

## Legal Status of Commercial Companies in Kosovo - Comparative Analysis and Their Significance in the Development of Entrepreneurship

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### Abstract:

*This paper will analyze the status of companies in the Republic of Kosovo under the applicable legislation with an analysis of the legal - legislative practice of other countries which apply different rules and their effect on the development of entrepreneurship in the country.*

*Companies are legal organizations of persons and capital, which conduct business - trade activity based on positive laws in place. Their goal is to create a reputation in the market and maximize property benefit. Business activity in the conditions of market economy, are developed by private commercial companies, whether legal personality, or even without it as well as public enterprises. For this reason also emphasized the need for legal regulation of them. Legislation in market economy serves to create a legal framework that enables the development of business activity and providing capital. To analyze this issue will use empirical data collected from the field in the form surveys which was conducted at the business sector of the Republic of Kosovo. Then will use the method of analysis and synthesis, comparative method, normative and legal method (dogmatic).*

*Economic development depends on the development of the private sector. This sector is the engine for economic development,*

*development of entrepreneurship and sustainable economic development.*

*Accurate determination of the legal personality of companies creates legal certainty of capital investments; enable the creation of new businesses, businesses and productive forces development affect the economy in general.*

**Key words:** Legal status, business, entrepreneurship, legislation, comparative analysis.

## 1. Introduction

The development of a modern economy in conditions of free market economy and competition in the market is based on a variety of relevant factors starting from the human factor, natural resources, technology, the overall social - economic development, to the legal and institutional infrastructure. State institutions create policies and pass laws to regulate the national economy without being involved in the supply and demand and market prices, and other interventions that affect free competition and market economy.

Stable and sustainable economy, depends heavily on the development of the private sector, this sector is the engine for economic recovery and sustainable economic development. A very important part of this sector is **entrepreneurship**. Entrepreneurship is a vital sector of the local economy, which in addition to other conditions also depend on the applicable legal regulations.

This research is based on two dimensions: legal and economic dimension. Explanation of legal issues which affect the local economy. First will be analyzed the legal aspect – commercial company legislation, then the impact of legislation on the development of commercial companies.

Registration procedures, liability and legal status of companies in the Republic of Kosovo is regulated by the Law on

Companies Law no. 02/L-123, which is changed with amendments by Law no. 04/L-006 on Amending the Law no. 02/L-123 on Commercial Companies. In addition to this Law is implemented the Law on Public Enterprises Law no. 03/L-087 which regulates the establishment, ownership, management and governance of public enterprises in Kosovo. In this paper the focus is centered in the legal status of commercial companies or their legal personality (legal subjectivity) because we think for commercial companies, it is essential to have legal personality, therefore to function as a legal entity.

We know that in any legal system in the world there are two subjects of law, natural and legal persons. Natural person is an individual - the man who wins the legal capacity to births and full legal capacity when reaches adulthood (18).

Juridical person is an artificial creature who is created by the law –a specific law. Legal reports are conducted by entities of law.

Company Law - Law no. 02/L-123, defines the concept juridical person: "*legal person*" is a general term that means a company, including commercial companies that has a specific legal identity and different from its members or shareholders."<sup>1</sup> By definition of law we understand that, to determine the legal subjectivity is necessary fulfillment of certain general and specific conditions when required for specific company. Initially the company must have a separate legal identity - this is determined by a specific law, the responsibility of company to apply to the institution - society not owners or founders. The rights and obligations in the management and governance of the founders or owners of capital are determined by internal normative acts, such as Statue and internal regulations of the company. In this sense legal persons can be, private legal persons and public legal persons. Below mainly we will examine private legal persons of the commercial law.

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<sup>1</sup> Neni 2 i Ligjit për Shoqëritë Tregtare në Kosovë, Ligji Nr. 02/L-123

## **2. The legal status of commercial companies by positive legislation of the Republic of Kosovo**

The Republic of Kosovo has gone through a difficult transition phase, and it is still in the early refinements legal capacity building. It is worth mentioning that Kosovo has benefited from the assistance of numerous international mission, but in certain cases, this assistance has also been harmful to its actuality. First the Assembly adopted the Law on Commercial Companies in Kosovo, which has become the UNMIK Regulation<sup>2</sup> - Regulation no. 2001/6, 8 February 2001. UNMIK due to their undefined legal status and attempting to stay away normative political implications - transformed laws into regulations. Initially it has adopted the Regulation nr.2001/6 on Commercial Companies in Kosovo, which entered into force on 8 February 2001.

"The object of this regulation was, creating opportunities for establishing regular commercial companies for profit in Kosovo; assignment of ownership, responsibility and competences for decision-making related to them; approaches, tools and organizing procedures, their structure and administration; methods, tools and procedures for termination and liquidation; their required rights and obligations; giving competence and authority and the relevant responsible persons and bodies (and their followers) to implement the provisions of this Regulation. This regulation governs only commercial companies for profit."<sup>3</sup> Under this Regulation commercial companies may be established as: individual businesses, partnership, limited partnership, limited liability company and joint stock company or corporation.

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<sup>2</sup> UNMIK – Misioni i Kombeve të Bashkuara në Kosovë i vendosur në bazë të Rezolutës 1244 të OKB-së të datës 10 qershor 1998

<sup>3</sup> REG/UNMIK/2001/6, neni 1

According to this legal act only corporations and limited liability company are considered legal persons and organized commercial companies as individual businesses, general partnership or limited partnership are not considered legal persons and founder responded with all their wealth before all creditors. Same legal solution has provided the applicable legislation of the Republic of Kosovo, Law for Commercial Companies, Law no. 02/L-123, which was approved by the Assembly on 27.09.2007. This law is changed with amendments by Law no. 04/L-006 on Amending the Law no. 02/L-123 on Commercial Companies, also specifies that only a Limited Liability Company and Joint Stock Company are Legal Persons. This law provides that instead of naming "*general partnership*" to use the term "*General Enterprise*".

Thus, according to Law no. 04/L-006 on Amending the Law no. 02/L-123 on Commercial Companies, "Article 2 of the basic Law, paragraph 2.1. the definition of "**Legal Person**" is amended as follows : "**Legal Person**" - the status of a legal person under this law have the limited liability company "L.L.C." and the joint stock company "J.S.C.".<sup>4</sup>

According to the Law on Commercial Companies Law no. 02/L-123, limited liability company "L.L.C." can be established or to have owner "one or more persons and/or commercial company."<sup>5</sup> Same legal solution the law has also provided for the joint stock company.<sup>6</sup>

Commercial companies which have the status of a legal person under the law, are more organized forms of business, ownership, management and responsibility is shared. Owners of capital - founders, respond to creditors up to the amount of capital invested in the company. According to this conception,

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<sup>4</sup> Neni 4.4 i Ligjit Nr. 04/L-006 për Plotësimin dhe Ndryshimin e Ligjit Nr. 02/L-123 për Shoqëritë Tregtare në Republikën e Kosovës

<sup>5</sup> Neni 84 i Ligjit për Shoqëritë Tregtare, Ligji Nr. 02/L-123

<sup>6</sup> Me gjrësisht shih nenin 132 të Ligjit për Shoqëritë Tregtare, Ligji Nr. 02/L-123

the company is obliged to respond before all creditors who can be many, ranging from banks, other financial institutions or state institutions.

Unlike commercial companies with legal personality, which by law they do not have the status of legal person - the owners of capital - founder respond with their entire property before creditors therefore have unlimited liability before all creditors. Company and founders are not separated legally and factually.

**Table 1 - represents business registration in Kosovo in 2008-2011.**

Type of business	Year 2008	Year 2009	Year 2010	Year 2011
Individual Business	5761	5930	6185	6387
General Partnership	268	212	196	194
Limited Liability Company	828	834	967	1102
Limited Partnership	2	0	0	0
Joint Stock Company	35	15	15	12
Foreign Companies	73	113	94	59
Social Enterprise	1	1	0	1
Public Enterprise	0	0	0	0
Agricultural Cooperatives	7	5	6	1
Total	6975	7110	7483	7756

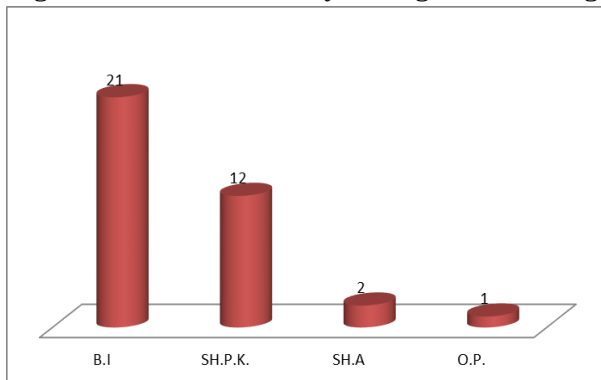
Source: Agency for Registration of Businesses in Kosovo

From Table 1. we can draw some conclusions: first, in four years a large number of businesses were registered, that if only 50 % of them would function properly in Kosovo would have an economic boom and Kosovan economy will not depend on the public sector and remittances from Kosovan Diaspora. Second, from the table we learn that in our country the dominant form of business is with a legal status of an individual business that speaks a lot to the level of knowledge of the businesses and citizens for the contemporary forms organization of business.

In May 2013 we conducted a survey of business organizations in Kosovo we have noticed that most businesses

prefer the legal status of Individual Business. Thus, from 36 businesses surveyed in nine (9) cities in the Republic of Kosovo, showed that 21 of them prefer the legal form of organization: Individual Business (IB), while only two of them as a Joint Stock Company (JSC), a significant number of them prefer the registration of Limited Liability Company (L.L.C).

**Figure 1 - Registration of business by the legal form of organization**



Source: Survey conducted by the author in collaboration with students in May, 2013.

In the Republic of Kosovo there is a category of commercial companies which are established by a special law, they are public enterprises. Ownership, governance and management of the Public Enterprise are regulated by Law on Public Enterprises Law no. 03/L-087. Public enterprises under this law may be established as the central public enterprises and local public enterprises. Central public companies are owned by the Government of Kosovo, while local ones are owned by local municipalities. All public enterprises, central and local should be organized as a joint stock company. Thus, according to the Law on Public Enterprises "All PE will be organized as a joint

stock company under the applicable law on commercial companies"<sup>7</sup>.

Under this law, the Government of the Republic of Kosovo has the exclusive right to establish public enterprises according to its needs under a special decision for establishment. At the same time, the government has the right to make a decision and to authorize a governmental commission for their privatization.

Under this law, all public companies have the status of a legal person, as obliged by law to register at the Business Registration Agency as a joint stock company – JSC.

### **3. Comparative aspects of the Republic of Albania**

According to the Albanian Civil Code, legal persons are divided in private legal persons and public legal persons, "Legal persons are public and private"<sup>8</sup>. "Profitable Private legal persons are companies. Companies are legal persons governed by Law no. 9901, dated 14.04.2008, for Entrepreneurs and Companies"<sup>9</sup>. The definition of society is given in Section 3 of this law. According to this law: "A company is established by two or more persons and /or legal persons, who agree to achieve common economic objectives, contributing to society, as defined in its statute."<sup>10</sup> "Limited Liability Company and Commercial Corporations can be established by only one person and /or legal person (companies with single partner or shareholder)"<sup>11</sup>.

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<sup>7</sup> Neni 4 paragrafi parë i Ligjit për Ndërmarrjet Publike në Republikën e Kosovës, Ligji Nr. 03/L-087.

<sup>8</sup> Neni 24 i Kodit Civil të Shqipërisë.

<sup>9</sup> Valentina Kondili. 2008. *E Drejta Civile -I*. Pjesa e Përgjithshme, Geer, fq. 167

<sup>10</sup> Neni 3 i Ligjit nr. 9901, të datës 14.04.2008, për Tregtarët dhe Shoqëritë Tregtare në Republikën e Shqipërisë, Fletorja Zyrtare e Republikës së Shqipërisë Nr. 60, 2008

<sup>11</sup> Po aty, Neni 3.1.



Based on Entrepreneurs and Commercial Companies Law, there are four forms of organization of companies: partnership, limited partnership, limited liability company and joint stock company.

A partnership under this law can be established by two or more natural persons and founders have unlimited liability. "In a general partnership, all partners are in the quality of merchant without limitation jointly responsible for the debts of the company."<sup>12</sup> According to the Law on Entrepreneurs and Commercial Companies, namely Article 22: "a collective society is general partnership if is registered as such, the business operates under a common name and the liability of partners is unlimited towards creditors." Same status has the limited partnership. The only difference between these legal forms of commercial companies is that at the limited partnership, the liability of at least one partner is limited to the amount invested in the company, while other liability of partners is unlimited. Despite the fact that to these types of commercial companies, there is unlimited liability of the owner or at least one of the owners of the company, they are legal persons as defined in the Civil Code in force in the Republic of Albania. In the Republic of Kosovo, as we noted above these legal forms of organization of business are not considered legal persons, by the fact that they have unlimited liability. Company Law in Kosovo explicitly provides that "**Legal Person**" is a general term that means a company, including commercial companies that has a separate legal identity and divided from its members or shareholders."<sup>13</sup>

Law for Entrepreneurs and Commercial Companies specifies that businesses can be established as limited liability companies and joint stock companies. Limited liability company "is the company founded by one or more members facing the

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<sup>12</sup> Shyqyri Llaci and Jorida Tabaku. 2009. *Qeverisja e Korporatave*. Tiranë, fq. 42.

<sup>13</sup> Neni 2 i Ligjit për Shoqëritë Tregtare në Kosovë, Ligji Nr. 02/L-123.

loss up to the limit of the value of their contribution to the capital stock".<sup>14</sup>

A joint stock company is the most organized of commercial companies in each country. According to the legislation of the Republic of Albania, namely Article 105 of the referred law of commercial companies says "joint stock company is a commercial company, whose capital is divided into shares subscribed by the founders. The founders are natural or legal persons who are not personally liable for the liabilities of the company covering losses only to the value of the subscribed shares outstanding.

#### **4. Comparative analysis with several countries**

In this part we will analyze some of the positive legislation regulating the legal status of the commercial companies. As we mentioned earlier there are substantial differences in the legal regulation of companies between different countries. All differences can be divided into two main areas: first, all forms of organizing commercial companies except individual companies are legal persons, and the second, only joint stock companies, limited liability companies, and public companies are legal persons while other forms such as limited partnership, general partnership, individual business are not legal persons and have unlimited liability to creditors.

Croatian author Vilim Gorenc defines commercial companies as "commercial companies are legal persons that are established by contract between two or more persons and legal persons who with their capital and/or joint work, work in the same company in order to achieve the common objectives, usually for the realization of profit"<sup>15</sup>. From his definition is

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<sup>14</sup>Shyqyri Llaci, fq. 41.

<sup>15</sup>Vilim Gorenc. 2003. "Trgovacko Pravo – drushtave." Zagreb. fq. 8

understood his concept to commercial companies, therefore, he calls all commercial companies as legal persons regardless.

"Croatian Law adopted generally accepted opinion concerning the legal persons and determined that all commercial companies are legal persons, and their establishment and organization is regulated by law. Thus, creation law has adopted the principle of French commercial law under which all commercial companies are legal persons. In this way are avoided changes in regulation of commercial companies on the basis of German law, under which the commercial company (see general partnership) and limited partnership are not a legal persons, while joint stock company, limited shares partnership and limited liability company are legal person".<sup>16</sup>

French Law has applied to the legislation legal settlement mandating that all forms of commercial companies are **legal persons**, unlike German law, which does not consider legal persons commercial companies (read: general partnership) and limited partnerships.

## **5. The importance of the legal personality of companies in the development of entrepreneurship**

Peter Drucker, presents entrepreneurship as business which is organized and carried out in a systematic and effective way. He treats entrepreneurship as part of business activities and leadership tasks, part of entrepreneurial management. According to him, entrepreneurial economy is psychological and cultural phenomenon, as it is the cultural and technological phenomenon.<sup>17</sup>

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<sup>16</sup> Vilim Gorenc. 2006. "Bazat e së drejtës tregtare statusore dhe kontraktore." Kolegji Universitar „Victory“ Prishtinë. fq. 43

<sup>17</sup> Peter Drucker. 1996. *Inovacije i Preduzentništvo*. Beograd. fq. 9.

While entrepreneurship is defined as " individual who, rather than working as an employee, runs a small business and undertakes all risks and rewards in a certain business venture, he has ideas, or offers service for sale. The entrepreneur is usually seen as a business leader and innovator of new ideas and business processes. "18 Seji, a French economist says that "entrepreneur moves resources from one area with low profit to an area with higher profit by involved in the process, people, objects, materials and money."19

"Entrepreneurs play an important role in any economy. They are people who have the skills and necessary initiative to promote good ideas for new products, and to make appropriate decisions to implement their ideas and create profit. Reward for risks taken is potential economic profit of the entrepreneurs."20 The development of this sector (read: entrepreneurship) is conditioned by favorable government policies. "Creating a favorable business environment requires above all: state action to ensure equality in the market, security of property and contract enforcement, the creation of good economic policies, especially tax and customs policy, credit policy, etc., providing necessary public infrastructure, etc."21

The development of this area to the economy in general, depends on several factors such as favorable policy making by state, loyal competition, trade policies, but also the great importance has the legislation, which lays the legal framework of operation and creates legal security of capital. We believe that in order for the sector to flourish and with that the economic development, the law of commercial companies should be provided to all forms of organizing business, excluding individual business, have the status of legal person. In this way

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<sup>18</sup><http://www.investopedia.com/terms/e/entrepreneur.asp>

<sup>19</sup> David Stokes. 2002. *Small Business Management*. 4 edition. Thomson.

<sup>20</sup><http://www.investopedia.com/terms/e/entrepreneur.asp>

will stimulate the creation of new businesses and many businesses will be thriving private sector development. The private sector is the main driver of economic development in the conditions of a free market economy. Given limited liability, will stimulate investment in the establishment of commercial companies from people who have innovative ideas, financial resources and capital. Such persons would take away from himself all risk of loss of their property, since there is society's responsibility for possible losses.

## **6. Conclusion**

Commercial companies are organizes legal persons and their capital is established under the law, and carry on business in accordance with the license granted. In a market economy business activity are mainly conducted by private commercial companies, so the question of their importance to the economy derives. From the analysis of the applicable legislation, the compilation of field research, the interpretation of specific legal provisions and analyzing studies by different authors, have reached the following conclusions:

- there are different legal solutions concerning the legal status of commercial companies between different countries;
- only limited liability company and joint stock company are considered legal persons (Albania, Kosovo, Germany);
- all commercial companies are considered as legal entities (France, Croatia, etc.)
- legal personality, to the founders of commercial companies it creates certainty for investment and the opening of new businesses;

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<sup>21</sup> M. Mustafa, E. Kutllovci, P. Gashi, B. Krasniqi: "Biznesi i Vogëldhe i Mesëm - krijimi, menaxhimidhëritja e bizneseve", Instituti Riinvest, Prishtinë, 2006, Fq. 168

- starting new businesses creates jobs, capital, their effect is observed in the national economy.

## **7. Recommendations**

- to amend the current law on commercial companies in the Republic of Kosovo and determined that all types of commercial companies have the status of legal person;
- develop an information campaign by the Ministry of Trade and Industry and the business community to Kosovo businesses and the general public about the economic and legal benefits that bring commercial companies with legal personality;
- to amend the current law on commercial companies and to provide, that to register a Limited Liability Company to set quotas of capital in the event of quick bankruptcy, to have the financial resources to respond to creditors firms.

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