [Privatization Agency, 2015]. After the Agency ceased its operations, the Ministry of Economy of the Republic of Serbia, now in charge of privatization, accepted this position, and specialized hospitals and rehabilitation centers continued to be regarded as "privatization entities" [Ministry of Economy, 2018].

Non-Refundable Investments as a Legal Basis for Determining Property Rights

The PIO Fund found the legal basis for lawsuits against the State in the 1995 Law on Assets in the Property of the Republic of Serbia and the 2011 Law on Public Property, according to which the assets of the organizations for compulsory social insurance were exempted from the coverage of the state property. Consequently, the PIO Fund considered the decisions on the registration of rehabilitation centers in the public books as the property of the Republic of Serbia to be unlawful. The PIO Fund found the legal basis for claiming the ownership over these properties in the powers that were already given to its legal predecessor, the Pension and Disability Insurance Association, by the above mentioned Articles 70 and 71 of the 1972 Law on Pension and Disability Insurance, to finance the improvement of the material basis for the protection of the insured from the surpluses of contributions. The PIO Fund provided evidence to the competent courts that on the basis of these

powers, medium-term plans and investment programs in the spa areas were prepared and implemented after they had been adopted by the Association Assembly. Also, for each of the planned investments, the PIO Fund submitted relevant documentation on its implementation [Working Group for Restructuring of the Pension Fund, 2012]. Therefore, the PIO Fund claimed that in order to determine the ownership rights over the facilities of specialized hospitals and rehabilitation centers, the court should be guided by the fact of whose assets were used to build these facilities.

The State responded by challenging the argument of the PIO Fund on non-refundable funds for investments as a basis for determining the property rights. The State did not deny that spa rehabilitation centers were built using the surpluses of contributions for pension and disability insurance. The State, however, did find it controversial that these contributions were invested without the obligation of repayment. According to the State's claim, by granting funds, the legal predecessors of the PIO Fund entered into a business relationship that was not aimed at acquiring ownership [Daily newspaper "Večernje Novosti", March 19, 2007]. In other words, the State was of the opinion that investments in the construction of rehabilitation centers, financed with the surpluses of the contributions for compulsory pension insurance without obligation to be repaid, should be treated as donated. It is clear that such viewpoint neglected the economic and systemic specificities of investment financing within an economic system based on a non-proprietary concept of social property. One of these specificities was that social legal entities could not, on the basis of a legal transaction, acquire property, hence in the specific case there could have been neither a donor nor a donee.

After many years of legal disputes, up to the highest judicial instances, the judgments are being delivered in favor of the prosecutor: the PIO Fund. One such final judgment was delivered by the Supreme Court of Cassation on 22 January 2015 [Rev 295/2014, property law, determination of property rights]. This judgment granted the PIO Fund the property rights over the facilities of a concrete spa rehabilitation center based on the money invested in their

kao i da je izgradnjom i korišćenjem ovih objekata ostvaren cilj prevencije invalidnosti i rehabilitacije invalida.

Definisanjem strukture vlasništva na objektima banjskih RH centara pravosnažnim presudama nadležnih sudova Republike Srbije, konačno se stižu uslovi za odlučivanje o svojinskoj transformaciji onih centara koji su 2008. proglašeni „subjektima privatizacije“.

Zaključak

Određivanjem titulara prava svojine i utvrđivanjem strukture vlasništva na banjskim RH centrima prevazilaze se privredno-sistemske probleme zbog kojih je godinama bila onemogućena njihova privatizacija. Pravosnažnim presudama nadležnih sudova PIO Fondu se priznaje pravo svojine na objektima RH centara u procentu u kojem je njihova izgradnja bila finansirana sredstvima doprinosa za obavezno penzijsko i invalidsko osiguranje. Kao titularu svojinskih prava na ovim objektima, PIO Fondu je omogućeno da

učestvuje u donošenju odluka o pokretanju postupaka njihove privatizacije.

Prvi javni poziv za prodaju jednog od banjskih RH centara, koji su 2008. godine bili proglašeni „subjektima privatizacije“, objavljen je za banjski kompleks „Žubor“ u Kuršumlijskoj Banji. Ovaj poziv zajednički su objavili 25.4.2018. godine Republička direkcija za imovinu i PIO Fond, na osnovu Odluke Upravnog odbora PIO Fonda od 16.3.2018. i Zaključka Vlade od 19.4.2018. godine [Republička direkcija za imovinu, 2018]. U oglasu za prodaju nepokretnosti ovog banjskog kompleksa, navedeno je da se radi o objektima u javnoj svojini Republike Srbije i svojini PIO Fonda. Očigledno je da su u ovom konkretnom slučaju država i PIO Fond, kao titulari prava svojine, postigli sporazum o međusobnim odnosima vezanim za realizaciju prodaje nepokretnosti. Nakon okončanja sudskih sporova, ovakvi sporazumi će biti uslov za sprovođenje postupaka privatizacije svih ostalih banjskih RH centara - „subjekata privatizacije“.

construction. The reasoning of the judgment particularly stressed the specificities of these investments within the economic system based on social property. It was pointed out that the contribution funds were spent in a planned and strictly dedicated manner. Also, the judgment referred to the provisions of the 1995 Law on Assets in the Property of the Republic of Serbia and the 2011 Law on Public Property on the basis of which the assets of the organizations of compulsory social insurance were excluded from the scope of the state property.

"In accordance with its legal and statutory powers, on 15 July 1975, the Association's Assembly (of the legal predecessor of the Prosecutor, cf. D.G.), adopted The Program of Development and Improvement of Disability Protection and the Creation of Material Conditions for the Prevention of Disability, Rehabilitation and Employment of Disabled Workers in the Period from 1976 to 1980. Pursuant to the decision of the Assembly of the Prosecutor's legal predecessor, special contracts were concluded stating that the funds in the defined amount were allocated without obligation to return, but with the obligation to be spent on purpose, with the consequence that, in the event of violation of such obligations, they would be returned together with the interest. Accordingly, the prosecutor's money was invested strictly for the sole purpose of preventing disability and rehabilitation of the prosecutors' insurers.

... According to the established and undeniable facts, the disputed facilities were built exclusively by the participation of the invested prosecutor's funds ... Invested assets ... represent the assets of prosecutor's insurers in terms of the provisions of the Law on Pension and Disability Insurance and the Law on Contributions for Compulsory Social Insurance.

... Funds used by compulsory social security organizations, as well as assets acquired on the basis of these funds, could not represent the assets of the Republic of Serbia, as explicitly provided for by Article 1, paragraph 2, subparagraph (3) of the Law on Assets in the Property of the Republic. ... By virtue of Article 3, paragraph 2, of the current Law on Public Property now in force, ... it is stipulated that the assets of compulsory social security organizations are not considered as public property." ...

The judgment of the Supreme Court of Cassation concludes that the claim of the PIO Fund was founded in relation to the property rights on the facilities of the respective spa center, bearing in mind the origin of the funds

invested and used for their construction, and that by building and using these facilities the goal of the prevention of disability and rehabilitation of the disabled people had been met.

By defining the ownership structure of the facilities of the spa rehabilitation centers within the final judgments of the competent courts of the Republic of Serbia, the conditions for deciding on the ownership transformation of those centers that were proclaimed "privatization entities" were finally met.

Conclusion

By defining the property title holder and determining the ownership structure of the spa rehabilitation centers, the economic and systemic problems which hindered the privatization of these centers for years have been overcome. According to the judgments of the competent courts the PIO Fund has been recognized as the property owner of the facilities of the spa rehabilitation centers in the percentage in which their construction was financed by means of contributions for compulsory pension and disability insurance. As the property owner of these facilities, the PIO Fund has been enabled to take part in the decision-making process of initiating the privatization procedures.

The first public call for the sale of one of the spa rehabilitation centers, which were declared "privatization entities" in 2008, was announced for the spa center "Žubor" in Kuršumlijska Banja. This call was jointly announced on 25 April 2018 by the Property Directorate of the Republic of Serbia and the PIO Fund, based on the Decision of the Managing Board of the PIO Fund as of 16 March 2018 and the Government Conclusion as of 19 April 2018 [Property Directorate, 2018]. The announcement for the sale of this spa center facilities stated that these are owned by the Republic of Serbia and the PIO Fund. It is obvious that in this particular case, the State and the PIO Fund, as the title holders to the property, have reached an agreement on their relations concerning the realization of the real estate sale. After the completion of legal disputes, such agreements will be a condition for the implementation of the privatization procedures for all other spa rehabilitation centers, i.e. "privatization entities".

Literatura / References

Knjige i članci / Books and articles

1. Bjelogrić, Dušan (1973). *Dvadeset pet godina ekonomskog razvoja Jugoslavije*, Novi Sad, Budućnost.
2. Čolanović, Branko; Šefer, Berislav (1991). *Fond Federacije za kreditiranje bržeg razvoja privredno nedovoljno razvijenih republika i pokrajina 1965-1990 - Iskustva i rezultati*, Beograd, Evropski centar za mir i razvoj ECPD.
3. Drašković, Božo (2010). *Kraj privatizacije i posledice po razvoj*, Beograd, Institut ekonomskih nauka.
4. Đuričin, Dragan (1994). *Privrede u tranziciji, privatizacija i povezane teme*, Gornji Milanovac, Dečje novine.
5. Gnjatović, Dragana (1994). Pojam državne svojine u jugoslovenskom slučaju, S. Tabaroši, M. Paunović, editors: *Nasleđe i naslednici Jugoslavije*, Zbornik radova Pravnog fakulteta u Beogradu, pp. 81-98.
6. Gnjatović, Dragana (2007). *Ekonomija Srbije, privredni sistem, struktura i rast nacionalne ekonomije*, Beograd, Megatrend univerzitet.
7. Gnjatović, Dragana (2016). Državni podsticaji stranim direktnim investicijama kao instrument politike javnih rashoda u Republici Srbiji, R. Kovačević, M. Gligorić, editors: *Strane direktne investicije i privredni rast u Srbiji*, Naučno društvo ekonomista Srbije sa Akademijom ekonomskih nauka i Ekonomski fakultet u Beogradu, pp. 131-140
8. Milićević, Snežana (2015). *Od tradicionalnih banjanskih lečilišta do destinacija zdravstvenog turizma*, Kragujevac, Univerzitet u Kragujevcu.
9. Petraković, Dragana (2007). Reforma sistema penzijsko-invalidskog osiguranja u Srbiji, *Industrija*, 35(2), pp. 29-46
10. Sukharev, Oleg (2015). Institutional Economic Theory of Assets Privatization and Nationalization: Basic Imperatives, *Megatrend Revija*, 12(1), pp. 3-29
11. Vujačić, Ivan; Perović Vujačić, Jelica (2011). Privatization in Serbia, Results and Institutional Failures, *Economic Annals*, LVI (191), pp. 89-105

Statističke publikacije / Statistical publications

1. Savezni zavod za statistiku [Federal Statistical Office] (1986). *Jugoslavija 1945-1985*, Beograd
2. Savezni zavod za statistiku [Federal Statistical Office] (1990). *Statistički godišnjak Jugoslavije 1990*, Beograd

Dokumenta i novinski članci / Documents and newspaper articles

1. Agencija za privatizaciju [Privatization Agency] (2015). *Banje i specijalne bolnice iz portfolija Agencije za privatizaciju Republike Srbije* Available at: http://www.priv.rs/upload/document/banje_portfolio_ap_2015-04-23_060138.pdf
2. Dnevni list „Večernje novosti“ [Daily newspaper "Večernje Novosti"] (2007). *Šteta je prodati*, 19.3.2007. Available at: <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:195625-Steta-je-prodati>
3. Dnevni list „Glas javnosti“ [Daily newspaper "Glas javnosti"] (2007). *Nema prodaje specijalnih bolnica*, 26.7.2007. Available at: <http://www.glas-javnosti.rs/clanak/glas-javnosti-26-09-2007/nema-prodaje-specijalnih-bolnica>
4. Dnevni list „Politika“ [Daily newspaper "Politika"] (2007). *Privatizacija 13 banja*, 15.12.2007. Available at: <http://www.politika.rs/sr/clanak/9159/%D0%9F%D1%80%D0%B8%D0%B2%D0%B0%D1%82%D0%B8%D0%B7%D0%B0%D1%86%D0%B8%D1%98%D0%B0-13-%D0%B1%D0%B0%D1%9A%D0%B0>
5. Ministarstvo privrede [Ministry of Economy] (2018). *Preduzeća u postupku analize i pripreme javog poziva* Available at: <http://www.priv.rs/Naslovna>
6. Radna grupa za restrukturiranje PIO fonda [Working Group for Restructuring of the PIO Fund] (2012): *Polazne osnove za restrukturiranje PIO Fonda*, Beograd. Available at: <http://www.poslodavci.rs/plan-za-restrukturiranje-pio-fonda/>

7. Republička komisija za fizikalnu medicinu i rehabilitaciju i balneoklimatologiju [Commission for Physical Medicine and Rehabilitation and Balneoclimatology] (2007). *Prilog državnoj strategiji privatizacije zdravstvenih ustanova u oblasti fizikalne medicine i rehabilitacije* Available at: <http://www.fizijatri.org/pdf/rsk/PRILOG%20DR%8EAVNOJ%20STARTEGIJI%20PRIVATIZACIJE%20ZDRAVSTVENIH%20USTANOVA%20U%20OBLASTI%20FIZIKALNE%20MEDICINE%20I%20REHABILITACIJE.pdf>
8. Republička direkcija za imovinu [Property Directorate] (2018). *Oglas radi otuđenja nepokretnosti banjskog kompleksa "Žubor" u Kuršumlijskoj Banji putem prikupljanja pismenih ponuda*, 25.4.2018. Available at: <http://www.rdi.gov.rs/doc/oglas/TEKST-OTGLASA-KURSUMLIJSKA-BANJA-25-april.pdf>
9. Vrhovni kasacioni sud [Supreme Court of Cassation] (2015). Baza sudske prakse, Utvrđenje prava svojine, REV: 295/2014, 22.01.2015. Available at: <http://www.vk.sud.rs/sr/%D1%80%D0%B5%D0%B2-2952014-%D1%81%D1%82%D0%B2%D0%B0%D1%80%D0%BD%D0%BE-%D0%BF%D1%80%D0%B0%D0%B2%D0%BE-%D1%83%D1%82%D0%B2%D1%80%D1%92%D0%B5%D1%9A%D0%B5-%D0%BF%D1%80%D0%B0%D0%B2%D0%B0-%D1%81%D0%B2%D0%BE%D1%98%D0%B8%D0%BD%D0%B5>
3. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za rehabilitaciju „Žubor“ Kuršumlija [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Rehabilitation „Žubor“ Kuršumlija], Official Gazette of the Republic of Serbia, no. 022/2008
4. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za rehabilitaciju „Ribarska Banja“, Kruševac [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Rehabilitation „Ribarska Banja“, Kruševac], Official Gazette of the Republic of Serbia, no. 022/2008
5. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za bolesti štitaste žlezde i bolesti metabolizma „Zlatibor“ Čajetina [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Thyroid Gland Diseases and Metabolic Diseases „Zlatibor“ Čajetina], Official Gazette of the Republic of Serbia, no. 022/2008
6. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za rehabilitaciju „Vranjska Banja“, Vranje [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Rehabilitation „Vranjska Banja“, Vranje], Official Gazette of the Republic of Serbia, no. 022/2008
7. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Institutu za lečenje i rehabilitaciju „Niška Banja“, Niš [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Institute for Medical Treatment and Rehabilitation „Niška Banja“, Niš], Official Gazette of the Republic of Serbia, no. 022/2008

Propisi / Regulations

1. Odluka o utvrđivanju privrednih i vanprivrednih delatnosti [Decision on Determining Productive and Non-Productive Activities], Official Gazette of the SFRY, no. 14/1977, 18/1980
2. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za rehabilitaciju Vrdnik [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Rehabilitation Vrdnik], Official Gazette of the Republic of Serbia, no. 022/2008

8. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za rehabilitaciju Bujanovac [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Rehabilitation Bujanovac], Official Gazette of the Republic of Serbia, no. 022/2008
9. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za nespecifične plućne bolesti „Sokobanja” [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Non-Specific Lung Diseases „Sokobanja”], Official Gazette of the Republic of Serbia, no. 022/2008
10. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za rehabilitaciju „Zlatar” Nova Varoš [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Rehabilitation „Zlatar” Nova Varoš], Official Gazette of the Republic of Serbia, no. 022/2008
11. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za lečenje i rehabilitaciju „Merkur” Vrnjačka Banja [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Medical Treatments and Rehabilitation „Merkur” Vrnjačka Banja], Official Gazette of the Republic of Serbia, no. 022/2008
12. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za rehabilitaciju „Gejzer” Sijarinska Banja, Medveđa [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Rehabilitation „Gejzer” Sijarinska Banja], Official Gazette of the Republic of Serbia, no. 022/2008
13. Rešenje o davanju saglasnosti na Inicijativu za pokretanje postupka privatizacije u Specijalnoj bolnici za rehabilitaciju Banja Koviljača [Decision on Giving Consent for the Initiative to Start the Privatization Procedure of the Specialized Hospital for Rehabilitation Banja Koviljača], Official Gazette of the Republic of Serbia, no. 022/2008
14. Strategija upravljanja vodama na teritoriji Republike Srbije do 2034. godine [Water Management Strategy on the Territory of the Republic of Serbia until 2034], Official Gazette of the Republic of Serbia, no. 3/2017
15. Uredba o planu mreže zdravstvenih ustanova [Decree on the Plan of the Healthcare Institutions Network], Official Gazette of the Republic of Serbia, no. 046/2006
16. Uredba o uslovima i načinu privlačenja direktnih investicija [Regulation on the Conditions and Methods of Attracting Direct Investments], Official Gazette of the Republic of Serbia, no. 37/2018
17. Ustav Repulike Srbije [Constitution of the Republic of Serbia], Official Gazette of the Republic of Serbia, no. 1/1990
18. Ustav Republike Srbije [Constitution of the Republic of Serbia], Official Gazette of the Republic of Serbia, no. 98/2006
19. Zakon o penzijskom i invalidskom osiguranju [Law on Pension and Disability Insurance], Official Gazette of the Republic of Serbia no. 51/1972
20. *Zakon o privremenoj zabrani raspolaganja društvenim sredstvima za neprirodne i neproizvodne investicije u drugom polugodištu 1986. godine i u 1987. godini* [Law on Temporary Prohibition of Disposal of Social Assets for Non-Industrial and Non-Productive Investments in the Second Half of 1986 and in 1987], Official Gazette of SFRY no. 034/1986

21. Zakon o penzijskom i invalidskom osiguranju [Law on Pension and Disability Insurance], Official Gazette of the Republic of Serbia, no. 27/1992
22. Zakon o banjama [Law on Spas], Official Gazette of the Republic of Serbia no. 80/1992, 67/1993
23. Zakon o uslovima i postupku pretvaranja društvene svojine u druge oblike svojine (Službeni glasnik Republike Srbije [Law on the Conditions and Procedure for Transforming Social Property into Other Forms of Property], Official Gazette of the Republic of Serbia, no. 48/1991, 48/1994, 51/1994
24. Zakon o preduzećima [Law on Enterprises], Official Gazette of SFRY, no. 77/1988, 40/1989, 46/1990, 61/1990
25. Zakon o društvenom kapitalu [Law on Social Capital], Official Gazette of SFRY, no. 84/1989, 46/1990
26. Zakon o sredstvima u svojini Republike Srbije [Law on Assets Owned by the Republic of Serbia], Official Gazette of the Republic of Serbia, no. 53/1995, 54/1996, 32/1997
27. Zakon o svojinskoj transformaciji [Law on Ownership Transformation], Official Gazette of the FRY no. 29/1997
28. Zakon o penzijskom i invalidskom osiguranju [Law on Pension and Disability Insurance], Official Gazette of the Republic of Serbia no. 34/2003
29. Zakon o izmenama i dopunama Zakona o penzijskom i invalidskom osiguranju [Law on Amendments to the Law on Pension and Disability Insurance], Official Gazette of the Republic of Serbia no. 63/2006
30. Zakon o privatizaciji [Law on Privatization], Official Gazette of the Republic of Serbia, no. 38/2001, 18/2003, 45/2005, 123/2007, 30/2010, 93/2012, 119/2012, 51/2014
31. Zakon o javnoj svojini [Law on Public Property], Official Gazette of the Republic of Serbia, no. 72/2011, 88/2013, 105/2014, 104/2016, 108/2016, 113/2017
32. Zakon o privatizaciji [Law on Privatization], Official Gazette of the Republic of Serbia, no. 83/2014, 46/2015, 112/2015, 20/2016
33. Zakon o zdravstvenoj zaštiti [Law on Healthcare], Official Gazette of the Republic of Serbia, no. 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2012, 45/2013, 93/2014, 96/2015, 106/2015, 113/2017