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Marmara Business Review, Haziran ve Aralık olmak üzere yılda iki kez çevirimiçi ve basılı olarak yayınlanması planlanan yayın hayatına yeni başlamış akademik ve hakemli bir dergidir. Derginin temel amacı, işletme alanında niceliksel ya da niteliksel özgün ve yeni bilimsel çalışmalar yayınlayarak literatüre katkı sağlamaktır. İngilizce, Almanca ve Türkçe makaleler kabul edilmektedir.

Marmara Business Review (MBR) is an international peer-reviewed and open-access academic journal which is issued by the Faculty of Business and Administration, Marmara University. The journal is published semiannually (June and December) in both online and print version. The aim of MBR is to provide a platform for the researchers, academicians, professionals, practitioners and students to impart and share knowledge in the form of high quality empirical and theoretical research papers, case studies, literature reviews. Papers in English, German and Turkish are accepted.

Teşekkür

Dergimizin ilk sayısına gönderilen makalelere hakemlik yaparak destek veren ve isimleri alfabetik sıra gözetilerek aşağıda düzenlenmiş olan meslektaşlarımıza katkılarından ötürü teşekkür ederiz.

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Sunuş

Değerli Okuyucu,

Bu sayı ile Marmara Business Review yayın hayatına ilk adımını atmaktadır. Marmara Business Review, Marmara Üniversitesi İşletme Fakültesi'nin hakemli dergisi olarak işletme yazınına akademik, kaliteli ve etik çerçeve içinde değerli çalışmalar kazandırmayı hedeflemektedir.

Bilgi paylaşımının ve aynı zamanda bilgi kirliliğinin arttığı günümüzde özgür, etik ve kaliteli akademik çalışmaların özenli bir hakem değerlendirme sürecinden geçerek hedef kitlesi ile buluşması, bilimselliğin korunması, yeni ufukların, tartışma ve iletişim kanallarının açılması, bu bilimsel atmosferin akademisyenlere, uygulamacılara ve politika belirleyicilere katkı sağlaması büyük önem taşımaktadır. Bu hedef doğrultusunda; Marmara Üniversitesi İşletme Fakültesi dergisi Marmara Business Review, kaliteden ödün vermeksizin güncel konuları ve araştırmaları yılda iki kez Haziran ve Aralık aylarında okurlarına sunarak Türkiye'de olduğu kadar uluslararası yazına da katkılar sağlamayı hedeflemektedir. Fakültenin eğitim dilleri olan Türkçe, İngilizce ve Almanca yayınları okurlarına sunmayı hedefleyen dergi, hukuk, pazarlama, üretim yönetimi, organizasyon, yönetim, muhasebe, finansman, insan kaynakları, sayısal yöntemler, bilgi sistemleri, işletme çevresi, küreselleşme, stratejik yönetim, tedarik zinciri, liderlik, girişimcilik ve inovasyon gibi birçok alanda işletmenin farklı konularına yer vermeyi amaçlanmaktadır. Kavramsal çalışmalar, ikincil veri analizleri, modelleme çalışmaları, nitel ve nicel araştırmaların okurları ile buluşması hedeflenmektedir. Ayrıca multi-disipliner bir anlayış içerisinde işletme yazınına katkı sağlayacak sosyoloji, psikoloji, ekonomi, antropoloji, istatistik, matematik gibi farklı disiplinlerdeki çalışmaların da dergide yer alması bilimsel gelişimi beraberinde getiren özgür bir tartışma ortamı yaratacaktır.

Bu sayı ile değer yaratmayı hedefleyen ve yakın bir gelecekte uluslararası endekslerde taranan saygın bir dergi olma amacıyla yola çıkmış Marmara Business Review, akademisyenler ve uygulamacılardan çalışmaları ile katılımlarını beklemektedir.

Saygılarımızla,

Marmara Business Review

Dear Reader,

With this issue, Marmara Business Review is taking its first step into its publication life. As a peer-reviewed journal of Marmara University Faculty of Business Administration, Marmara Business Review aims to contribute to literature with academic, high quality and valuable studies within an ethical framework.

In today's environment where there is high information sharing and at the same time high information pollution, enabling independent, ethical, qualified academic studies to reach their target audience through a rigorous peer evaluation process is of great importance. Further, acting with objectivity, opening new horizons, opening up debate and communication channels, contributing to the academics, practitioners and policy makers with a scientific atmosphere also have great importance. In line with this goal; the Journal of Marmara University Faculty of Business Administration, Marmara Business Review, aims to make contributions to both Turkish and international literature by presenting its readers current topics and researches twice a year, in June and December, without compromising on quality. The journal's intention is to present the publications in the faculty's educational languages; Turkish, English and German. Business subjects in various areas like law, marketing, production management, organization, administration, accounting, finance, human resources, quantitative methods, information systems, business environment, globalization, strategic management, supply chain management, leadership and innovation will take place in the journal. It is aimed to bring forward conceptual studies, secondary data analysis, modelling studies, qualitative and quantitative researches to the readers. Additionally, including different disciplines that will contribute to business literature with a multi-disciplinary approach like sociology, psychology, economy, anthropology, statistics and mathematics will create a free discussion environment and bring academic progress.

Aiming to create value and become a reputable journal cited in international indexes in the near future, Marmara Business Review, is waiting the participation of academics and practitioners with their studies.

Regards

Marmara Business Review

Sehr geehrte Leserin und sehr geehrter Leser,

Sie halten die erste Ausgabe der Fachzeitschrift "Marmara Business Review" in Ihren Händen. Diese begutachtete Zeitschrift hat sich als Ziel vorgenommen, unter Berücksichtigung ethischer Prinzipien akademische Artikel auf höchstem Niveau zu veröffentlichen.

Es ist heute, im Zeitalter von – oftmals irreführender - Informationsüberflut wichtiger denn je, dass qualitativ hochwertige, akademische Werke nach einem sorgfältigen Begutachtungsprozess ihre Leserschaft erreichen. Nur so kann Wissenschaft die Diskussion zwischen Akademikern, Individuen aus der Wirtschaft sowie Politikern ermöglichen. Die Marmara Business Review, Fachzeitschrift der Fakultät für Betriebswirtschaftslehre der Marmara Universität, möchte durch seine Veröffentlichungen Zweimal im Jahr (Juni und Dezember) zu aktuellen Themen und Forschungsergebnissen sowohl in der Türkei als auch auf internationaler Ebene einen Beitrag leisten.

In der Zeitschrift möchten wir in den drei Sprachen unserer Abteilungen Artikel zu diversen Disziplinen der Betriebswirtschaft, wie zB Recht, Marketing, Produktionsmanagement, Unternehmensführung, Organisation, Buchführung, Finanzierung, Personalmanagement, quantitative Methoden, Wissensmanagementsysteme, Unternehmsumwelt, Globalisierung, strategisches Management, Lieferkettensysteme, Entrepreneurship sowie Innovation veröffentlichen. Wir sind der Ansicht, dass auch interdisziplinäre Werke, die in den Bereichen Soziologie, Psychologie, Volkswirtschaftslehre, Antropologie, Statistik und Mathematik angesiedelt sind, eine geeignete akademische Platform in unserer Zeitschrift finden werden.

Die Zeitschrift Marmara Business Review wird in Kürze auch in internationalen Publikationsindexen gelistet werden. Wir würden uns freuen, wenn sowohl Akademiker als auch Experten aus der Wirtschaft ihre Artikel bei uns einreichen.

Mit freundlichen Grüssen

Marmara Business Review

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İŞLETMELERDE KONTROL VE DENETİM KAVRAMLARININ DOĞRU KULLANILMASI AMACINA YÖNELİK KAVRAMSAL BİR İNCELEME

Nuran CÖMERT [*]

Öz

İngilizce'de "contro" ve "audit" kavramları, anlamları pek de birbirine karıştırılmayan iki ayrı sözcükle ifade edilirken bunların Türkçe karşılıkları olan "kontrol" ve "denetim" kavramları sıklıkla birbirine karıştırılmakta ve zaman zaman da birbirinin yerine kullanılmaktadır. Revizyon, teftiş, murakabe gibi biraz daha eski dili yansıtan sözcükler de işin içine girdiğinde tam bir kavram kargaşası yaşanmaktadır. Özellikle ticari ve mali mevzuat ile ilgili düzenlemelere baktığımızda kontrol kavramı denetimle karıştırılmakta, bunun devamı olarak da işletmelerde iç kontrol ve iç denetimin işlevleri ve bu işlevleri üstlenme sorumlulukları iyi anlaşılamamaktadır. Kavramlara doğru anlamlar yüklemediğimiz sürece o kavramlara dayalı doğru yapılar kurma ihtimalimiz düşük demektir. Bu amaçla bu çalışma kapsamında öncelikle kontrol ve iç kontrol kavramları daha sonra da denetim ve iç denetim kavramları çözümlenerek aralarındaki farklar ortaya konulmuş ve bu bağlamda iç kontrol ve iç denetimin örgüt kapsamında nasıl yapılandırılması gerektiğine ışık tutulmaya çalışılmıştır.

Anahtar Kelimeler: Kontrol, İç Kontrol, Denetim, Bağımsız Denetim, İç Denetim.

A CONCEPTUAL ANALYSIS TOWARDS CORRECT USAGE OF CONTROL AND AUDIT CONCEPTS

Abstract

In English, control and audit concepts are used as two different concepts. However, Turkish equivalents of audit and control concepts are often confused and sometimes used interchangeably. Moreover, when the similar concepts used in older language, such as "revizyon", "teftiş", "murakabe" (revision, inspection, and supervision) are involved; there is a complete confusion of concepts. Especially when we look at the regulations related to commercial and financial legislation, the concept of control is confused with audit, and as a consequence, the functions of internal control and internal audit in businesses and their responsibilities to undertake these functions are not well understood. As long as we do not give correct meaning to concepts, we are less likely to construct "right" structures based on those concepts. For this purpose, the concepts of control and internal control and then audit and internal audit concepts were

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analyzed and the differences between them were put forward in this study. In this context, shedding light to structuring internal control and internal audit within the organization was aimed.

Keywords: Control, Internal Control, Audit, Internal Audit, Independent Audit.

1. Giriş

İngilizce'de ***control*** ve ***audit*** kavramları, anlamları pek de birbirine karıştırılmayan iki ayrı sözcükle ifade edilirken bunların Türkçe karşılıkları olan kontrol ve ***denetim*** kavramları sıklıkla birbirine karıştırılmakta ve zaman zaman da birbirinin yerine kullanılmaktadır. ***Revizyon, teftiş, murakabe*** gibi biraz daha eski dili yansıtan sözcükler de işin içine girdiğinde tam bir kavram kargaşası yaşanmaktadır. Ülkemizde bu konularda gözetim ve düzenleme yetkisi olan kurum ve kuruluşlar biraz da Amerika'yı yeniden keşfetmeye gerek yok anlayışını benimsedikleri için, yeni düzenlemeler yaparken, eski uygulamaların olumlu etkilerini de ortadan kaldırabilecek şekilde davranmakta, akademik bir temelde birleşip doğrusunu benimsemek yerine her biri kendi çeviri anlayışını esas almaktadır. [1] Hiç şüphesiz bu durum yöneticiler, işletme sahipleri ve uygulamacılar arasında problem yaratmakta ve işletmelerde örgütsel çatışmalara neden olmaktadır. Birbirinden neredeyse habersiz bir şekilde bilimsel çalışmalar yapanlar da —*özellikle denetim ve işletmecilik alanında çalışanlar*— bu kavramları birbirinin yerine kullanabilmektedirler.

Şüphesiz Türk işletmecilik hayatı için bu kavramlar içerik itibariyle çok yeni değildir. Özellikle karma ekonomik modelin benimsendiği Cumhuriyetin yaklaşık ilk 50 yıllık döneminde kamu iktisadi teşekküllerinde, banka ve sigorta şirketlerinde teftiş olarak ifade edilen işlev, bugün iç denetim olarak ifade edilen işleve, Eski Türk Ticaret Kanunumuzda (TTK'da) yer alan murakıplık ise bağımsız denetime benzemektedir. Ancak bu işlevlerin çağın gelişmelerine uygun, kuruma değer katan etkili ve verimli bir şekilde çalışır hale getirilmesi hep eksik kalmıştır. Özellikle Avrupa Birliği (AB) uyum sürecinde mevzuatta yer alan bu müesseseler sürekli eleştirilmiş ve dolayısıyla uyum kapsamında ister istemez teftiş ve murakabe anlayışını değiştirme ihtiyacı doğmuştur. Bu bağlamda halka açık işletmelerle para ve sermaye piyasalarında faaliyet gösteren işletmeler için düzenleme yapma yetkisi olan kurumlar dünyadaki modelleri mevzuata uyarlamışlar ancak bunu çeviri geleneği ile gerçekleştirirken, kavramlarda titizlik göstermedikleri için kavram kargaşasına sebep olmuşlardır. Şüphesiz bu konuda literatüre katkı verenleri de ayrı tutmamak gerekir. Ancak uygulamaya yön verenlerin sebep olduğu kavram kargaşasının etkisi biraz daha fazla olmaktadır.

[1] Nitekim Bankacılık Düzenleme ve Denetleme Kurulunun 1 Kasım 2006 tarihinde yayınlamış olduğu *Bankaların İç Sistemleri Hakkındaki Yönetmelik* ten önceki düzenlemelerinde bankalar için iç kontrol ve teftiş birimlerini kapsayan bir denetim sistemi modelini örnek olarak yayınlaması, diğer işletmelerin de yanlış kurgulanmış bir modeli aynen uygulamalarına sebep olmuştur. SPK da bu modeli sorgulamadan aynen benimseyerek 14 Temmuz 2003 tarihinde yayınlamış olduğu ***Aracı Kurumlarda Uygulanacak İç Denetim Sistemine İlişkin Esaslar Hakkında Tebliğ*** de kavram kargaşasını körükleyen bir düzenleme yapmıştır.

Düzenlemelere baktığımızda özellikle kontrol kavramı denetimle karıştırılmakta, bunun devamı olarak da iç kontrol ve iç denetimin işlevleri ve bu işlevleri üstlenme sorumlulukları karıştırılmaktadır.

Kavramlara doğru anlamlar yüklemediğimiz sürece o kavramlara dayalı doğru yapılar kurma ihtimalimiz düşük demektir. Bu ülkenin bir vatandaşı olarak her gün yaşadığımız sorunları kendi mesleki birikimimle anlamaya ve değerlendirmeye çalışırken, özellikle bireysel olarak kontrol mantığımızın gelişmemiş olmasının bir sebebinin de bilinçaltına yerleştirilmiş olan yanlış anlamlardan kaynaklandığını düşünüyorum. Bu yazı bu düşünceden hareketle kaleme alınmıştır.

Bu amaçla bu çalışma kapsamında öncelikle kontrol ve iç kontrol kavramları daha sonra da denetim ve iç denetim kavramları çözümlenerek aralarındaki farklar ortaya konulmuş ve bu bağlamda iç kontrol ve iç denetimin örgüt kapsamında nasıl yapılandırılması gerektiğine ışık tutulmaya çalışılmıştır.

2. Kontrol Kavramı

Kontrol sözcüğü dilimize Fransızcadan geçmiş olup Latince counter-roll (contre-roll= karşıt kayıt) sözcüğünün kısaltılmışıdır. Sözcüğün bugünkü anlamını ifade eden kullanımı 14. YY a dayanıyor. 1422'de contre-role olarak çift tutulan kayıt anlamında diğerini kontrol için kullanılmıştır. [2]

Türkçede de benimsendiği üzere Control, Fransızcada işin doğru yapılıp yapılmadığını inceleme anlamına gelirken, İngilizcede esas olarak *yönetme, yöneltme ve zapt etme gücü ve yetkesi (otorite)* anlamına gelmektedir. Ancak Fransızcadaki anlamına benzer şekilde hesap incelemesi anlamını da taşımaktadır.

Bilimsel yönetime katkıda bulunan ve bugün de geçerli olan yönetim ilkelerinin evrenselliğini ortaya koyan Henri Fayol, kontrolü yönetsel işin bir parçası olarak kabul ederek bir işletmede işlerin programa, verilen talimatlara ve kabul edilen ilkelere göre yürüyüp yürümediğinin doğrulanması olarak tanımlamıştır. Yönetim biliminin bugüne kadar gelişiminde çok çeşitli kontrol tanımları yapılmakla birlikte Fayol'un klasik yaklaşımı geçerliliğini korumuştur.

Fayol, yönetimin kontrol etme işlevini söyle tanımlamaktadır (Şengül, 2007): *"Kontrol her şeyin verilen emirlere ve var olan kurallara uygun şekilde olmasını gözetlemektir"*.

Fayol'a göre kontrol işlevinin amacı örgütün isleyişindeki hata ve eksiklikleri ortaya çıkararak gidermek ve tekrarını önlemektir. Kontrol eylemi doğrudan yöneticiler tarafından yerine getirilebileceği gibi bu görev yardımcılara da bırakılabilir. Kontrol eylemlerinin yoğun ve karmaşık olduğu örgütlerde bu iş için özel birimler oluşturulmalıdır. Kontrolün etkili olabilmesi için zamanında yapılması ve yaptırımlarla desteklenmesi gerekir. Kontrol eyleminin yerine getirilmesi örgütün işleyişini engellememelidir. Dolayısıyla kontrol eyleminin kapsamı ve

2 *Le Nouveau Petit Robert Dictionnaire de la langue française, Paris,1993, sayfa 2840.*

sınırları açık bir biçimde belirlenmelidir. Fayol, bu noktada icracı birimlerle kontrol birimleri arasında olası görev ve yetki karmaşıklığının önlenmesini önermektedir. Kontrol eylemi, karar alma ve uygulama eylemi değildir. Örgütün işleyişine ilişkin karar alma ve uygulama eylemleri diğer birimler tarafından yerine getirilmekle örgütte bir iş bölümü gerçekleşmiş olmaktadır. Örgütün başarısı iş bölümünün iyi yapılmasına ve birimlerin kendi görev ve yetki alanları dışına çıkmamasına bağlıdır. Bu anlamda kontrol eylemini gerçekleştirenler yapılan işlerin örgütün hiyerarşik isleyiş, plan ve amaçlarına uygunluğunu denetlemekle yükümlüdürler. Fayol'a göre iyi bir kontrol sisteminin varlığı yönetim eylemini destekler ve örgütün yıkımına neden olabilecek sorunların tespitine olanak sağlayabilir. Kontrol işlevi, yönetimin diğer işlevler gibi sürekli bir şekilde dikkat gerektiren ve sanat niteliği taşıyan bir işlevdir (Şengül, 2007).

F.W. Taylor ile gelişmeye başlayan bilimsel yönetim yaklaşımının verimlilik temeline dayalı anlayışının doğasında yatan kontrol anlayışı Fayol'un yaklaşımıyla yönetsel bir işlev olarak yerini bulmuştur. Fayol'un klasikleşen yönetim süreci yaklaşımına göre kontrol yönetimin beş temel işlevinden—*Planlama, örgütleme, yürütme, eşgüdüm ve kontrol*— biri olup işletmenin faaliyet sonuçlarını tespit ederek diğer fonksiyonların neyi nasıl ve hangi ölçülerde başardığını ortaya koyar. Daha önce de vurguladığımız üzere bu anlayışa göre kontrolün asıl amacı, hataları ve zayıf noktaları ortaya çıkarmak, düzeltici önlemler alarak bunların tekrarını engellemektir. Bu yönüyle kontrol tıpkı bir ölçme tartma işlemi gibi yöneticinin işletmede yapılan ve tamamlanan işleri değerleme ve düzeltme faaliyetidir (Hodgetss, 1999).

Taylor ve Fayol'u izleyen dönemlerde yönetim bilimi yaklaşımları çerçevesinde yapılmış çeşitli kontrol tanımlarını şu şekilde sıralayabiliriz [3]:

Hugo Diemer'e göre kontrol, yönetimden ne yapılması gerektiğinin ve işletmenin tüm birimlerinde ne yapıldığının bilinmesini isteyen bir yönetim ilkesidir. Eğer yapılması gereken ile yapılan arasında fark varsa kontrol, bu farkın neden oluştuğunu bilmek demektir. Kontrol; hata, eksiklik veya aşırı maliyetlerin üstesinden nasıl gelineceğini bilmek ve bunun gereğini yerine getirmek anlamına gelmektedir (Diemer, 1924).

Webster R. Robinson (1925) ise kontrolü işletme örgütünün sekiz temelinden altıncısı olarak belirlemiş ve işletmenin genel müdürü ve üst düzey yöneticilerine işletme faaliyetlerinin verimliliği, işletmenin geçmişte ve bugün neler yaptığı, gelecekte neler beklenebileceği konusunda sürekli, hızlı ve doğru bilgi sunma yollarını kapsayan temel olarak tanımlamıştır.

Davis (1940) ise kontrolü, işletmenin yönerge ve kılavuzları ile faaliyetlerinin yönetimi ve düzenlenmesi olarak tanımlamıştır. Davis kontrolün alt işlevini ise rutin planlama, programlama, hazırlık, sevk, yönlendirme, gözetim, karşılaştırma ve düzeltici işlem olarak sıralamıştır.

[3] Bu konuda ayrıntılı inceleme için bakınız, Fatih Kulak; Merkez Bankalarında İç Kontrol ve İç Denetim: Kavramsal Çerçeve ve Türkiye Cumhuriyet Merkez Bankası'nda İç Kontrol ve İç Denetimin Etkililiği Konusunda Bir Değerlendirme.

Dimock'un (1945) tanımına göre kontrol, yönetsel emir ve beklentilerin ne derece başarıldığına karar vermek üzere, belirlenmiş amaçlar ve standartlar ışığında mevcut performansın analiz edilmesidir.

B.E. Goetz'in (1949) kontrol tanımına göre kontrol, planlara uyum sağlanmasını içerir. Goetz'e göre program çalışıncaya ve hedeflerine ulaşılıncaya değin astlar talimatlandırılmalı, yönetilmeli, güdülenmeli, denetlenmeli ve düzeltilmelidir. Yönetsel kontrolün amacı ve içeriği budur.

W.H. Newman (1951) kontrolü yönetimin bir süreci olarak açıklamakta, faaliyet sonuçlarının planlara olabildiğince uyulduğunun görülmesi olarak tanımlamaktadır. Bunun gereği olarak standartların konması, çalışanların bu standartlara ulaşmak için teşvik edilmesi, gerçekleşen sonuçların standartlarla karşılaştırılması ve başarı planından sapmalar olduğunda düzeltici işlem yapılması gereklidir.

D.S. Sherwin (1956) kontrolü, faaliyetleri önceden belirlenmiş standartlara göre düzenleme işi olarak tanımlamaktadır.

H. Koontz (1958) yönetimin işlevlerini planlama, örgütleme, personel sağlama, yöneltme ve kontrol etme olarak sıralamış ve kontrolü, planların eyleme dönüştüğünden emin olmak için astların faaliyetlerinin ölçülmesi ve düzeltilmesi olarak tanımlamıştır. Koontz, Fayol'ün tanımına atıfta bulunarak kontrolün işletmedeki her şey, tüm çalışanlar ve işlemlere yönelik eylemler olduğunu belirtmektedir. Koontz'a göre kontrol süreci üç aşamadan oluşmaktadır: (1) standartların belirlenmesi, (2) performansın standartlarla karşılaştırılması ve (3) sapmaların düzeltilmesi.

Koontz ve O'Donnell'a (1959) göre ise kontrol, işlemlerin planlara uyum göstermesini sağlamak için tasarlanmış faaliyetleri içerir. Yani planların başarılmasını sağlamak üzere astların faaliyetlerinin ölçülmesi ve düzeltilmesidir.

Reeves ve Woodward (1970) ise kontrolü tam olarak faaliyetlerin istenen sonuçları doğurduğundan emin olma görevi olarak tanımlamışlardır. Bu bakımdan kontrol, faaliyetlerin sonuçlarının izlenmesi, geri bildirimlerin incelenmesi ve gerekirse düzeltici işlemlerin yapılması ile sınırlıdır.

Yönetim kontrolü kavramına vurgu yapan Mockler (1970) ise kontrolü, performansın önceden belirlenmiş standartlara uygun olup olmadığının belirlenmesi, kurumsal amaçların başarılmasında beşeri ve diğer kurumsal kaynakların mümkün olan en etkili ve verimli şekilde kullanılıp kullanılmadığı ve gerekli olan iyileştirici önlemin alınıp alınmadığının araştırılması amacıyla işletme yöneticileri tarafından gerçekleştirilen sistematik bir çaba olarak tarif etmiştir.

Gerek bilimsel yönetim yaklaşımlarında gerek uygulamada yapılan tüm kontrol tanımları, işlerin gerçek durumu hakkında bir yoklama ve karşılaştırma unsuru içermektedir.

Dünya uygulamalarına yön verici bir etki gücüne sahip olan COSO, – Committee of Sponsoring Organisations [4] *İç Kontrol-Bütünleştirilmiş Genel Çerçeve* başlıklı raporunda, işletmeler için örnek teşkil edecek bir iç kontrol modeli ortaya koyarken öncelikle herkesin kabul ettiği bir kontrol tanımı yapmaya çalışmış, ancak süreçte böyle bir ortak tanım yapmanın ne kadar güç olduğu konusunda bir tespit de ortaya koymuştur.

COSO söz konusu çalışmanın araştırma safhasında toplumun her kesimine sorular sormak suretiyle insanların kontrol denilince neyi anladığını belirlemeye çalışmıştır. Araştırmanın sonucunda kontrol kavramına insanların önemli bir kısmının şu anlamları yüklediği anlaşılmıştır; gücün ***kullanılması, kısıtlanması ya da kontrolü; rehberlik etmek veya yönetmek amaçlı güç ya da otorite; yapılan işlerin düzene sokulması, yönetimi ve koordinasyonu, bir sistemin işleyişini düzenleyen veya yönlendiren mekanizma.*** COSO bu tanımlardan yola çıkarak, bütün kontrol tanımlarının ortak noktasını bulmaya çalışmış ve bunlardan somut olarak iki çıkarım yapmıştır;

- **Amaç** belirleme
- Bu amaçlara ulaşabilmek için **eylemlerde** ***–yönlendirme, yol gösterme, kısıtlama, düzenleme, yönetim*** *gibi*—**bulunma**.

COSO'ya göre kontrolün gerçekleştirilebilmesi için önceden belirlenmiş amaçlara gereksinim vardır. Amaç olmadan kontrolün bir yararı olmaz.

COSO bu çerçevede kontrolü *amaçlara ulaşmak için birilerinin ve/veya herhangi bir şeyin, örneğin bir işletmenin çalışanlarının, bir birimin veya tüm işletmenin etki altına alınması* şeklinde tanımlamıştır.

COSO komitenin sponsorlarından biri olan Uluslar Arası İç Denetçiler Enstitüsü (IIA), Mesleki Uygulamalar Çerçevesi (IPPF) kapsamında kontrolü şu şekilde tanımlamıştır;

> *"Kontrol, riskleri yönetmek, belirlenmiş amaç ve hedeflere ulaşma olasılığını artırmak amacıyla yönetim, yönetim kurulu ve diğer ilgililerce, yapılan her türlü eylemdir. Yönetim amaç ve hedeflerin başarılması için makul bir güvence sağlayacak yeterli performans eylemlerini planlar örgütler ve yürütür."*

IIA ile paralel düzenlemeler yapan Avrupa İç Denetçiler Enstitüleri Konfederasyonu (ECIIA) kontrolü; "*yönetimin, amaç ve hedeflere ulaşma konusunda makul güvence sağlayacak yeterli faaliyetleri planlaması, organize etmesi ve yürütmesi"* şeklinde açıklamaktadır.

[4] **COSO, *Destekleyici Örgütler Komitesi*** Amerika Birleşik devletlerinde ilk kez 1985 yılında Hileli Finansal Raporlama Ulusal Komisyonuna destek sağlamak amacıyla kurulmuş bir özel sektör girişimidir. Esas olarak hileli finansal raporlamaya yol açabilen ihmal edilmiş ya da dikkatten kaçan etkenler üzerinde çalışır ve halka açık şirketler, bağımsız denetçiler, Amerikan Sermaye Piyasası Kurulu(SEC) ve diğer düzenleyiciler ile eğitim kurumları için tavsiyeler geliştirir. İlk başkanının adı James C. Treadway olduğu için komisyon bu kişinin adıyla da anılmaktadır. Bugün dünyanın her tarafında kurumsal yönetim, iş ahlakı (business ethics), iç kontrol, kurumsal risk yönetimi, hile ve finansal raporlama konularına eleştirel bir bakışla rehberlik sağlayan bir kurum olarak kabul görmektedir. Bu komitenin destekleyicisi beş mesleki örgüt (AAA-Amerikan Muhasebecilik Kurumu, AICPA-Amerikan Kamu Muhasebecileri Örgütü, IIA- Uluslararası İç Denetçiler Enstitüsü, IMA- Yönetim Muhasebecileri Enstitüsü, FEI-Uluslararası Finansal Yöneticiler Birliği) kendi düzenlemelerinde bu komitenin rehberlerini referans aldıkları için komitenin düzenlemelerinin etki gücü yüksektir. Özellikle Amerikan yasalarına ve Literatürüne de etki eder.

İç Kontrol Kavramı

COSO İç kontrol kavramını tanımlarken oldukça titiz davranmış iç sözcüğünü dahi tanımlama gereği duymuştur.

COSO İç (internal) sözcüğünü *"bir şeyin sınırları ya da kapsamı içinde kalan"* olarak dikkate aldığını açıklarken bu tanımda geçen *"bir şey"* sözcüğü ile *"bir kişilik"* ya da *"kurum"* un kastedildiğini belirtmiştir. Dolayısıyla *iç kontrol* ile bir işletmenin, bir üniversitenin, bir kamu kuruluşu veya yardım kuruluşunun veya emeklilik fonlarının sınırları dâhilindeki kontroller kastedilmekte, işletme dışındaki düzenleyici otoritelerin ve dış denetçilerinin eylemlerinin bunun dışında tutulduğu açıklanmaktadır.

Esasen kontrol; kontrol edenin kontrol edilen karşısındaki konumuna göre iç ve dış kontrol olarak ikiye ayrılabilir (Knedler, 2003). COSO yaklaşımında iç *kontrol*, kuruluş bünyesindeki kontrolle aynı anlamda kullanılmaktadır. Ancak burada önemli olan nokta iç kontrolün kuruluşun amaçları ile ilgili olmasıdır.

COSO'nun bugün için evrensel boyutta kabul gören tanımından önce dünyada kabul gören birçok iç kontrol tanımı yapılmış ve bu çerçevede iç kontrol modelleri önerilmiştir. Ancak uygulamaya dönük en kapsamlı tanımlar Amerikan Sertifikalı Kamu Muhasebecileri Enstitüsü' (AICPA – American Institute of Certified Public Accountants) tarafından yapılmıştır. COSO 1992'de İç Kontrol – Bütünleşik Çerçeveyi yayınlayıncaya kadar -özellikle denetim uygulamalarında- AICPA'nın iç kontrol yaklaşımları etkili olmuştur.

AICPA'nın 1949'da yaptığı bir tanıma göre ***İç kontrol****, işletmede varlıkların korunması, muhasebe verilerinin doğruluğu ve güvenilirliğinin sağlanması, faaliyetlerin etkili biçimde yürütülmesinin teşviki ve yönetsel politikalara bağlılığın özendirilmesi için kabul edilen tüm eşgüdüm yöntem ve önlemleri ile organizasyon planından ibarettir***.**

COSO'nun 1992 yılında yayımlanmış olduğu İç *Kontrol – Bütünleşik* Çerçevesinde ise iç kontrol şu şekilde tanımlanmıştır;

> *İç kontrol genelde işletmenin yönetim kurulu, üst yönetimi ve diğer personeli tarafından etkilenen; faaliyetlerin etkililiği ve verimliliği, finansal raporlamanın güvenilirliği ve ilgili yasalara ve düzenlemelere uygunluk amaçlarına ulaşılıp ulaşılmadığı konusunda makul güvence sağlamak üzere tasarlanmış bir süreçtir.*

COSO yukarıdaki tanımı 2013 yılında güncelleyerek yayınladığı İç Kontrol-Bütünleşik Çerçevede aynen benimsemiş ancak *finansal raporlamanın güvenilirliği* amacı yerine biraz daha geniş anlam taşıyacak şekilde sadece *raporlamanın güvenilirliği* kavramını kullanmıştır.

Ülkemizde özellikle 2000li yılların başından itibaren kamu kurumları ile para ve sermaye piyasalarında faaliyet gösteren kurum ve kuruluşların mevzuatlarında iç kontrollerle ilgili çeşitli düzenlemeler yer almaya başlamıştır. Bu kurum ve kuruluşların küresel piyasalarla doğrudan

veya dolaylı ilişkisinin artması ve Avrupa Birliği müktesebatına uyum ihtiyacı nedeniyle küresel düzenleyici kurumların düzenlemelerinde yer alan kontrol modelleri, ister istemez ülkemiz mevzuatına da yansımıştır. Ancak ülkemizdeki düzenlemelerde yer alan kontrol kavramı ve tanımları amacı ve sistemik modeli izah etmekten uzak, birbirini tekrar eden -AICPA'nın 1949 da yaptığı ve 1992 de terk ettiği tanımı benimsemiş- bir özellik taşımaktadır.

Bankacılık Düzenleme ve Denetleme Kurulunun (BDDK) *Bankaların Sistemleri Hakkında Yönetmeliğinde*[5] **iç kontrol sisteminin amacı başlıklı 9. Maddede** iç kontrol şöyle tanımlanmıştır:

> *İç kontrol sisteminin amacı, bankanın varlıklarının korunmasını, faaliyetlerin etkin ve verimli bir şekilde Kanuna ve ilgili diğer mevzuata, banka içi politika ve kurallara ve bankacılık teamüllerine uygun olarak yürütülmesini, muhasebe ve finansal raporlama sisteminin güvenilirliğini, bütünlüğünü ve bilgilerin zamanında elde edilebilirliğini sağlamaktır.* [6]

Sermaye Piyasası Kurulu (SPK), aracı kurumlar için yayınlamış olduğu *V/68 Sayılı Aracı Kurumlarda Uygulanacak İç Denetim Sistemine İlişkin Esaslar Hakkında Tebliğ* de iç kontrol sistemini kendine özgü şekilde şöyle tanımlamıştır:

> *İç kontrol sistemi: Aracı kurumun merkez dışı örgütleri dâhil tüm iş ve işlemlerinin yönetim stratejisi ve politikalarına uygun olarak düzenli, verimli ve etkin bir şekilde mevcut mevzuat ve kurallar çerçevesinde yürütülmesi, hesap ve kayıt düzeninin bütünlüğünün ve güvenilirliğinin, veri sistemindeki bilgilerin zamanında ve doğru bir şekilde elde edilebilirliğinin sağlanması, hata, hile ve usulsüzlüklerin önlenmesi ve tespiti amacıyla aracı kurumda uygulanan organizasyon planı ile bunlara ilişkin tüm esas ve usulleri* [7]

Başbakanlık Hazine Müsteşarlığı tarafından 21.06.2008 tarih ve26913 sayılı resmi gazetede yayımlanan *Sigorta ve Reasürans İle Emeklilik Şirketlerinin İç Sistemlerine İlişkin Yönetmelik* de ise iç kontrol şu şekilde tanımlanmıştır:

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5 *11 Temmuz 2014 tarih ve 29057 sayılı Resmi Gazete'de yayımlanmıştır.*

6 Bu tebliğde bankalar için önerilen iç kontrol sisteminde ve tanımda görüşümüze göre teknik hatalar yapılmıştır. İngilizce'de doğru dürüstlük anlamına da gelen integrity sözcüğü Türkçeye bütünlük şeklinde çevrilmiştir. COSO'nun 1992 de yapmış olduğu yalın ancak model ortaya koyan tanımı AICPA tarafından da aynen benimsenmiş ve 1992 den sonra yayınlanan standartlarda bu tanım esas alınmışken, BDDK sınırlı sayıdaki Türkçe yazında birbirinden veya eskimiş kaynaklardan kopyalanarak kullanılmaya devam edilen AICPA'nın 1949 yılında yapılmış tanımını esas alıp kendine özgü karma bir tanım ortaya koymuştur.

7 SPK'nın bu düzenlemesi ne teorik temellere ne de standartlara uygun olup uygulamada kafa karıştırmaktadır. Örneğin adı geçen tebliğde şu tanımlar yer almaktadır: İç ***denetim sistemi****:* İç kontrol sistemi ile teftiş sisteminden oluşan bütünleştirilmiş süreci, Teftiş sistemi*: Aracı kurumun günlük faaliyetlerinden bağımsız, yönetimin ihtiyaçları ve aracı kurumun yapısına göre mevzuat ve aracı kurum politikalarına uygunluk denetimleri şeklinde müfettişlerce gerçekleştirilen, iç kontrol sisteminin işleyişi başta olmak üzere aracı kurumların tüm faaliyetlerini ve birimlerini kapsayan ve bu alanlara ilişkin değerlendirme yapılmasını sağlayan, değerlendirmelerde kullanılan kanıt ve bulguların raporlama, izleme ve inceleme sonucunda elde edildiği sistematik denetim sürecini ifade eder.* Bu tanımda iç kontroller konusunda güvence unsuru olan denetim iç kontrolden daha geniş bir kavrammış gibi tarif edilmiştir. Oysa iç denetim iç kontrol sisteminin bir parçasıdır.

İç kontrol sisteminin amacı, şirket varlıklarının korunmasını, faaliyetlerin etkin ve verimli bir şekilde Kanuna ve ilgili diğer mevzuata, şirket içi politikalar ile kurallara ve sigortacılık teamüllerine uygun olarak yürütülmesini, muhasebe ve finansal raporlama sisteminin güvenilirliğini, bütünlüğünü ve bilgilerin zamanında elde edilebilirliğini sağlamaktır.

Sayıştay Denetim Terimleri Sözlüğünde ise İç kontrol, *'Bütçeye ve yürürlükteki kurallara uyulmasına, varlıkların korunmasına, muhasebe kayıtlarının geçerliliğinin ve samimiyetinin sağlanmasına ve özellikle finansal bilgileri uygun zamanda kullanıma hazır halde bulundurarak yönetsel kararların kolaylaştırılmasına imkân veren prosedürler ve araçlar bütünü'* olarak tanımlanmaktadır.

10.12.2003 tarihli ve 5018 sayılı 'Kamu Malî Yönetimi ve Kontrol Kanunu'na dayalı olarak Maliye Bakanlığı'nca yayımlanan 'İç Kontrol ve Ön Mali Kontrole İlişkin Usul ve Esaslara İlişkin Yönetmelikte iç kontrol tanımı şöyle yapılmıştır:

> *İç kontrol, "İdarenin amaçlarına, belirlenmiş politikalara ve mevzuata uygun olarak faaliyetlerin etkili, ekonomik ve verimli bir şekilde yürütülmesini, varlık ve kaynakların korunmasını, muhasebe kayıtlarının doğru ve tam olarak tutulmasını, malî bilgi ve yönetim bilgisinin zamanında ve güvenilir olarak üretilmesini sağlamak üzere idare tarafından oluşturulan organizasyon, yöntem, süreç ile iç denetimi kapsayan malî ve diğer kontroller bütünü" olarak tanımlanmıştır.*

3. Denetim ve İç Denetim Kavramları

Denetim (*audit*) sözcüğü Latince kökenli olup duyma, işitme anlamına gelen *audire* sözcüğünden gelmektedir. Esas olarak hesapların sözlü olarak okunması yoluyla incelenmesinden kaynaklanmakta ve günümüzde de hesapların incelenmesi anlamına gelmektedir (The Oxford Dictionary of Etymology). Daha çok bağımsız muhasebe uzmanlarının bu işi yapmaları nedeniyle de muhasebe yazınında *auditing* bu anlamı ifade edecek şekilde genellikle muhasebe/finansal denetimi kavramıyla eş anlamlı olarak kullanılmaktadır (Arkun, 1980).

En geniş anlamıyla auditing/denetim kavramının tanımı Amerikan Muhasebecilik Kurumu (AAA) tarafından şu şekilde yapılmıştır; *ekonomik eylemler ve olaylar hakkındaki beyanların/iddiaların, bu beyanlarla ilgili önceden belirlenmiş olan ölçütlere uygunluğunun derecesini belirlemek ve sonuçlarını ilgili kullanıcılara iletmek amacıyla tarafsız bir şekilde kanıt toplayan ve değerlendiren sistematik bir süreçtir* (Committee on Basic Auditing Concepts, s.2).

Bu tanımda yer alan beyan kavramının denetimde özel bir anlamı bulunmaktadır (Taylor & Glazen, 1991). Örneğin finansal tablo kalemlerinde sunulan bilgiler ile kayıtlarda veya sistemde yer alan açıklamalar yönetim tarafından pay ve çıkar sahiplerine(sosyal paydaşlara) sunulan beyan ve iddialardır. Buna ilişkin iki örnek vermek gerekirse;

(1) Finansal tablolar bir işletmenin belli bir dönemdeki ekonomik olay ve işlemlerinin makul/adil ölçümlerini(değerini) gösterir.

(2) İşletmenin kullandığı bilgisayara dayalı muhasebe sistemi verimlidir ve güvenilirdir.

İlk beyanda veya iddiada; denetçi finansal tabloların genel kabul görmüş muhasebe ilke ve kurallarına uygun hazırlanıp hazırlanmadığını araştırır.

İkinci beyanda da ise; denetçi muhasebe sisteminin verimlilik ve güvenilirlik ölçütlerini karşılayıp karşılamadığını araştırır.

Denetimi örgütsel amaca bağlı olarak sınıflandırmak gerekirse üçe ayırabiliriz.;

(1) Finansal tablo denetimi,

(2) Uygunluk denetimi

(3) Faaliyet denetimi

Bu ayırım dikkat edilirse COSO'nun iç kontrol tanımında- ki bu tanım başlı başına bir iç kontrol modelini de ortaya koyuyor- yer alan üç temel amaç ile örtüşür.

(1) Finansal Tablo Denetimi: Bir işletmenin finansal tablolarının önceden belirlenmiş ölçütlere uygun olarak hazırlanıp hazırlanmadığı konusunda görüş belirtmek amacıyla finansal tabloların denetlenmesidir. Bu ölçütler temel olarak genel kabul görmüş muhasebe ilkeleri ya da standartlarıdır. Bu denetimi genellikle örgütle hiyerarşik bir bağı ve ilişkisi olmayan bağımsız muhasebe uzmanları yapar. Bu nedenle bu hizmete bağımsız denetim denilir.

(2) Uygunluk Denetimi: Bir kişi ya da işletme biriminin yasalara ve düzenlemelere bağlı kalıp kalmadığını belirlemek amacıyla yapılan denetimdir. Örneğin gelir vergisi beyannamesinin vergi kanunlarına uygunluğunun vergi idaresinin uzmanları tarafından yapılan denetimi uygunluk denetimidir.

(3) Faaliyet Denetimi: Bir örgütün faaliyetlerinin etkililiğini ve verimliliğini değerlendirmek amacıyla bu faaliyetlerle ilgili usul ve yöntemlerin uygulanışının gözden geçirilmesidir. Örgütün tamamı, bir işletme birimi, bir üretim faaliyeti, pazarlama faaliyeti vb. fonksiyonun denetimi faaliyet denetiminin kapsamına girer. Bu denetim iç denetçiler tarafından yapılır ve kamu kuruluşlarında kamu denetçileri de faaliyet denetimi yaparlar.

Bu açıklamalarımızı denetçinin konumu açısından değerlendirdiğimizde denetimi aşağıdaki gibi 3 gruba ayırabiliriz;

(1) Bağımsız/Dış denetçi

(2) İç denetçi

(3) Devlet denetçisi

4. Bağımsız Denetim/Denetçi

Bağımsız denetim örgütle hiyerarşik bir bağı ve ilişkisi olmayan bağımsız uzmanlarca yapılan denetimdir. Bu nedenle bu denetime dış denetim de denir. Günümüzde daha çok serbest meslek sahibi olarak kendi adına veya bu denetim işini yapmak üzere kurulmuş olan bir denetim şirketinin ortağı olarak çalışan kişiler tarafından, işletmelerin finansal tablolarının genel kabul görmüş muhasebe ilkelerine(muhasebe standartlarına) uygunluk derecesini belirlemek amacıyla yapılan denetim çalışmasına bağımsız denetim ya da dış denetim denilmektedir. Özellikle kamuya hesap verme sorumluluğu olan işletmelere bu hizmeti veren yetki belgeli muhasebe uzmanlarına ABD'de Certified Public Accountant(CPA) Kanada'da Certified General Accountant (CGA) veya Chartered Accountant(CA) [8], İngiltere'de Chartered Certified Accountants (CCA), Fransa'da Expert Comptable, Almanya'da Wirtschaftprüfer, Commonwealth ülkelerde ise Chartered Accountant (CA) denilmektedir. Ülkemizde ise bu hizmeti 3568 sayılı meslek yasası kapsamında Serbest Muhasebeci Mali Müşavir (SMMM) ve Yeminli Mali Müşavir (YMM) belgesine sahip muhasebe uzmanları verebilir. Ülkemizde söz konusu meslek mensuplarının bu hizmeti verebilmeleri için ayrıca Kamu Gözetimi Muhasebe ve Denetim Standartları Kurumu (KGK) tarafından öngörülen yetkinlik belgesine de sahip olması gerekmektedir.

5. Devlet Denetimi/Denetçisi

Devletin yetkili kurumlarınca; kamu hizmeti yapan kurum ve kuruluşların çeşitli nedenlerle yapılan denetimlerdir. Bunun örnekleri aşağıda sıralanmıştır;

- **Devlet Denetleme Kurulu;** Cumhurbaşkanlığı'na bağlı olup Anayasanın ilgili maddelerine göre Cumhurbaşkanının isteği ile silahlı kuvvetler ve yargı organları hariç tüm kamu hizmeti veren kamu kurum ve kuruluşlarında—dernekler vakıflar sendikalar dâhil—yapılan inceleme araştırma ve denetimleri gerçekleştirir.
- **Sayıştay Denetimi;** Sayıştay **kamuda** hesap verme sorumluluğu ve mali saydamlık esasları çerçevesinde, kamu idarelerinin etkili, ekonomik, verimli ve hukuka uygun olarak çalışması ve kamu kaynaklarının öngörülen amaç, hedef, kanunlar ve diğer hukuki düzenlemelere uygun olarak elde edilmesi, muhafaza edilmesi ve kullanılması için Türkiye Büyük Millet Meclisi adına denetim yapar, sorumluların hesap ve işlemlerinin kesin hükme bağlanmasını ve kanunlarla verilen inceleme, denetleme ve hükme bağlama işlerini yürütür.
- **Başbakanlık Yüksek Denetleme Kurulu:** TBMM adına sermayesinin yarısından fazlasının devlete ait olduğu kamu kuruluş ve ortaklıklarının –mahalli idareler ve meslek kuruluşları hariç—denetimini yapar.
- **Kamu Kurum ve Kuruluşları Bünyesindeki Denetim Kurulları;** SPK, BDDK, EPDK, Maliye Bakanlığı, Gümrük ve Ticaret Bakanlığı vb. gibi kamu kurum ve kuruluşları, kendi mevzuatları

[8] Kanada'da Quebec ve Ontario'da Certfied Mangement Accountant (CMA) denilen yönetim muhasebecileri de denetim yetkisi alabilirler.

çerçevesinde oluşturulan ve kendi mevzuatları kapsamında denetim yapan denetim veya teftiş kurullarına sahiptirler.

- **T.C. Kamu Denetçiliği (Ombudsmanlık) Kurumu**: 29/6/2012 tarihli ve 28338 sayılı Resmi Gazetede yayımlanarak yürürlüğe giren 6328 sayılı Kamu Denetçiliği Kurumu Kanunu ile idarenin her türlü eylem ve işlemleri ile tutum ve davranışlarını; insan haklarına dayalı adalet anlayışı içinde, hukuka ve hakkaniyete uygunluk yönlerinden incelemek, araştırmak ve önerilerde bulunmak üzere TBMM'ye bağlı kamu tüzel kişiliğini haiz özel bütçeli Kamu Denetçiliği Kurumu kurulmuştur. Daha çok şikayete bağlı olarak yönetimin yaptığı haksızlıkları ortaya koymak, takdir yetkisinin kötüye kullanılmasını engellemek, mevzuata saygılı olmayı ve uygun hareket etmeyi temin etmek, icrai karakter taşımayan önerilerde bulunmak, hakkaniyet tedbirleri salık vermek ve nihayet kamu hizmetlerinin daha iyi görülmesi için gerekli reformların yapılması önerilerinde bulunmak amaçları çerçevesinde görev yapan bir kurumdur.

6. İç Denetim

Denetim ile ilgili olarak yukarıda yapmış olduğumuz açıklama ve sınıflandırmalardan anlaşılacağı üzere iç denetçiler tarafından yapılan denetime genel olarak iç denetim denir.

İç denetçi ise işletme örgütü içinde yürütülen denetim eylemlerinin sonuçlarını, örgüt içinde en etkili şekilde değerlendirmeye alacak bir yönetim birimine raporlama yapan kişilere denir. Bu kişilerin örgüt içinde oluşturulan fonksiyonel bir birimde çalışması alışılmış bir uygulama olmakla birlikte iç denetimin oldukça geniş ve ileri uzmanlık gerektiren bir hizmet olması sebebiyle işletme dışından hizmet veren kişiler de iç denetçi olabilir ya da bu hizmet dışardan satın alınabilir.

İç denetim hizmetinin etkili ve verimli bir şekilde yürütülmesine ilişkin görüş ve anlayış son 50 yılda büyük ölçüde değişmiştir. Bugün için geçerli olan anlayış çerçevesinde iç denetim aşağıdaki gibi tanımlanmaktadır.(IIA-IPPF,2013)

İç denetim bir örgütün faaliyetlerini geliştirmek ve onlara değer katmak *amacıyla tasarlanan bağımsız ve tarafsız bir güvence ve danışmanlık faaliyetidir. İç denetim örgütün yönetim süreçleri, kontrol süreçleri ve risk yönetimi süreçlerinin etkililiğini değerlendirmeye yönelik disiplinli ve sistemli bir yaklaşım getirerek örgütün amaçlarını başarmasına yardımcı olur.*

Bu tanımdan anlaşılacağı üzere biçimsel ve belgelendirilmiş bir süreç olan iç denetim vasıtasıyla yönetim ve çalışanlar kendi faaliyetlerini analiz ederler ve ilgili iç kontrol prosedürlerinin etkililiğini değerlendirirler (Dumitrescu, 2004).

İç denetim hem finansal işlemlerle hem de finansal olmayan işlemlerle ilgilenir. İç denetim; esas olarak örgüte değer katmak amacıyla örgütün faaliyetlerini incelemek ve değerlendirmek için örgüt içinde kurulmuş bağımsız bir değerleme fonksiyonu olduğundan bu denetimin kapsamına yukarıda belirttiğimiz tüm denetim türleri girer.

- ***İç Denetim-Finansal Tablo Denetimi:*** İç denetim finansal tablonun doğruluğunun araştırılmasından çok finansal tablolara temel oluşturan muhasebe bilgilerinin doğruluk ve güvenilirliğini araştırır. Hata ve hilelerin ortaya çıkarılması, önlenmesi, varlıkların mevcudiyetinin belirlenmesi bu denetimin kapsamı dâhilindedir.
- ***İç Denetim-Uygunluk denetimi:*** İşletme faaliyetlerinin işletme yönetimince belirlenmiş politikalara, planlara, programlara, prosedürlere yasalara ve işletme içi diğer düzenlemelere uygunluğunun ölçülmesi ve bu anlamda iç kontrollerin etkililiğinin değerlendirilmesi iç denetimin görevidir. Bu anlamda iç denetim bir iç kontrol aracıdır.
- ***İç Denetim-Faaliyet Denetimi:*** İşletme örgütünün veya biriminin faaliyet sonuçlarının önceden belirlenmiş amaçlara ve hedeflere ulaşıp ulaşmadığı, kaynaklarının ekonomik ve verimli bir şekilde kullanılıp kullanılmadığının denetimi de yine iç denetimin görevidir.

İç denetim ile ilgili başka tanımlar da yukarıda verilen tanımın ne kadar evrensel kabul gördüğünü göstermektedir.

Uluslararası Muhasebeciler Federasyonu'na göre [9] iç denetim işletme içinde işletmeye hizmet vermek üzere kurulan bir değerlendirme faaliyetidir. İşlevleri arasında iç kontrolün yeterliliği ve etkililiğinin incelenmesi, değerlendirilmesi ve gözlemlenmesi yer alır.

İç denetim, Avrupa Konseyi'nin 9 Eylül 2001 tarih ve 762/2001 sayılı Finansal Düzenlemesinde *"yönetim ve kontrol sistemlerinin etkililiğinin değerlendirilmesi ve faaliyetlerin düzenli bir biçimde yürütüldüğünün doğrulanması"* olarak tanımlanmaktadır (Knedler, 2003).

İngiltere Hazinesi tarafından hazırlanan Kamu Sektörü İç Denetim Standartları başlıklı dokümanda iç denetimin tanımı ve yaptığı faaliyetler şöyle belirtilmektedir (Yörüker, 2004):

> *"İç denetim, örgüt bünyesindeki bağımsız bir değerlendirme olup iç kontrol sisteminin etkililiğini ölçmek ve değerlendirmek suretiyle yönetime hizmet sağlamak şeklinde faaliyet gösterir***.**

Bu hizmeti sağlamada iç denetim:

- ✓ İç kontrol sistemini analiz eder ve bir inceleme programı oluşturur.
- ✓ Hedeflerin en ekonomik ve verimli bir biçimde gerçekleştirilmesi için sistemler içinde tesis edilmiş kontrolleri belirler ve değerlendirir.
- ✓ Bulguları ve sonuçları raporlar ve uygun olduğu durumda tavsiyelerde bulunur.
- ✓ İncelemeye tabi sistemdeki kontrollerin güvenilirliği hakkında bir görüş bildirir.
- ✓ Örgüt bünyesindeki iç kontrol sistemini bir bütün olarak değerlendirmek suretiyle bir güvence verir".

9 Bakınız http://www.ifac.org/Members/Downloads/A060Glossary.pdf, s.10.

BIS Basel Bankacılık Gözetim Komitesi'nin Ağustos 2002'de yayımlanan '*Bankalarda İç Denetim ve Yöneticilerin Denetçilerle İlişkisi: Bir Araştırma*' başlıklı araştırma raporunda, söz konusu araştırmanın iç denetimin kapsamıyla ilgili sonuçları Uluslararası İç Denetçiler Enstitüsü'nün (IIA) iç denetim tanımıyla uyum halindedir: "*İç denetim bir örgütün faaliyetlerinin geliştirilmesi ve katma değer yaratılması için tasarlanmış bağımsız ve tarafsız bir güvence ve danışmanlık faaliyetidir. İç denetim; risk yönetimi, kontrol ve yönetişim süreçlerinin etkililiğini değerlendirmek ve artırmak için sistematik ve disiplinli bir yaklaşım sunarak organizasyonun amaçlarına ulaşmasına yardımcı olur)*. İç denetim, bankanın iç kontrol sistemlerinin sürekli izlenmesi ve sermaye değerlendirme prosedürlerinin bir parçasıdır (Dumitrescu, 2004).

İngiltere'de 2006 yılında yayımlanan Birleşik Krallıkta Yerel Yönetimlerin İç Denetim Uygulama Yasası **iç denetimi;** *"… risk yönetimi, kontrol ve yönetimden oluşan kontrol ortamı hakkında örgüte, kontrol ortamının örgütün amaçlarına ulaşmasındaki etkililiğini değerlendirmek suretiyle bağımsız ve tarafsız bir görüş sunan bir güvence fonksiyonu"* olarak tanımlamaktadır. Söz konusu kaynağa göre *"iç denetim, işletmenin iç kontrol ortamını geliştirmesinde işletme yönetimine yardımcı olmak için bağımsız ve tarafsız bir danışmanlık hizmeti de sunar. İç denetim kaynakların düzgün, ekonomik, verimli ve etkili kullanımına katkı sağlamak üzere kontrol ortamının yeterliliğini tarafsız biçimde ölçer, değerlendirir ve raporlar* (CIPFA, 2006).

*Ülkemizde düzenleyici ve gözetim kurumları tarafından yapılan iç denetim tanımlarının hiç biri iç denetim standartlarındaki tanımı kapsayacak özellik taşımamaktadır. Ne yazık ki dünyadaki gelişmeleri daha iyi takip edebilen bazı özel sektör kuruluşlarımız kendi kurumları için hazır*ladıkları yönetmeliklerde IIA'nın tanımlarına çok daha uygun tanımlar yapmışlardır.

Ülkemizde Sayıştay iç denetimi *'kurum bünyesinde bulunan ve kurum yönetimi tarafından olası yolsuzlukları, hataları ve verimsiz uygulamaları en aza indirmek amacıyla kurumun sistemlerini ve prosedürlerini kontrol etmek ve değerlendirmek üzere görevli bulunan birim (veya faaliyet)* olarak tanımlamıştır. [10]

İç kontrol sistemi ile teftiş sisteminden oluşan bütünleştirilmiş süreci iç denetim sistemi olarak tanımlayan SPK uluslararası yaklaşımlarda iç denetim(internal auditing) denilen kavramı teftiş sistemi olarak tanımlamıştır. SPK ya göre teftiş sistemi; *Aracı kurumun günlük faaliyetlerinden bağımsız, yönetimin ihtiyaçları ve aracı kurumun yapısına göre mevzuat ve aracı kurum politikalarına uygunluk denetimleri şeklinde müfettişlerce gerçekleştirilen, iç kontrol sisteminin işleyişi başta olmak üzere aracı kurumların tüm faaliyetlerini ve birimlerini kapsayan ve bu alanlara ilişkin değerlendirme yapılmasını sağlayan, değerlendirmelerde kullanılan kanıt ve bulguların raporlama, izleme ve inceleme sonucunda elde edildiği sistematik* ***denetim sürecini, ifade*** etmektedir (SPK V/68).

[10] Sayıştay dışındaki kurumların iç denetim tanımlarında sistem, süreç gibi terimler taşıdıkları anlamı ifade etmekten uzak biçimde rast gele kullanılmış, iç denetimin işletme içinde fonksiyonel bir birim olduğu bir türlü anlatılamamıştır. Birimin kontrol ile farkı ve ilişkisi ise doğru dürüst açıklanamamıştır.

SPK bağımsız denetim standartlarına ilişkin Tebliğin de ise uluslararası standartlara daha uygun bir tanım yaparak iç denetimi şu şekilde açıklamıştır [11]:

İç denetim, işletme yönetiminin amaçlarına hizmet etmek üzere, işletme içinde oluşturulan bir değerlendirme mekanizması olup, diğer faaliyetler yanında işletmenin iç kontrol sisteminin yeterliliği ve etkinliğinin araştırılması, değerlendirilmesi ve gözetimini içerir.

> *İç denetimin kapsamı ve amaçları işletmenin büyüklüğü ve yapısı ile işletme yönetiminin isteklerine göre değişiklik gösterir. Genelde iç denetim faaliyetleri;*
>
> *a) Muhasebe ve iç kontrol sistemlerinin gözden geçirilmesi: Yeterli muhasebe ve iç kontrol sistemlerinin kurulması, işletme yönetiminin sorumluluğunda olup, sürekli özen ve dikkat gerektiren bir faaliyettir. Bu çerçevede söz konusu sistemlerin gözden geçirilmesi, işlerliklerinin kontrol edilmesi ve geliştirilmesine yönelik çalışmaların yapılması da iç denetimin görev tanımı içinde yer alır.*
>
> *b) Finansal bilgiler ile faaliyet bilgilerinin incelenmesi: Bu süreç, finansal bilgilerin belirlenmesi, ölçülmesi, sınıflandırılması ve raporlanması için kullanılan prosedürler ile işlemlere, kayıtlara ve prosedürlere ilişkin detay testleri de içeren münferit kalemlerin özellikle araştırılması amacıyla kullanılan yöntemlerin gözden geçirilmesini kapsar.*
>
> *c) İşletmenin finansal nitelikli olmayan kontrolleri de dâhil olmak üzere, faaliyetlerinin etkinliği ve yeterliliğinin gözden geçirilmesi ve*
>
> *d) Kanunlar, diğer yasal gereklilikler ve düzenlemeler ile işletme yönetimi politikaları, kuralları ve diğer iç gerekliliklere uyumun gözden geçirilmesi, faaliyetlerinden birini veya bir kaçını kapsar.*

BDDK ise yayınlamış olduğu Bankaların İç Sistemleri Hakkındaki Yönetmelikte iç denetimin amacını ve fonksiyonunu şu açıklamıştır [12]:

> *İçdenetim sisteminin amacı,üst yönetime banka faaliyetlerinin Kanun ve ilgili diğer mevzuat ile banka içi strateji, politika, ilke ve hedefler doğrultusunda yürütüldüğüve içkontrol ve risk yönetimi sistemlerinin etkinliği ve yeterliliği hususunda güvence sağlamaktır.*
>
> *İçdenetim sisteminden beklenen amacın sağlanabilmesi için, içdenetim faaliyetleriyle; banka içi herhangi bir kısıtlama olmaksızın bankanın tüm faaliyetleri, yurt içi ve yurt dışı şube ve genel müdürlük birimleridâhildiğer birimleri dönemsel ve riske dayalıolarak incelenir ve denetlenir, eksiklik, hata ve suiistimaller ortayaçıkarılır,*

11 Ülkemizde KGK'nın bağımsız denetim standartlarını yayınlamasını takiben her ne kadar yürürlükten kalkmış da olsa SPK, Seri X;No:22 Sayılı Sermaye Piyasasında Bağımsız Denetim Standartları Hakkında Tebliğ, Kısım 27, Birinci Bölüm, Madde 3. de bu tanımı yapmıştır. (Bu tebliğ uluslararası denetim standartlarıyla tam uyumlu olduğundan Tebliğde yer alan iç denetim tanımı ve açıklamaları da doğal olarak IIA'in tanımıyla uyumludur.)

12 Bankaların İç Sistemleri hakkındaki Yönetmelik *(11 Temmuz 2014 tarih ve 290573 sayılı Resmi Gazete' de yayımlanmıştır.),* Bakınız *Üçüncü* Kısım, Birinci *Bölüm, Madde 21.*

bunların yeniden ortaya çıkmasının önlenmesine ve banka kaynaklarının etkin ve verimli olarak kullanılmasına yönelik görüş ve önerilerde bulunulur ve Kuruma ve üst yönetime iletilen bilgi ve raporlamaların doğruluğu ve güvenilirliği değerlendirilir.

Dönemsel ve riske dayalı denetimlerde;

- *İçkontrol ve risk yönetimi sistemlerinin yeterliği ve etkinliği değerlendirilir.*
- *Elektronik bilgi sistemi ile elektronik bankacılık hizmetleri de dâhil olmak üzere ve 13/1/2010 tarihli ve 27461 sayılı Resmî Gazete'de yayımlanan Bağımsız Denetim Kuruluşlarınca Gerçekleştirilecek Banka Bilgi Sistemleri ve Bankacılık Süreçlerinin Denetimi Hakkında Yönetmeliğin, Bilgi Sistemleri ve Bankacılık Süreçleri Denetimine İlişkin Esaslar başlıklı beşinci bölümünde belirlenen usul ve esaslar çerçevesinde bilgi sistemleri gözden geçirilir.*
- *Muhasebe kayıtları ile finansal raporların doğruluğu ve güvenilirliği incelenir.*
- *Operasyonel faaliyetlerin, belirlenmiş olan usullere uygunluğu ile bunlara ilişkin içkontrol uygulama usullerinin işleyişi test edilir.*
- *İşlemlerin, Kanuna ve ilgili diğer mevzuata, banka içi strateji, politika ve uygulama usulleri ile diğer iç düzenlemelere uygunluğu denetlenir.*

Banka içi düzenlemeler çerçevesinde yönetim kurulu ve denetim komitesine yapılan raporlamalar ile yasal raporlamaların doğruluğu, güvenilirliği ve zaman kısıtlamalarına uygunluğu denetlenir.

Bankada risk ölçüm modeli kullanılmasıhalinde, risk ölçüm modelleriyle ilgili olarak;

- *Riskölçüm model ve yöntemleriyle elde edilen sonuçların günlük risk yönetimine dâhil edilip edilmediği,*
- *Bankanın kullandığı fiyatlama modelleri ile değerleme sistemleri,*
- *Bankanın kullandığı risk ölçüm modellerinin kapsadığı riskler,*
- *Risk ölçüm modellerinde kullanılan verinin ve varsayımların doğruluğu ve uygunluğu,*
- *Risk ölçüm modellerinde kullanılan verinin kaynağının güvenilirliği, bütünlüğü ve zamanında elde edilebilirliği,*
- *Risk ölçüm modelleri için kullanılan geriye dönük testlerin doğruluğu denetime tabi tutulur.*

Bankanın konsolidasyona tabi ortaklıkları da iç denetime tabi tutulur.

İSEDES, iç denetim sistemi kapsamında ilgili mevzuat ve banka içi düzenlemeler çerçevesinde denetlenir.

BDDK'nın yukarıda açıklanan iç denetimle ilgili açıklamaları IIA in standartlarına uyumlu görünmekle birlikte aynı tebliğin iç kontrolle ilgili açıklamalar bölümünde bankalarda ayrı bir iç kontrol birimi kurulmasını öngörmesi aynı yönetmelik içinde iç denetim ve iç kontrol ile ilgili benzer açıklama ve düzenlemeler getirmesi ve iç kontrolü iç kontrol elemanlarının bir faaliyeti olarak açıklaması kafa karıştırıcı ve banka içinde örgütsel çatışmalara yol açacak niteliktedir.

5018 Sayılı Kamu Mali Yönetim ve Kontrol ve Kanunu kapsamında yayınlanan İç Denetçilerin Çalışma Usul Ve Esasları Hakkındaki Yönetmelikte ise iç denetim şu şekilde tanımlanmıştır:

İç denetim: Kamu idaresinin çalışmalarına değer katmak ve geliştirmek için kaynakların ekonomiklik, etkililik ve verimlilik esaslarına göre yönetilip yönetilmediğini değerlendirmek ve rehberlik yapmak amacıyla yapılan bağımsız, nesnel güvence sağlama ve danışmanlık faaliyetidir.

Aynı tebliğ kapsamında iç denetim faaliyetinin amacı ise şu şekilde açıklanmıştır:

> *İç denetim faaliyetinin amacı;*
>
> *(1) İç denetim faaliyeti; kamu idarelerinin faaliyetlerinin amaç ve politikalara, kalkınma planına, programlara, stratejik planlara, performans programlarına ve mevzuata uygun olarak planlanmasını ve yürütülmesini; kaynakların etkili, ekonomik ve verimli kullanılmasını; bilgilerin güvenilirliğini, bütünlüğünü ve zamanında elde edilebilirliğini sağlamayı amaçlar. İç denetim faaliyeti sonucunda, kamu idarelerinin varlıklarının güvence altına alınması, iç kontrol sisteminin etkinliği ve risklerin asgarîye indirilmesi için kamu idaresinin faaliyetlerini olumsuz etkileyebilecek risklerin tanımlanması, gerekli önlemlerin alınması, sürekli gözden geçirilmesi ve mümkünse sayısallaştırılması konularında yönetime önerilerde bulunulur.*
>
> *(2) İç denetim, nesnel güvence sağlamanın yanında, özellikle risk yönetimi, kontrol ve yönetim süreçlerini geliştirmede idarelere yardımcı olmak üzere bağımsız ve tarafsız bir danışmanlık hizmeti sağlar. Danışmanlık hizmeti, idarenin hedeflerini gerçekleştirmeye yönelik faaliyetlerinin ve işlem süreçlerinin sistemli ve düzenli bir biçimde değerlendirilmesi ve geliştirilmesine yönelik önerilerde bulunulmasıdır.*
>
> *(3) Nesnel güvence sağlama, kurum içerisinde etkin bir iç denetim sisteminin var olduğuna; kurumun risk yönetimi, iç kontrol sistemi ve işlem süreçlerinin etkin bir şekilde işlediğine; üretilen bilgilerin doğruluğuna ve tamlığına; varlıklarının korunduğuna; faaliyetlerin etkili, ekonomik, verimli ve mevzuata uygun bir şekilde gerçekleştirildiğine dair, kurum içine ve kurum dışına yeterli güvencenin verilmesidir.*

Ülkemizde çeşitli otoritelerce yapılan iç denetim tanım ve açıklamaları uluslararası standartları referans almış gibi görünmekle birlikte her otoritenin kendi anlayış ve yorumuna göre değişiklik göstermektedir.

7. Sonuç

Bilindiği üzere kavram, bir şeyin zihnimizdeki tasarımı olup bir iletişim aracı olarak kullanılır. Kavramlara atfettiğimiz anlamlar farklı olursa iletişim kurmak imkânsız hale gelir. Kişiden kişiye göre değişebilecek olan kavramlara ortak anlamlar yükleyebilmek için tanım yapmak ihtiyacı doğar. Özün ifadesi olan *tanım*, esasen kullandığımız biçimsel mantığın temel ürünüdür. Yapılan *tanımlama* bir kavramın anlamını aydınlatma, açıklama ve belirleme işlemidir. Filozof John Locke'nin üç yüz yıl önce söylediği gibi dilin özensiz ve yanıltıcı kullanımı doğru akıl oluşturma ve iletişim kurma yeteneğimizi olumsuz etkiler (Kılıç, 2014). Gereksiz tartışmaların temel kaynağını büyük ölçüde yanlış anlaşılmalar oluşturur. Dolayısıyla kontrol ve denetim ile ilgili olarak bugüne kadar yaşadığımız sorunların temelinde biraz da bunlara atfettiğimiz anlamlardaki hatalar oluşturmaktadır. Neyi, niçin, nasıl yapmamız gerektiğini doğru olarak ifade edemediğimiz sürece, yapılan şeyin gereksiz olacağından hiç kuşku duyulmamalıdır. İçinde bulunduğumuz ortam ve koşullar sürekli değişirken kontroller ve denetimle ilgili kavrayışlar da değişmektedir. Dolayısıyla düzenleyiciler ve literatüre yön verenlerin bu kavramlara doğru anlamlar yükleyerek değişimi yakalamaya yardımcı olmaları gerekir.

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KANN SERBIEN VON DEN ERFAHRUNGEN AUS DER TSCHECHISCHEN PRIVATISIERUNG PROFITIEREN? Ein retrospektiver Vergleich der primären tschechischen Privatisierung mit den serbischen Privatisierungsbemühungen unter Berücksichtigung von Fallstudien

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Abstract

Zusammenfassung und die Tschechische Republik haben die Privatisierung gemeinsam vor mehr als 25 Jahren begonnen. Während die Tschechische Republik ihr Privatisierungsprogramm zügig vollendet hat, dauert die Privatisierung in Serbien noch immer an. Im Mittelpunkt des Beitrages steht das Bestreben Erkenntnisse aus der tschechischen Privatisierung für die noch andauernden serbischen Privatisierungsaktivitäten zu gewinnen. Die Erörterung der Rahmenbedingungen, Modelle und Ergebnisse der Privatisierungsmethoden in beiden Staaten sowie ein Strukturvergleich des serbischen Privatisierungsprogramms mit der primären tschechischen Privatisierung sollen die erhofften Erkenntnisse bringen. Eine Fallstudienanalyse von drei Privatisierungsbeispielen soll die reale Situation einbringen. Die Untersuchungsergebnisse zeigen, dass obwohl sich das tschechische Privatisierungsmodell vom serbischen Pendant in vieler Hinsicht unterscheidet, dieses keine völlig neuartigen Anregungen für die serbische Privatisierung liefert. In weiterer Folge wurden die Resultate und Erkenntnisse in Empfehlungen für die serbischen Privatisierungsbemühungen zusammengefasst.

Keywords: Privatisierung, Transition, Serbien, Tschechische Republik

CAN SERBIA BENEFIT FROM THE EXPERIENCE OF CZECH PRIVATIZATIONS?

Abstract

Serbia and the Czech Republic have started privatization more than 25 years ago. While the Czech Republic has dispatched its privatization program, privatization in Serbia is still proceeding. It's built on this essay (article) to clarify, how Serbia takes lessons from the Czech privatization process. Discussing the underlying circumstances, models and results of the privatization methods in both countries, as well as a structural comparison of the Serbian privatization program with the Czech privatization,

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should provide the anticipated insights. A case study analysis of three privatization samples is intended to bring in the real situation. The research results show that, although the Czech privatization model differs in many respects from the Serbian one, it does not provide any entirely new impulses for Serbian privatization. Afterwards, the results and findings were given in recommendations for the Serbian privatization-endeavor.

Keywords: Privatizations, Serbia, Czech Republic

1. Privatisierung

Selten ist eine Veränderung der wirtschaftlichen Realität so schnell vollzogen worden wie der Übergang zum Kapitalismus in den ehemaligen kommunistischen Staaten in Ost- und Südosteuropa. Die Privatisierung als ein wesentlicher Träger des Transformationsprozesses wird dabei in der Literatur als ein zentraler Reformschritt dargestellt. Djuricin (2008) erkennt in der Privatisierung die Initialzündung des angestrebten Transitionsprozesses. Darüber hinaus betonen Havrylyshyn und McGettigan (1999) die Wichtigkeit der Privatisierungsprogramme bei der Implementierung der Corporate Governance, dem Aufbau der notwendigen Marktbehörden sowie in der Unterstützung wirtschaftlicher und politischer Reformprozesse. Die Schaffung dieser Mechanismen soll anschließend die Strukturen der betroffenen Volkswirtschaften nachhaltig verändern. Auch Gray (1996) unterstreicht die Möglichkeiten, die sich im Zuge einer Privatisierung den betroffenen Unternehmen anbieten können. So verweist er insbesondere auf den Zugang zu frischem Kapital, die Integration neuer Technologien sowie Einbindung innovativer Führungsstile. In diesem Sinne wird die notwendige unternehmerische Ressourcenallokation angetrieben, sprich die alten Prozesse durch neue ersetzt und anschließend anhand Unternehmensstilllegungen, Insolvenzen, Gründung neuer Gesellschaften, Restrukturierung, Personalabbau, Veränderung der Produktprogramme oder Investitionen verwirklicht (Havrylyshyn & McGettigan, 1999). Folglich sollen laut Dragutinovic und Radulovic (2014) die wesentlichsten Ziele einer Privatisierung, nämlich die Erhöhung der wirtschaftlichen Effizienz, Entlastung des Staatshaushaltes, Entwicklung des heimischen Kapitalmarktes und schlussendlich Errichtung eines wettbewerbsfähigen, marktwirtschaftlichen Wirtschaftsumfeldes erzielt werden.

Obwohl die Literatur keine allumfassende Definition der Privatisierung anbietet, ähneln sich die Begriffsbestimmungen einzelner Forscher sehr. Klenk, Philipp, Reineke und Schmitz (1994) definieren Privatisierung als jeden Transfer staatlicher Tätigkeit in den privaten Sektor und somit die Entstaatlichung der Wirtschaft. Die Entstaatlichung bezeichnen sie als die Spaltung des staatlichen vom betrieblichen Wirkungskreis sowie die nachträgliche Gestaltung dezentraler Regelungsapparate und Anreizstrukturen. Diese weite Perzeption des Privatisierungsbegriffes ist eine angemessene Definition der stattgefundenen oder noch immer stattfindenden Entstaatlichungsvorgänge in den Transitionsökonomien. Nellis (1998) definiert beispielsweise die Privatisierung als einen Eigentumsübergang in dem Sinne, dass die Mehrheit des

Gesellschaftskapitals vom staatlichen Eigentum in die privaten Hände übergeht. Demgegenüber beschränkt Gray (1996) die Privatisierung nicht nur auf den technischen Eigentümerwechsel, sondern sieht die Verbesserung der Corporate Governance sowie die Entwicklung und Förderung von marktwirtschaftlichen Rechtsnormen als eine der wesentlichsten Aufgaben des Privatisierungsprozesses.

2. Privatisierungsmethoden in den Transitionsstaaten

Mit dem Zusammenbruch des Kommunismus hatten sich die staatlichen Unternehmen den neuen Marktanforderungen zu stellen. Die große Mehrheit der Unternehmen sollte im Rahmen der Transition privatisiert werden. Laut Schnitzer (2003) waren insbesondere die hochverschuldeten Staaten bestrebt schnelle Einkünfte für den Staatshaushalt zu erzielen, denn sie waren sich im Klaren, dass noch einige Zeit verstreichen würde bis ein intaktes Steuersystem eingerichtet wird und damit geregelte Einnahmen für den Staat erzielt werden können.

Das wesentliche Unterscheidungsmerkmal zwischen Privatisierungen in den Transitionsländern und den konventionellen Privatisierungen in den marktwirtschaftlichen Ökonomien ist laut Louzek (2009) das Kontingent der abzuwickelnden Transaktionen. Die Standardmethoden sind in der Transition nicht immer anwendbar, da es sehr lange dauern würde die Zielobjekte zu verkaufen.

Schnitzer (2003) unterscheidet vier Hauptmethoden der Privatisierung in den Transitionsökonomien: *Restitution*, *direkter Verkauf*, *Insiderprivatisierung* (Management/ Employee-Buyouts) und *Massenprivatisierung* anhand von Vouchern.

Unter *Restitution* wird gemäß Schnitzer (2003) die Rückgabe der staatlichen Unternehmen an ihre Besitzer verstanden, wo ihre früheren Besitzer gefunden werden können und wo die Enteignung ungerecht erschien. Die Restitution kam sowohl in Serbien als auch in der Tschechischen Republik vorwiegend bei kleinsten Unternehmen und in der Agrarwirtschaft in Betracht und wird in dieser Arbeit nicht weiter diskutiert.

Direktverkäufe erzielen schnelle Einnahmen für die Staatskasse und vereinfachen es den Unternehmen neues Kapital und Wissen zu beschaffen. Das Verkaufsmodell erfordert eine direkte Veräußerung der Gesellschaften an strategische Investoren. Diese Geldgeber besitzen üblicherweise das notwendige Know-how und die erforderlichen Marktkenntnisse, die Firmen erfolgreich zu führen. Der Staat als Verkäufer geht davon aus, dass die Investoren ein Interesse an der Fortführung des Unternehmens besitzen. Die Direktverkäufe ermöglichen in weiterer Folge die Etablierung von konzentriertem Eigentum, was den Unternehmen erlaubt, schnellere Restrukturierungsmaßnahmen einzuleiten und hoffentlich erfolgreicher zu wirtschaften (Schnitzer, 2003).

In seiner Untersuchung behauptet Pavlovic (2003), dass das Verkaufsmodell durch das chaotische Marktumfeld in den ost-südosteuropäischen Transitionsökonomien benachteiligt worden ist. Das Modell soll dort am effizientesten funktionieren, wo eine gewisse Marktordnung

herrscht. Diese Situation war in den neuentstandenen Demokratien nicht immer vorhanden, was sich auf die Wahrnehmung des Marktes, vor allem bei ausländischen Investoren, negativ ausgewirkt hat. Dieses Misstrauen in das Wirtschaftsumfeld übertrug sich infolgedessen auf die Verkaufsgeschwindigkeit der angebotenen Gesellschaften. Hingegen argumentiert Schnitzer (2003), dass die Langwierigkeit und schwere politische Verwirklichung des Direktverkaufs die wesentlichsten Nachteile dieses Modells sind, da die Mehrheit der Bevölkerung an dieser Privatisierungsmethode nicht teilnimmt.

Gray (1996) bezeichnet die *Insiderprivatisierung* (Management/Employee-Buyouts) als eine Privatisierungsmethode, die die Schenkung oder den Verkauf von Teilbereichen oder ganzen Unternehmen (sehr oft mi zu geringen Preisen) an die eigenen Mitarbeiter oder Führungskräfte beinhaltet. Das Insidermodell wurde in vielen europäischen Transitionsländern, u.a. auch in Serbien, als Hauptmodell vor 2001 angewendet.

Gemäß Pavlovic (2003) ermöglichen Management/Employee-Buyouts eine schnelle und einfache Implementierung des Privatisierungsverfahrens. Die Methode wird als gerecht bezeichnet, hat sich aber in vielen Fällen beim Aufbau vom Privateigentum als sehr wirkungslos gezeigt. Die Studie von Schnitzer (2003) offenbart zudem die fehlenden Möglichkeiten einer späteren Eigentumskonzentration als das größte Manko dieser Privatisierungsmethode. Die Insider tendieren üblicherweise dazu, ihre Unternehmensanteile nicht zu verkaufen, auch wenn dadurch die Unternehmenseffizienz gesteigert werden würde. Die Mitarbeiter und Führungskräfte sind normalerweise mehr am Erhalt ihres Arbeitsplatzes interessiert als an der Profitabilität des Arbeitgebers.

Die *Voucher-Privatisierung*, auch Coupon- oder Gutschein-Privatisierung genannt, berechtigt theoretisch alle Staatsbürger gleichermaßen am Privatisierungserlös teilzunehmen und Anteile an den zu privatisierenden Unternehmen zu besitzen. Die Voucher, eine Form von künstlicher Währung innerhalb des Privatisierungsprozesses, werden vom Staat kostenlos an die Staatsbürger ausgegeben oder zu einem sehr niedrigen Preis verkauft. Auf diese Weise wird versucht die Kernproblematik des Verkaufsmodells in den Transitionsländern zu umgehen, nämlich die Knappheit an inländischem Kapital. Nach der Beendigung der Voucher-Privatisierung wird erwartet, dass es im Rahmen der sekundären Privatisierung, bedingt durch Wiederverkäufe von Unternehmensanteilen auf dem Aktienmarkt, zu einer effizienten Realokation der Anteile und somit zu einem Kapital- und Wissenszuwachs kommt (Schnitzer, 2003).

In der Literatur werden die politische Akzeptanz und rasche Umsetzung als die größten Vorteile dieses Modells bezeichnet. Starke Evidenz zur Gültigkeit dieser These liefert Schnitzer (2003). Auch bezogen auf die Verhinderung des Ausverkaufes an Ausländer wird dieses Modell gewürdigt. In dieser Beziehung betont Gray (1996), dass bei einer gut abgestimmten Voucher-Privatisierung die typischen Verkaufsprobleme, wie ungerechte Verkaufsprozesse oder falsche Bewertung des Staatseigentums beseitigt werden können. Als Nachteil dieses Modells sieht Schnitzer (2003) vorrangig das Ausbleiben von Erlösen, denn abgesehen vom Verkauf der Voucher werden keine generiert. Zudem beinhaltet die Voucher-Privatisierung wie auch beiManagement/

Employee-Buyouts einen grundlegenden Nachteil: Die Entwicklung der Corporate Governance wird nicht gefördert (Pavlovic, 2003).

3. Privatisierung in der Tschechischen Republik

Als die Transformation der post-kommunistischen Staaten begann, befand sich Tschechische Republik in einer beispiellosen wirtschaftlichen Lage. Das Staatsbudget war ausgeglichen, zeigte sogar einen Überschuss, der erst 1996, also lange nach Beginn der Privatisierung, von einem Defizit abgelöst wurde. Nach damaliger Beurteilung der verantwortlichen Reformer sollte das oberste Ziel der tschechischen Transition die Schaffung von Privateigentum sowie die Trennung der starken Bindung zwischen Staat und Unternehmen sein (Török, 2011). Die Regierung wollte so rasch wie möglich Effizienz, Leistungsfähigkeit und die Corporate Governance der Unternehmen verbessern. Abgesehen von der Veränderung der elementaren Grundsätze der Unternehmensführung spielte gemäß Graham (1998) eine weitere Absicht der tschechischen Privatisierungsarchitekten eine wesentliche Rolle, nämlich die Verhinderung eines hohen Einflusses von ausländischen Investoren oder der kommunistischen Nomenklatur.

In der Vorbereitung auf den Privatisierungsprozess sah es der tschechische Staat als nicht notwendig an, die Unternehemen einer organisationalen, operativen oder finanziellen Restrukturierung zu unterziehen. McMaster (2001) betont zudem, dass eine Vorselektion der geeigneten Erwerber in der Regel ebenso unterlassen wurde. Die Rolle des Staates bestand darin, ein institutionelles Gerüst der Marktwirtschaft zu implementieren, die übrige Arbeit sollten die Marktkräfte erledigen. Das vorrangige Ziel des Privatisierungsprogrammes war so rasch wie möglich einen ersten und nicht den optimalen Käufer zu finden.

Die Transition in der Tschechischen Republik wurde angesichts kapitalistischer Vergangenheit als Rückkehr Tschechiens in ihre natürliche Position als demokratischer Staat propagiert (Holy, 1996). Diesbezüglich argumentiert McMaster (2001), dass die marktwirtschaftliche Vergangenheit, qualifizierte Arbeitskräfte sowie eine größere Zahl von „High-Tech"-Unternehmen als Vorteile gegenüber anderen ehemaligen kommunistischen Ländern gesehen wurden. Diese Unternehmen sowie die traditionelle tschechische Industrie (Glaserzeugung, Brauereien, etc.) wurden als anpassbarer an die neuen Marktgegebenheiten beurteilt als die großen serbischen Industriekombinate.

Privatisierungsmethoden

Die primäre Privatisierung in der Tschechischen Republik wurde gemäß Kocenda und Valachy (2001) durch drei Programme ausgetragen: *Restitution*, *kleine Privatisierung* und *große (Massen-) Privatisierung*. Die *Restitution* und die *kleine Privatisierung* wurden 1990 eingeleitet und hatten eine wesentliche Rolle während den ersten Jahren der Transition. Die kleine Privatisierung wurde bei kleinen Wirtschaftseinheiten, vor allem im Einzelhandel und der Gastronomie, in Form von öffentlichen Versteigerungen angewandt. Die Massenprivatisierung begann 1991 und dauerte

wie die Restitution bis 1995 an. Im Gegensatz dazu wurde die kleine Privatisierung bereits 1993 abgeschlossen. Der Privatisierungsprozess wurde in sehr schwacher Intensität auch nach 1993 bzw. 1995 fortgesetzt. Im Jahr 2005 wurde die Privatisierung offiziell für beendet erklärt.

Die *große (Massen-)Privatisierung* wurde 1991 ins Leben gerufen und stellte das tragende Privatisierungsprogramm der Tschechischen Republik dar. Der Privatisierungsplan betraf alle Gesellschaften, die nicht durch die Restitution oder die kleine Privatisierung privatisiert wurden. Die Massenprivatisierung erlaubte die Anwendung unterschiedlicher Privatisierungsmethoden. Die kleinen Gesellschaften wurden üblicherweise im Zuge von Versteigerungen oder Ausschreibungen verkauft. Die mittleren Unternehmen wurden entweder direkt an vorselektierte Käufer oder mittels Ausschreibungen veräußert. Die größten Gesellschaften wurden zuerst in Aktiengesellschaften umgewandelt und danach überwiegend mithilfe der Voucher-Methode transferiert. Das Verfahren wurde 1995 für abgeschlossen erklärt (Kocenda & Valachy, 2001).

Voucher-Privatisierung

Alle tschechischen Staatsbürger über 18 Jahre waren berechtigt 1000 Voucher-Punkte in Form von einer Voucher-Broschüre zu kaufen. Die Kosten für diese 1000 Punkte betrugen CZK 1000 (ca. USD 35), was damals ca. ein Viertel des durchschnittlichen Monatsverdienstes ausmachte (Hanousek & Filer, 2002). Die Teilnehmer konnten im Rahmen einer Ausschreibung eigenständig für die Unternehmensanteile bieten oder ihre Voucher-Punkte an die neuentstandenen Investment-Privatisierungsfonds (abk. IPFs) übertragen. Im Gegenzug bekamen sie Anteile an den Fonds, sprich die Teilnehmer wurden Aktionäre der Fonds. Anschließend nahmen die Investment-Privatisierungsfonds an den Bieterprozessen teil. Erst diese Investmentfonds, mit ihren Versprechungen von schnellen Kapitalrenditen, machten die schleppend anlaufende Voucher-Privatisierung für sehr viele tschechische Staatsbürger attraktiv (Svitek, 2002).

Die Grundideen hinter der Voucher-Privatisierung waren erstmals die Bevölkerung für die Privatisierung und den Kapitalismus zu begeistern sowie einen erheblichen Teilbereich des öffentlichen Wirtschaftsvermögens sehr schnell an verschiedene Gruppen privater Käufer zu transferieren. Auf diese Weise sollte die enge Verbindung zwischen Staat und Unternehmen rasch getrennt werden (Majestrik, 1997). Nach Auffassung von Svitek (2002) sollten sich die Staatsbürger am Eigentum beteiligen und demnach die Transition sowie politische und wirtschaftliche Stabilität fördern. Kosta (1997) argumentiert zudem, dass nur mittels der Voucher-Privatisierung der Mangel an inländischem und ausländischem Kapital in kürzester Zeit überbrückt werden konnte. Den Reformern war es gemäß Nellis (1999) bewusst, dass die Voucher-Privatisierung erstmal in einem Streubesitz der Unternehmensanteile enden würde und dieser Zustand eher ungünstig für eine effiziente Unternehmensführung wird. Jedoch waren die Privatisierungsarchitekten überzeugt, dass die sekundäre Privatisierung und der Aktienhandel zu einer größeren Konzentration der Unternehmensanteile und somit zu weiteren Reformen führen wird (Schnitzer, 2003).

Ergebnisse der tschechischen Privatisierung

Während der *kleinen Privatisierung* wurden rund 22.000 Wirtschaftssubjekte ins Privateigentum transferiert. Der gesamte Verkaufserlös betrug rund USD 1 Mrd.. Durchschnittlich übertraf der Verkaufspreis den Anfangspreis um 51% (Havlicek, Turkova & Dlaskova, 2014). Obwohl die Versteigerungen gleiche Möglichkeiten für alle Teilnehmer boten, bemängelt Svitek (2002), dass die meisten Käufer aus der ehemaligen kommunistischen Nomenklatur kamen. Ende 1993 wurde dieses Privatisierungsprogramm abgeschlossen.

Die Aktiengesellschaften bildeten die häufigsten und wichtigsten Treiber des Eigentümertransfers in der Tschechischen Republik. Mit Hilfe der *Voucher-Privatisierung* wurden circa 43% des für die Massenprivatisierung vorgesehen Kapitals privatisiert. Im Verlauf der ersten Welle der Voucher-Privatisierung, die noch vor der Spaltung der Tschechoslowakei begonnen wurde, wurden circa 7,5% des gesamten staatlichen Kapitals transferiert. Die zweite Welle wurde Ende 1994 beendet und beinhaltete 4,5% des gesamten Staatskapitals (Kocenda & Valachy, 2001). Insgesamt beteiligten sich 1664 Gesellschaften oder Gesellschaftsteile an den zwei Wellen der Voucher-Privatisierung. An der ersten Welle zwischen März 1992 und Jänner 1993 nahmen 988 und in der zweiten Phase 676 Unternehmen teil. Der Buchwert des anhand Voucher-Modells privatisierten Kapitals übertraf USD 11 Mrd., was circa 10% des tschechischen Volksvermögens ausgemacht hat (Hanousek & Filer, 2002).

Durchschnittlich nahmen 75% der berechtigten Staatsbürger an jeder Welle teil. Der Buchwert der durchschnittlich angebotenen Anteile pro Teilnehmer betrug in der ersten Welle USD 1400 sowie USD 1000 in der zweiten. Im Verlauf der ersten Welle übertrugen 72,2% der Teilnehmer ihre Punkte an einen der 265 Fonds. In der zweiten Welle waren es 63,5% verteilt auf 349 Privatisierungsfonds. Insgesamt wurden rd. 66% aller Voucher-Punkte an die IPFs transferiert (Kocenda & Valachy, 2001).

Tabelle 1: Voucher-Privatisierung in der Tschechischen Republik

	1.Welle	2.Welle
Anzahl der teilnehmenden Unternehmen	988	861
Buchwert der Anteile bereitgestellt für Voucher	USD 7,2 Mrd.	USD 5,2 Mrd.
Teilnehmende Staatsbürger	5,98 Mio.	6,16 Mio.
Voucher-Punkte bei IPFs	72,2%	63,5%

Quelle: in Anlehnung an Kocenda &Valachy (2001, S. 8)

Kogut & Spicer (2002) verweisen darauf, dass die staatlichen Behörden von Anfang an mit der Gründung der IPFs gerechnet haben, jedoch wurde ihr enormes und schnelles Wachstum nicht antizipiert. Die größten IPFs befanden sich im Besitz der inländischen Banken, die sich wiederum überwiegend in staatlichen Händen befanden. Bereits nach dem Erlass der rechtlichen Rahmenbedingungen für IPFs warnten Gegner des Modells vor der potentiell zu großen Konzentration der Eigentumsrechte und des Kapitals innerhalb dieser Fonds. Zudem erkannte die Regierung sehr bald, dass die organisatorischen Aufgaben der Voucher-Privatisierung viel mehr Zeit in Anspruch nehmen würden als angenommen. Diese Erkenntnis veranlasste die Entscheidungsträger neben der Voucher-Privatisierung auch Direktverkäufe zu forcieren (Kosta, 1997).

Die Studie von Havlicek, Turkova und Dlaskova (2014) kommt zum Resultat, dass der *direkte Verkauf* für die Privatisierung von rund 30% des Kapitals verantwortlich war und somit die zweitwichtigste Privatisierungsmethode in der Tschechischen Republik stellte. Innerhalb dieses Modells wurden rd. 350 Unternehmen für umgerechnet rd. USD 8 Mrd. an Investoren verkauft.

Tabelle 2: Große (Massen)-Privatisierung in der Tschechischen Republik von 1991 bis 2005

Privatisierungsmethode	Kapital in USD	%
Voucher-Privatisierung	11,3 Mrd.	42,7
Direkter Verkauf	8,0 Mrd.	30,4
Kostenloser Transfer an Kommunen	4,1 Mrd.	15,5
Kostenloser Transfer an die Reservefonds	2,2 Mrd.	8,2
Kostenloser Restitutionstransfer	0,84 Mrd.	3,2
Gesamt	26,4 Mrd.	100

Quelle: In Anlehnung an Havlicek, Turkova & Dlaskova (2014, S. 63)

Mit Ende 1995 erreichte der Anteil des Privatsektors am tschechischen Bruttoinlandsprodukt rund 70%, welcher zu dieser Zeit der höchste Anteil unter den Transitionsökonomien war (Wilkens & Maenning, 1997). Die anfänglichen Ergebnisse waren also vielversprechend. Das Wirtschaftswachstum kletterte im Jahre 1995 auf sehr zufriedenstellende 5%. Die tschechische Regierung erklärte im Jahre 1996 die Transition für abgeschlossen. Infolgedessen empfahl die Weltbank das tschechische Model als die optimale Privatisierungsstrategie für Staaten in der Transition (Nellis, 2002).

Erkenntnisse aus der primären tschechischen Privatisierung

Die tschechische Privatisierung war gemäß Louzek (2009) keine ruhige Privatisierung, wo die Regierung die einzelnen Zielobjekte gewissenhaft für die Transaktion vorbereiten und an die

attraktivsten Investoren veräußern konnte. Die Arbeit von McMaster (2001) kommt zum Ergebnis, dass der Prozess von der herrschenden politischen Elite geleitet wurde, die die Entwicklung und Implementierung der Privatisierungsstrategien ohne jegliche gesellschaftlichen Hindernisse oder Gegenmeinungen der politischen Opposition bzw. der Interessenverbände vorantrieb.

Ende 1996 sank die tschechische Wachstumsrate um 40%, 1997 erreichte sie einen Tiefstand in Höhe von 0,3% und erholte sich nicht bis zum Jahr 2000. Die Untersuchung von Nellis (1999) dokumentiert, dass diesbezüglich die Privatisierungsmissstände eine tragende Rolle spielten. So zeigt er, dass infolge der Voucher-Privatisierung eine Unmenge an Aktienanteilen an eine große Anzahl der Personen übertragen wurde, die weder das Wissen noch die Möglichkeiten hatten, diese erfolgreich anzuwenden. Zudem waren die IPFs gesetzlich unzureichend geregelt, was zu umstrittenen und kriminellen Handlungen führte. Ein großer Teil der Unternehmensanteile an gesunden und versprechenden Firmen fiel durch Manipulationen des Voucher-Systems in die Hände dubioser, politisch sehr gut vernetzter Personen. Das Fehlen wohlüberlegter Vorschriften und Vollstreckungsmechanismen an den Kapitalmärkten sowie die unzureichende gesetzliche Regelung öffnete die Tür für eine Reihe hochdubioser und illegaler Machenschaften, an denen sich Fonds-Manager auf Kosten der Minderheitenaktionäre bereichert haben. Nellis (1999) betont, dass das beträchtliche Tempo des Voucher-Programms für die Atomisierung des Eigentums und das lückenhafte Privatisierungsreglement verantwortlich war und dementsprechend als das eigentliche Übel der Privatisierung angesehen werden soll. Ellerman (1998), einer der wichtigsten Kritiker des tschechischen Voucher-Programms, nannte diesen Zustand „Trennung des Eigentumes von der Kontrolle“ (p. 11).

Török (2011) und McMaster (2001) haben in ihren Arbeiten ebenfalls enorme Privatisierungsmängel identifiziert. Allerding argumentieren sie, dass die IPFs die eigentlichen Übeltäter sind. Die größten IPFs standen im Eigentum der großen lokalen Banken, die zum größten Teil nicht privatisiert wurden. Solche Strukturen führten unweigerlich zu einer Reihe gravierender Interessenskonflikte. Die große Konzentration der Eigentumsrechte und des Kapitals in den Händen der Investment-Privatisierungsfonds resultierte in einem halbstaatlichen–halbprivaten Besitzverhältnis der Unternehmen. Die Entstaatlichung, als Hauptziel jeder Privatisierung, wurde dadurch nicht zur Gänze erreicht. Diese Eigentümerstruktur entsprach nicht den Anforderungen der Marktwirtschaft, zumal die Dominanz des privaten Sektors nicht gegeben war, sondern der indirekte Einfluss des Staates durch die IPFs. Darüber hinaus entstand eine sehr unüberschaubare Aktionärsstruktur, die die Führung und erforderliche Restrukturierungsmaßnahmen der Gesellschaften erschwerte. Die Auswirkungen dieser Missstände waren enorm. Der starke Einfluss von IPFs und Managern führte zu einer weitverbreiteten Unzufriedenheit in der Bevölkerung. Das Fehlen eines effizienten Kapital- und Finanzmarktes verlangsamte zusätzlich die notwendige Restrukturierung der privatisierten Unternehmen. Die Firmen wurden unterkapitalisiert und unfähig Investitionsmittel aufzubringen sich selbstüberlassen. Die niedrige Arbeitslosenrate, früher als Erfolg der Voucher-Privatisierung gefeiert, wurde nun als ein Indikator für das Fehlen von Veränderungen in den privatisierten Unternehmen interpretiert (Nellis, 2002).

Obwohl das Voucher-Modell die Privatisierung eindeutig unterstützt hatte, zeigte sich, dass tschechische Unternehmen, die nach standardisierten Privatisierungsmodellen (Direktverkäufe an inländische oder ausländische Investoren) transferiert wurden, nach der Privatisierung eine bessere Performance vorwiesen als Unternehmen, die durch das Voucher-Modell privatisiert wurden. Die Forscher Havlicek, Turkova und Dlaskova (2014) bekräftigten mit ihrer Studie den erfolgreicheren Einfluss des Direktverkaufes auf privatisierte Unternehmen. Sie kamen zum Ergebnis, dass die direkte Veräußerung an ausländische oder inländische Investoren die vorteilhafteste Privatisierungsmethode sowohl für die langfristige Leistungsfähigkeit des Unternehmens als auch für die tschechische Wirtschaft war. McMaster (2001) befürwortet diese These ebenso und sieht die Eigentumskonzentration als Ursache dafür. Nach seiner Ansicht sind Unternehmen mit konzentriertem Eigentum erfolgreicher bei langfristigen und strategischen Planungen als Unternehmen mit einem hohen Streubesitzanteil.

Ein weiterer Grund für die schlechtere Performance der Voucher-Unternehmen war die Vorselektion der Zielobjekte, die der tschechische Staat am Anfang der Privatisierung zugelassen hat. Louzek (2009) bestätigt diese Erkenntnis und dokumentiert, dass den ausländischen Investoren erlaubt wurde – anders als von den Reformern angekündigt – die Unternehmen mit der höchsten Profiterwartung zu übernehmen. Ein Beispiel dafür ist der Verkauf des Autobauers Skoda an den Volkswagen-Konzern. Bis Ende 1991 wurden auf diese Weise insgesamt 50 profitable Großunternehmen privatisiert. Zudem wurden Firmen mit durchschnittlichen Erwartungen von einflussreichen inländischen Investoren übernommen. Die restlichen Unternehmen, für die sich sehr wenige Investoren interessierten, wurden in das Voucher-Privatisierungsprogramm übergeben.

Diese Privatisierungsmissstände und eine depressive Wirtschaftsumgebung führten zum Start der sogenannten sekundären Privatisierung, die in dieser Arbeit nicht weiter behandelt wird. Infolgedessen verkauften Massen von kleineren und desillusionierten Investoren ihr Anteile an Unternehmen oder IPFs weiter an größere Investoren. Kogut und Spicer (2002) haben in Bezug auf den Aktienhandel während der sekundären Privatisierung weitere Privatisierungsmängel identifiziert. Obwohl alle Unternehmen nach der Privatisierung an der Prager Börse gelistet und in das RM-System (elektronische Handelsplattform) aufgenommen wurden, führte dies anfänglich nicht zu einem transparenten Austausch der Anteile. Der größte Teil des Handels fand außerhalb des formalen Marktes, sprich nicht über die Prager Börse oder das RM-System, statt.

4. Privatisierung in Serbien

Die Privatisierung in den Transitionsstaaten, somit auch in Serbien, ist ein sehr komplexer Vorgang. Die Veränderungen während des Transitionsprozesses betreffen nicht nur die Wirtschaftsstruktur, sondern auch die politische Ordnung oder das soziale Gefüge des jeweiligen Landes. Des Weiteren definiert Simon (2010) die serbische Transition, infolge der hohen Komplexität, als eine Triple-Transition. Der Transitionsprozess in Serbien beinhaltet neben den

notwendigen Wirtschaftsreformen auch die politische Neugestaltung sowie die Etablierung einer neuen Nation.

Seit 1989 wird die Privatisierung in Serbien unter Verwendung von verschiedenen Modellen durchgeführt, dennoch wurde sie bis heute nicht abgeschlossen. Trotz mehrerer Veränderungen der gesetzlichen Rahmenbedingungen mit dem Ziel der Beschleunigung der Privatisierung und der Effizienzverbesserung des Prozesses, muss festgestellt werden, dass die Privatisierung in Serbien noch einen langen Weg vor sich hat. Die Studie von Dragutinovic und Radulovic (2014) kommt zum Ergebnis, dass die Privatisierung in Serbien von Anfang an fälschlicherweise als ein Allheilmittel für die geplagte serbische Wirtschaft angesehen wurde, obwohl die serbische Ökonomie jahrelang unter Wirtschaftssanktionen, kriegerischen Auseinandersetzungen sowie Jahrzehnten der sozialistischen Marktwirtschaft und Arbeiterselbstverwaltung litt. Heute wird die Privatisierung als ein notwendiges Übel angesehen und der Begriff Privatisierung von der breiten Öffentlichkeit als ein Synonym für kriminelle Machenschaften verwendet.

Die ersten Privatisierungsversuche in Serbien begannen 1989 mit der Implementierung verschiedener Bundesgesetze, die die Reorganisation der Staatsunternehmen ermöglichen sollten. Der Wunsch nach Wirtschaftsreformen und einer erfolgreichen Privatisierungswelle wurde sehr bald durch den Zerfall Jugoslawiens und die beginnenden Kriegshandlungen zerstört (Pavlovic, 2003).

Privatisierung vor 2001

Die Privatisierung in Serbien zwischen 1989 und 2001 wird von Uvalic (2001) als eine Historie verschiedenartiger Insidermodelle, sprich unterschiedlicher Distributionsmethoden vom staatlichen Kapital an Arbeitnehmer, Rentner und Staatsbürger definiert. Bis 2001 wurden zwei Privatisierungsgesetze und eine Menge von begleitenden Verordnungen verabschiedet, dennoch erzielte die Privatisierung katastrophale Resultate. Im Zuge der Privatisierung bis 2001 entwickelte sich durch die Insider ein breitgestreuter und unproduktiver Eigentumsbesitz. Die Arbeitnehmer, Rentner und Staatsbürger bekamen, bedingt durch die enormen Verluste in der Wirtschaft, meistens wertlose Anteile an hoch unterkapitalisierten Unternehmen. Im Zeitraum von 1989 bis 2001 wurden auf diese Weise ca. 10% des staatlichen Kapitals, mit weniger als 2% Anteil am Bruttoinlandsprodukt, in private Hände transferiert. Lediglich rd. 4% der eingeleiteten Privatisierungen wurden erfolgreich abgeschlossen.

Für Vujacic und Vujacic-Petrovic (2011) oder Pavlovic (2003) war für den Misserfolg der ersten elf Privatisierungsjahre vorrangig die (gewollte) mangelnde Entschlossenheit der politischen Kreise entscheidend, die nicht bereit waren notwendige Reformen zu implementieren. Des Weiteren befand sich Serbien von 1992 bis 2001 fast durchgehend unter den von den Vereinten Nationen verhängten Wirtschaftssanktionen. Demzufolge kann das miserable Ergebnis der Privatisierung als Folge von ungünstigen äußeren Rahmenbedingungen, vorherrschenden politischen Gegebenheiten sowie unpassenden Privatisierungsmodellen zusammengefasst werden.

Privatisierung nach 2001

Der demokratische Wandel, welcher mit dem Sturz Slobodan Milosevics in Oktober 2000 begann und mit dem institutionellen Wandel fortgesetzt wurde, machte wieder Hoffnung für die serbische Privatisierung. Zu diesem Zeitpunkt wurde die Privatisierung in den meisten ost-südosteuropäischen Ländern, wie beispielsweise Polen, Estland, Ungarn oder Tschechien, zum größten Teil abgeschlossen. Der Regierungsumsturz 2001 und die darauffolgende Implementierung des neuen Privatisierungsgesetzes werden heute als der wahre Anfang der Transition sowie der Privatisierung in Serbien bezeichnet (Mali, 2012).

Die durch Wirtschaftssanktionen, Isolation und Korruption völlig zerstörte serbische Wirtschaft benötigte 2001 so rasch wie möglich frisches Kapital und Know-how. Zugleich sah die neue Regierung in der Privatisierung eine Chance, mit dem alten ungeliebten System der Arbeiterselbstverwaltung und dem nicht erfolgreichen Insidermodell abzubrechen (Pavlovic, 2003). Diese Bedürfnisse und Tatsachen spielten laut Mali (2012) eine prägende Rolle bei der Ermittlung zukünftiger Privatisierungsmethoden, die unter dem Privatisierungsgesetz 2001 zusammengefasst wurden.

Das Privatisierungsgesetz 2001 nahm deutlich Abstand von der früher dominanten Insidermethode. Dem Staat wurde eine bedeutendere Rolle im Prozess zugesprochen. Mit dieser Maßnahme sollte der Erfolg des Verfahrens gesichert und der Privatisierung eine zusätzliche Seriosität verliehen werden. Im Gegensatz zu Privatisierungsprogrammen davor sollten dieses Mal die ausländischen Investoren ermutigt werden an der Privatisierung teilzunehmen.

Das Privatisierungsgesetz 2001 beinhaltet zwei elementare Privatisierungsmodelle: *direkter Verkauf* und *kostenloser Transfer* von staatlichem Kapital. Das Gesetz schreibt vor, dass bis zu 70% des staatlichen Kapitals über die Ausschreibungen oder Versteigerungen verkauft werden müssen, während die restlichen 30%, nach Abschluss der Veräußerung der 70%, an die Staatsbürger, Arbeitnehmer oder an staatliche Fonds verteilt werden sollen (Pavlovic, 2003).

Das serbische *Verkaufsmodell* verlangt den Verkauf der Mehrheitsverhältnisse des Firmenkapitals an die Investoren mittels öffentlicher Ausschreibungen oder Versteigerungen (Mali, 2012). Pavlovic (2003) sieht als das Ziel der Verkaufsmethode nicht nur die Unternehmen schnellstmöglich zu verkaufen, sondern diese auch an strategische Investoren zu übergeben. Von den strategischen Investoren wird erwartet Wissen und Kapital mitzubringen, ressourcenschonend zu wirtschaften, gewinnorientiertes Denken einzuführen, marktwirtschaftliches Umfeld zu entwickeln sowie neue Arbeitsplätze zu kreieren.

Die Regierung bestand darauf, wenn auch nicht im Privatisierungsgesetz explizit erwähnt, dass die öffentliche Ausschreibung als Verkaufsart für die großen und strategisch wichtigen Unternehmen angewendet wird. Im Gegensatz dazu sollen die kleinen und mittleren Unternehmen mittels Versteigerung veräußert werden. Bei öffentlichen Ausschreibungen muss der Käufer im Vorhinein einen umfassenden Geschäftsplan an die Privatisierungsagentur übermitteln.

Das Konzept soll neben dem Kaufpreis auch einen Vorschlag für das Sozialprogramm, das beabsichtigtes Investitionsvolumen sowie ein Umweltprogramm beinhalten. Das Sozialprogramm impliziert eine Reihe von Maßnahmen für die Beschäftigten. Die wesentlichste Regelung sind die Abfertigungsrichtlinien für den sogenannten technologischen Überschuss, sprich Beschäftigte die nicht mehr produktiv eingesetzt werden können. Der Kaufpreis wird nicht als der ausschlaggebende Verkaufsgrund betrachtet, sondern die Mixtur der Schwerpunkte. Im Gegensatz zu Ausschreibungen ist bei Auktionen der Preis das entscheidende Kriterium (Pavlovic, 2003).

Der *kostenlose Transfer* der restlichen Minderheitsverhältnisse konnte auf folgende zwei Arten ausgeführt werden: Übertragung der Anteile an die Mitarbeiter des Wirtschafssubjektes oder Transfer der Anteile an die Allgemeinheit, in Serbien auch als Gutschein-Privatisierung bezeichnet (Pavlovic, 2003).

Bodenschätze und Unternehmen von allgemeiner Bedeutung, wie beispielsweise Autoindustrie, Raffinerien oder Post/Telekom, unterlagen anfänglich nicht der Privatisierung. Mit fortlaufender Privatisierungsmisere und Budgetproblemen wurden auch fast alle strategischen Unternehmen privatisiert oder befinden sich noch immer im Privatisierungsprozess.

Das Verkaufsmodell ist das dominante Modell der serbischen Privatisierung, was auch keine große Überraschung ist, da es auch von der Regierung wegen der schnellen und direkten Einnahmen bevorzugt wird. 75% der Privatisierungserlöse sollen, laut Privatisierungsgesetz 2001, direkt in das serbische Budget einfließen, 5% in den Entschädigungsfonds für nationalisierten Besitz, 10% in den Rentenfonds und die restlichen 10% in den Infrastrukturfonds (Pavlovic, 2003).

Ergebnis der serbischen Privatisierung seit 2001

Von Anfang 2002 bis Ende 2011 wurden in Serbien insgesamt 3.945 Gesellschaften mit einem Gesamtverkaufserlös in Höhe von EUR 3,7 Mrd. privatisiert. Etwa 44% der gesamten Verkaufserlöse wurden durch öffentliche Ausschreibungen erzielt, 38% durch Versteigerungen und die restlichen 18% durch Versteigerungen am Finanzmarkt realisiert. Die meisten Privatisierungsaktivitäten waren Auktionen (56%), gefolgt von Auktionen am Finanzmarkt (41%), während nur 3% der Gesellschaften durch öffentliche Ausschreibungen transferiert wurden. Die Erklärung dafür liegt in der Größenordnung der privatisierten Unternehmen. Die Mehrheit der für die Privatisierung angebotenen Unternehmen waren kleine und mittlere Unternehmen. Die Versteigerungen erzielten auch mit 88% die höchste Abschlussquote, d.h. 88% aller durchgeführten Versteigerungen wurde erfolgreich beendet, sprich es kam zu einem vertraglichen Eigentumsübertrag. Demgegenüber waren Ausschreibungen nur bei 59% aller Privatisierungsprojekte erfolgreich. Trotz niedrigerer Erfolgsquote als Versteigerungen spielten Ausschreibungen mehr Erlöse in die Staatskasse ein und erreichten zugleich ein höheres Price-to-Book-Verhältnis (P/B-Ratio) als die öffentlichen Auktionen (Mali, 2012).

Tabelle 3: Gesamtüberblick Privatisierung in Serbien 2002 bis 2011

	Privatisierungs-pool	Privatisierte Unternehmen	Abschlussquote	Buchwert des Kapitals (TEUR)	Verkaufserlös (TEUR)	P/B Ratio
Ausschreibungen (A)	217	128	59%	1.320.993	1.619.750	1,23
Versteigerungen (V)	2.459	2.155	88%	1.333.097	1.388.870	1,04
A+V	2.676	2.283	85%	2.654.090	3.008.620	1,13
Versteigerungen Finanzmarkt (VF)	2.699	1.662	62%	682.997	684.342	1,00
Gesamt A+V+VF	5.375	3.945	73%	3.337.087	3.692.962	1,11

Quelle: in Anlehnung an Mali (2012, S. 153)

Nach anfänglicher Skepsis im Jahr 2002 erhöhte sich die Anzahl der Privatisierungen in 2003 drastisch. 2004 verringerte sich die Menge der Aktivitäten erheblich infolge der Parlamentswahlen und anschließender Regierungsbildung. In den folgenden Jahren wurden wieder mehr Unternehmen transferiert. Seit 2008 dezimierte sich die Anzahl der Privatisierungen kontinuierlich aufgrund der Finanzkrise und der schwierigen weltweiten Wirtschaftslage (Mali, 2012).

Tabelle 4: Erfolgreiche Privatisierungen in Serbien (Jahresübersicht)

Privatisierungsmodell	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Gesamt
Ausschreibung	12	19	8	16	25	17	19	7	2	2	128
Versteigerung	206	681	254	201	209	282	226	69	25	2	2.155
Versteigerung Finanzmarkt	48	116	65	295	307	352	254	109	54	62	1.662
Gesamt	266	816	328	512	541	651	499	185	81	66	3.945

Quelle: in Anlehnung an Mali (2012, S. 154)

Eine hohe Abschlussquote wurde vor allem in den ersten Jahren nach der Einführung des neuen Privatisierungsgesetzes erzielt. In den folgenden Jahren sank die Quote sukzessive. Eine der Erklärungen dafür ist, dass mit Fortschreiten der Privatisierung immer weniger attraktive Gesellschaften im Privatisierungspool blieben (Mali, 2012).

Tabelle 5: Abschlussquote der serbischen Privatisierung (Jahresübersicht)

Privatisierungsmodell	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Gesamt
Ausschreibung	46%	50%	82%	76%	86%	38%	73%	78%	40%	50%	59%
Versteigerung	100%	96%	85%	89%	93%	95%	74%	58%	38%	29%	88%
Versteigerung Finanzmarkt	80%	100%	31%	88%	79%	68%	76%	38%	28%	24%	62%
Gesamt	91%	95%	64%	88%	84%	76%	75%	44%	31%	25%	73%

Quelle: in Anlehnung an Mali (2012, S. 155)

Im betrachteten Zeitraum waren inländische Investoren (vorrangig natürliche Personen) die wesentlichen Käufer. Diese Geldgeber nahmen üblicherweise an öffentlichen Versteigerungen kleinerer Gesellschaften teil. Demgegenüber waren ausländische Investoren bei weniger als 7% aller Privatisierungsprozesse involviert. Der überwiegende Teil ausländischer Erwerber beteiligte sich am Kauf großer Gesellschaften (Lukic & Gulan, 2006).

Nikolic (2011) zeigt in seiner Untersuchung, dass die Privatisierung in Serbien von 2001 bis 2011 auf den ersten Blick technisch (im Sinne abgeschlossener Verträge) erfolgreich durchgeführt wurde. Ein zweiter Blick offenbart aber große Mängel und Fehler des Privatisierungssystems. Bis Ende 2010 wurde fast jede vierte Privatisierung (23,1%) annulliert und wieder renationalisiert. Infolge der Vertragsauflösungen entgingen dem serbischen Staat Verkaufserlöse in Höhe von rd. EUR 1,26 Mrd.

Tabelle 6: Annullierte Privatisierungen in Serbien von 2001 bis 2011

Annullierungsgründe*	Anzahl annullierter Transaktionen
Nichtbezahlung des Kaufpreises (u.a. Ratenzahlung)	214
Missachtung des vereinbarten Sozialprogramms und der Geschäftstätigkeit	208
Nichterbringung von Bankgarantien für die Investition	47
Nichtdurchführung von Investitionsverpflichtungen	72
Sonstiges	21

Quelle: In Anlehnung an Nikolic (2011, S. 106)
*In den meisten Fällen waren mehrere Gründe für die Auflösung der Verträge ausschlaggebend.

In erster Linie bestärkte gemäß Nikolic (2011) die Möglichkeit der Ratenzahlung des Kaufpreises die Stornierung vieler Privatisierungsfälle. Zumeist zahlte der Käufer die ersten Raten des Verkaufspreises, übernahm die Kontrolle über das Unternehmen und verließ es nach einiger Zeit, ohne die restlichen Zahlungen zu tätigen. Während der Beherrschung des Unternehmens übertrug der vermeintliche Käufer die Vermögenswerte des privatisierten Unternehmens an ein anderes Wirtschaftssubjekt unter seiner Kontrolle. Dieses betrügerische Verfahren, in der Literatur auch unter dem Begriff *Tunneling* bekannt, wurde in den Transitionsstaaten üblicherweise durch den langsamen Privatisierungsprozess ermöglicht, da die Langsamkeit der Verfahren den Managern der zu privatisierenden Firmen zu Gute kam. Die Geschäftsführer hatten aus diesem Grunde genügend Zeit, die Geschäftstätigkeiten des staatlichen Unternehmens an die eigenen, neugegründeten Unternehmen zu übertragen. Die Besonderheit des serbischen Tunnelings liegt in der Tatsache, dass die Maßnahmen von dem neuen Unternehmenseigentümer durchgeführt wurden. Die neuen Besitzer bezahlten willentlich maximal eine oder zwei Raten des Kaufpreises und entnahmen unterdessen gewollt Vermögensbestände aus dem gekauften Objekt, bevor die Privatisierungsagentur die Verstöße bemerkte und den Kaufvertrag für nichtig erklärte. Die Absicht des Käufers war von Anfang an, die Vermögensstände der Firma zu erwerben und nicht die Weiterführung der Geschäftstätigkeit des Unternehmens zu gewährleisten. Das ausgeplünderte und ausgelaugte Unternehmen wird danach von der Privatisierungsagentur renationalisiert, d.h. die Privatisierung wird annulliert und die Firma erneut in den Privatisierungspool zurückübergeben.

Ende 2014 befanden sich noch 155 Unternehmen in der Privatisierungsvorbereitung sowie 419 Gesellschaften in verschieden Phasen der Privatisierung. Ein neues Privatisierungsgesetz wurde im August 2014 verabschiedet. Das neue Gesetz sollte mehr Flexibilität bei der Wahl des optimalen Privatisierungsmodells für die restlichen Unternehmen gewähren, jedoch wurden in der Praxis bis dato keine sichtbaren Verbesserungen erzielt. Das Enddatum der Privatisierung wurde mit 31.12.2015 neu festgelegt (Dragutinovic & Radulovic, 2014). Dieses Ziel wurde wiederum deutlich verfehlt.

5. Fallstudien – Privatisierungsbeispiele

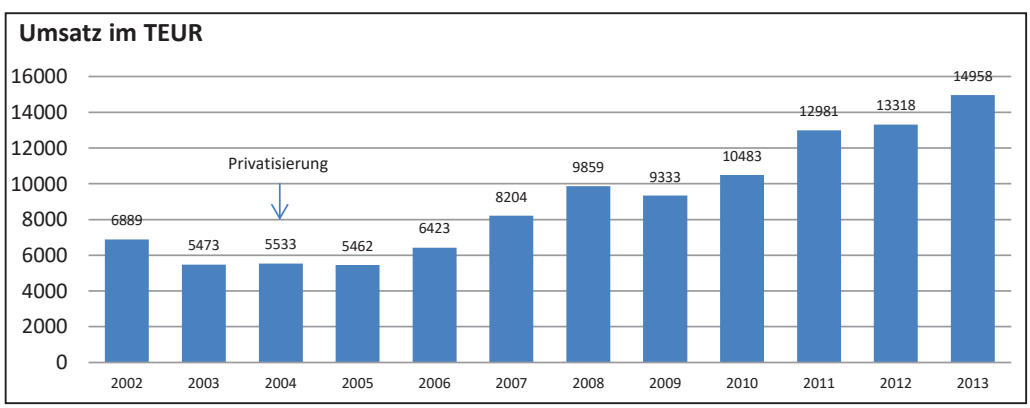
Nachdem ein Überblick über die Ergebnisse der Privatisierung gewonnen wurde, bedarf es detaillierter Einblicke in die konkrete Praxis der serbischen Privatisierung. Die folgenden drei Fallstudien entstammen aus einer Untersuchung von Dragutinovic und Radulovic aus dem Jahre 2014, die von der *Nacijonalna alijansa za lokalni ekonomski razvoj* beauftragt wurden. Diese Privatisierungsbeispiele sollen Prozesse und Problematiken innerhalb des Privatisierungskonstrukts verdeutlichen. Besonderes Interesse gilt den wirtschaftlichen und organisationellen Gegebenheiten, die in den untersuchten Unternehmen vor und nach der Transaktion geherrscht haben. Die betriebswirtschaftlichen Erkenntnisse sollen anhand der Analyse von vier Kennzahlen (Gesamt- und Eigenkapitalrentabilität, Liquidität 3. Grades und EBIT-Marge) sowie durch Verläufe der Umsatzerlöse innerhalb des betrachteten Zeitraumes gewonnen werden. Schlussendlich soll die Fallstudienanalyse Empfehlungen für die Privatisierungsprozesse in Serbien liefern.

Fallstudie DP Dusan Petronijevic
(Branche: Herstellung von Papier, Pappe und Folgeprodukte)

Das Unternehmen wurde 2004 mittels einer öffentlichen Ausschreibung privatisiert. Der Käufer, ein strategischer Investor aus dem Ausland, erwarb 70% des Unternehmenskapitals. Die restlichen Anteile wurden zu je 15% an die Beschäftigten und die staatliche Privatisierungsagentur übertragen. Das Ausbleiben der Konkurrenz und ein mit dem Erwerb des Unternehmens verbundenes, umfangreiches und kostspieliges Sozialprogramm prägten den geringen Verkaufspreis. Im Rahmen der Vorbereitung für die Privatisierung fanden im Unternehmen weitreichende Restrukturierungsmaßnahmen statt. Periphere Unternehmenseinheiten wurden ausgegliedert und von der Privatisierung ausgeschlossen, ein staatliches Beschäftigungs- und Rentenprogramm half bei der Reduktion der Beschäftigungszahlen um 40%.

Die Produktionskapazitäten waren vor dem Unternehmensverkauf nur zu einem geringen Teil ausgelastet. In den letzten zwei Jahren vor dem Verkauf gingen die Umsatzerlöse durchschnittlich um 13,5% zurück. Nach der Privatisierung änderte sich die wirtschaftliche Entwicklung des Unternehmens drastisch. Der Marktanteil wuchs im betrachteten Zeitraum 2002 bis 2013 um mehr als 50% und das Unternehmen erzielte eine durchschnittliche Steigerung der Umsatzerlöse in Höhe von 17,4% pro Jahr. Ende 2013 waren die Umsätze 1,7 Mal höher als im Privatisierungsjahr.

Abbildung 1: Umsatzerlöse 2002-2013 – DP Dusan Petronijevic

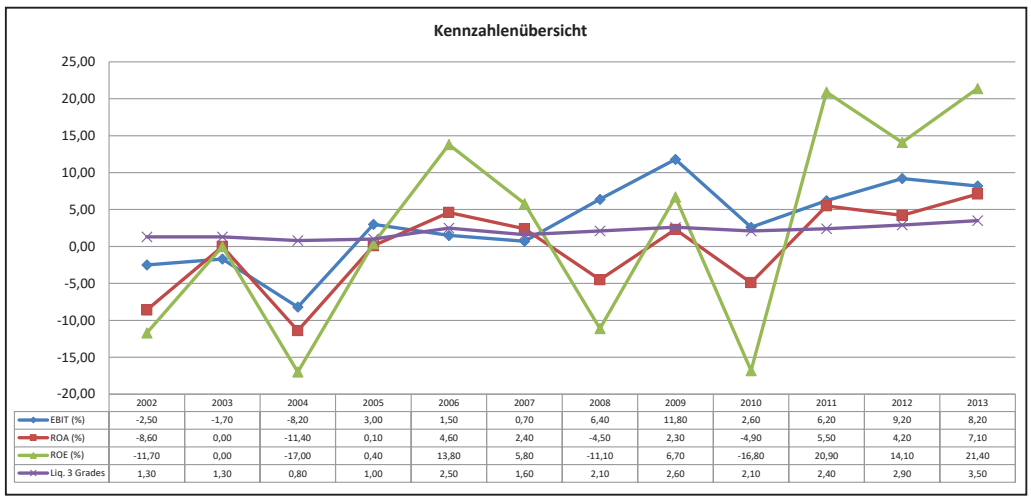


Quelle: in Anlehnung an Radulovic & Dragutinovic (2014, S. 25)

Eine ähnliche Entwicklung verzeichneten auch die vier analysierten Kennzahlen. Das Unternehmen wies vor der Transaktion deutlich niedrigere EBIT-Margen als danach aus. Im Privatisierungsjahr war die Kennziffer jedoch, infolge hoher Abfertigungsaufwendungen an ausscheidende Arbeitnehmer, negativ. In folgenden Geschäftsjahren ist ein positiver Trend deutlich erkennbar. Der prozentuale Anteil des EBIT am Unternehmensumsatz ist mit den Jahren kontinuierlich angestiegen, was auch die Verbesserung der Ergebnissituation bedeutete. Die zufriedenstellende Entwicklung der Kennzahlen Gesamtkapitalrentabilität (Abk. ROA) und Eigenkapitalrentabilität (Abk. ROE) zeigt,

dass die Firma nach der Transaktion effizienter mit dem Kapital umgegangen ist. Die Liquidität 3. Grades verzeichnete ebenfalls höhere Werte als vor der Privatisierung. Vor dem Verkauf bewegte sich die Kennziffer unter dem optimalen Wert von zwei. 2004 sank der Wert, aufgrund der bereits angesprochenen Abfertigungsaufwendungen, auf einen Tiefstand. In den nächsten Jahren stieg die Liquidität 3. Grades stetig. Die Werte bewegten sich um oder oberhalb des optimalen Wertes, was die zufriedenstellende Liquiditätssituation der Firma betont.

Abbildung 2: Kennzahlen 2002-2013 – DP Dusan Petronijevic



	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
EBIT (%)	-2,50	-1,70	-8,20	3,00	1,50	0,70	6,40	11,80	2,60	6,20	9,20	8,20
ROA (%)	-8,60	0,00	-11,40	0,10	4,60	2,40	-4,50	2,30	-4,90	5,50	4,20	7,10
ROE (%)	-11,70	0,00	-17,00	0,40	13,80	5,80	-11,10	6,70	-16,80	20,90	14,10	21,40
Liq. 3 Grades	1,30	1,30	0,80	1,00	2,50	1,60	2,10	2,60	2,10	2,40	2,90	3,50

Quelle: Eigene Darstellung in Anlehnung Radulovic & Dragutinovic (2014, S. 27 ff.)

Das Unternehmen repräsentiert eine erfolgreiche und problemlose Privatisierung, in welcher der strategische Investor von Anfang an die Kontrolle übernommen hat. Die allgemeinen Ziele der Privatisierung wie Verbesserung der Effizienz, Investitionserhöhung, Transfer von Knowhow und Entlastung des Staates wurden zur Gänze erreicht.

Fallstudie DP Mala Bosna
(Branche: Land- und Forstwirtschaft)

Das Unternehmen Mala Bosna wurde mittels einer öffentlichen Auktion im Jahre 2007 privatisiert. Der Käufer, ein Konsortium natürlicher Personen aus Serbien, erwarb 70% der Unternehmensanteile, während die restlichen 30% an die Beschäftigten transferiert wurden. Analog wie bei der vorher erläuterten Fallstudie war auch bei dieser Transaktion ein vorgegebenes Investitions- und Sozialprogramm Bestandteil des Kaufvertrages.

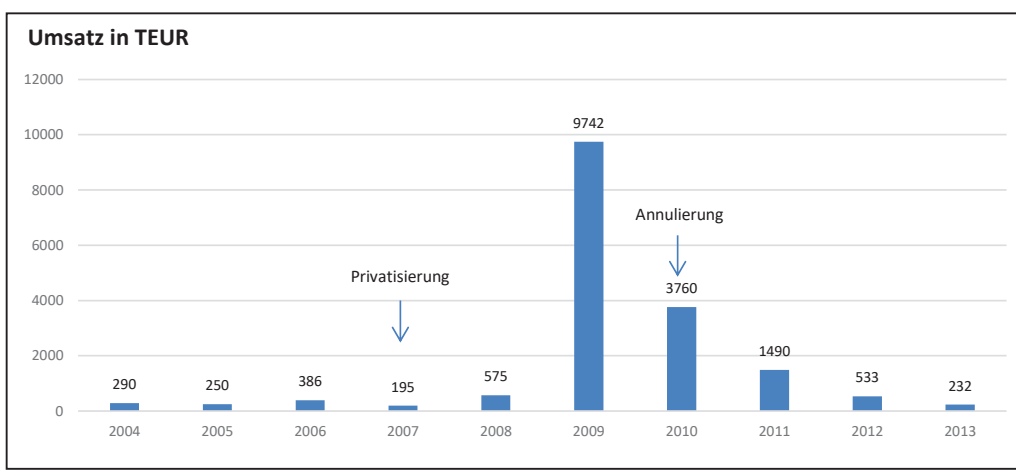
Die Zeit nach der Privatisierung war durch unklare Eigentümerverhältnisse geprägt. Im Jahre 2009 wurden – im Einvernehmen mit der Privatisierungsagentur – die erworbenen

Unternehmensanteile wiederum von einer anderen natürlichen Person übernommen, die in einer engen Beziehung mit den vorherigen Eigentümern stand. Anschließend übergab der neue Investor die Geschäftsführeraufgaben an eine weitere Person, die zu diesem Zeitraum Eigentümer oder Geschäftsführer mehrerer zum Unternehmen nahestehenden Gesellschaften war.

Das Unternehmen Mala Bosna ist ein charakteristisches Exempel des serbischen Tunnelings, sprich der absichtlichen Ausnutzung einer privatisierten Firma als kollateraler Schaden, um Kredite für die Finanzierung verbundener Unternehmen zu erhalten. Als Handlanger und Unterstützer haben sich dubiose private serbische Banken etabliert. Die erhaltenen Geldmittel wanderten zum größten Teil direkt an die verbundenen Unternehmen. Das Unternehmen Mala Bosna blieb daraufhin mit Bankverbindlichkeiten und Forderungen gegenüber verbunden Unternehmen hilflos zurück. Gleichzeitig mit der Belastung des Unternehmensvermögens kam es auch zum physischen Vermögenstransfer zu nahestehenden Unternehmen und Personen. Angesichts der dubiosen Machenschaften und nicht erfüllten Vertragsvereinbarungen wurde der Kaufvertrag im Jahre 2010 aufgelöst.

Die Jahre nach der Privatisierung erzielte das Unternehmen, ausgenommen 2009, stetig fallende Umsätze. Das Jahr 2009 war ein Ausreißer in dem Umsatzerlöse erzielt wurden, die 49 Mal höher waren als im Privatisierungsjahr. Diese enorme Steigerung wurde nicht durch die eigene Fertigung oder den Verkauf der Lagerbestände erreicht, sondern durch die Veräußerung der Produkte, die von der staatlichen Rohstoffausgleichsagentur ausgeliehen und auf eigene Rechnung verkauft worden waren. Die schwache Liquiditätslage sowie etliche Kontenblockaden führten schlussendlich zum totalen wirtschaftlichen Kollaps des Unternehmens. Kurz nach der Auflösung der Privatisierung wurde ein Restrukturierungsverfahren eingeleitet, in dem sich das Unternehmen noch immer befindet.

Abbildung 3: Umsatzerlöse 2004-2013 – DP Mala Bosna



Quelle: in Anlehnung an Radulovic & Dragutinovic (2014, S. 192)

Vor der Transaktion verzeichnete das Unternehmen eine relativ niedrige Verschuldungsquote, was sich nach der Privatisierung, infolge des Tunneling in kürzester Zeit änderte. Die durchschnittlichen EBIT-Margen waren vor der Privatisierung höher als danach. Es ist jedoch zu erwähnen, dass diese höheren Werte nicht dem Ergebnis besserer Geschäftsaktivität entstammen, sondern ein Resultat der Wertsteigerung der Lagerbestände waren. Die Veränderungen der Kennzahlen ROA und ROE im Zeitablauf zeigen, dass das Unternehmen vor der Privatisierung mit dem Kapital effizienter umgegangen ist. Während des gesamten Beobachtungszeitraums hat das Unternehmen Liquiditätsprobleme verzeichnet, die oft in den angesprochenen Kontenblockaden geendet haben. Der Vergleich der Kennzahlenwerte vor und nach der Privatisierung zeigt, dass die Liquidität 3. Grades nach der Transaktion von Jahr zu Jahr gesunken ist.

Tabelle 7: Kennzahlen 2004-2013 - DP Mala Bosna

Jahr	EBIT (%)	ROA (%)	ROE (%)	Liq. 3. Grades
2004	-16,7	1,5	1,8	0,5
2005	23,4	0,3	0,3	0,9
2006	12,1	0,3	0,4	1,0
2007	25,6	1,2	1,8	1,0
2008	17,4	0,7	1,2	1,0
2009	-0,1	0,1	0,6	1,1
2010	2,6	-39,1	-627,1	0,7
2011	21,5	-3,6	-	0,1
2012	-11,8	5,4	-	0,2
2013	-539,4	-12,5	-	0,1

Quelle: in Anlehnung an Radulovic & Dragutinovic (2014, S. 193 ff.)

Fallstudie Zavarivac AD

(Branche: Metallerzeugung und –bearbeitung)

Die wirtschaftlichen Probleme des Unternehmens Zavarivac AD begannen bereits in den 1990ern, als das Unternehmen nach dem Zerfall Jugoslawiens große Teile des Absatzmarktes verloren hatte. Das Unternehmen wurde danach zweimal privatisiert. Die erste Privatisierung wurde Ende 2000 eingeleitet. Dabei wurden rd. 60% des Kapitals kostenlos an die Beschäftigten übertragen, die restlichen 40% verblieben im staatlichen Besitz. In den folgenden Jahren kam es zu keinen wesentlichen Veränderungen der Eigentümerstruktur.

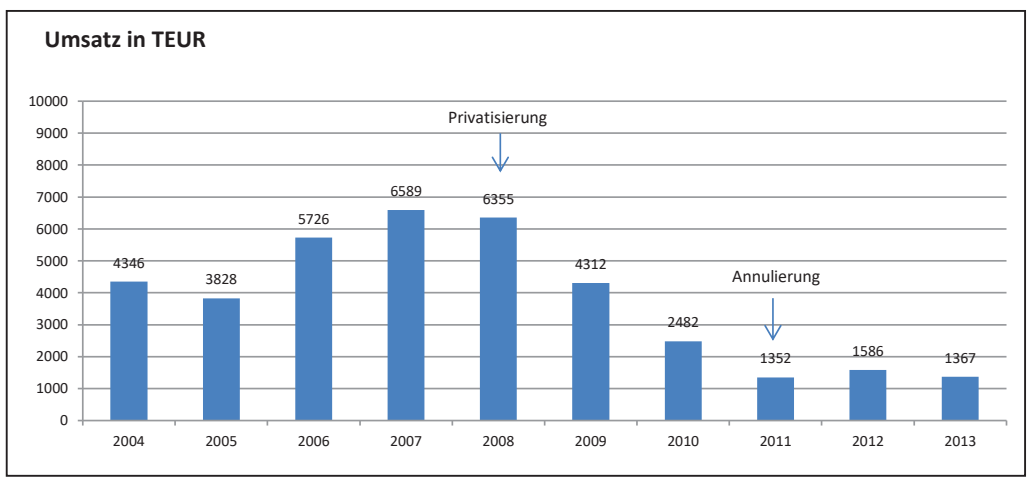
Vor der zweiten Privatisierung verzeichnete Zavarivac AD, trotz starken Schwankungen in der Geschäftstätigkeit durchgehend positive Geschäftsergebnisse, dennoch war die Zeit durch eine

Steigerung des Verschuldungsgrades geprägt. Die Problematik des teuren Personalüberschusses und das Ausbleiben dringend benötigter operativer Restrukturierung belasteten das Unternehmen schwer.

Die Privatisierung der restlichen rd. 40 % Unternehmensanteile wurde, nach mehrmaligem Scheitern, im Zuge einer öffentlichen Ausschreibung Ende 2008 vollzogen. Der Erwerber war ein Konsortium bestehend aus vier serbischen Unternehmen und 16 natürlichen Personen. Den Käufern gelang es, neben den zum Verkauf stehenden Anteilen, auch die Aktien der Arbeitnehmer zu erwerben und somit einen Mehrheitsbesitz zu ergattern.

Nach der zweiten Privatisierung verzeichnete Zavarivac AD eine Verschlechterung der Geschäftstätigkeit mit dramatischem Rückgang der Umsätze. Die Gründe dafür waren, abgesehen von der weltweiten Wirtschaftskrise, die schlechte finanzielle Lage der Firma, kostspieliger Personalüberschuss sowie zerrüttete Verhältnisse zwischen Arbeitnehmern und neuen Eigentümern. Die Streitigkeiten eskalierten Ende 2010 als es zu einer Arbeitsstillegung kam, nachdem keine Vereinbarung betreffend Abfertigungszahlungen für die entlassenen Arbeitnehmer gefunden werden konnte. Daraufhin sagten die Banken ihre Unterstützung ab und stellten die gewährten Kredite fällig. 2011 löste die Privatisierungsagentur den Übernahmevertrag auf und leitete einen Restrukturierungsprozess ein. In der Folge verschlechterte sich die ökonomische Situation des Unternehmens kontinuierlich.

Abbildung 4: Umsatzerlöse 2004-2013 – Zavarivac AD



Quelle: in Anlehnung an Radulovic & Dragutinovic (2014, S. 110)

Alle untersuchten Kennzahlen haben nach der Privatisierung bedingt durch Produktionsstillegungen und zusätzliche Verschuldung des Unternehmens eine Verschlechterung erfahren.

Tabelle 8: Kennzahlen 2004-2013 – Zavarivac AD

Jahr	EBIT (%)	ROA (%)	ROE (%)	Liq. 3. Grades
2004	5,5	0,2	0,3	1,3
2005	6,9	0,3	0,5	1,2
2006	-1,0	0,3	0,5	1,1
2007	-4,5	0,1	0,3	1,3
2008	7,8	0,2	0,5	1,3
2009	-46,6	-33,5	-96,7	0,3
2010	-62,8	-22,8	-190,3	0,4
2011	-135,7	-21,1	-	0,3
2012	-96,5	-16,9	-	0,3
2013	-144,5	-21,6	-749,0	0,2

Quelle: in Anlehnung an Radulovic & Dragutinovic (2014, S. 110 ff.)

6. Erkenntnisse aus der serbischen Privatisierung

Die Analyse der serbischen Privatisierung seit 2001 zeigt auf den ersten Blick ein durchaus positives Ergebnis. Die eigentlich hohe Abschlussquote der Privatisierungsaktivitäten charakterisiert aber lediglich den bloßen Transfer des staatlichen Besitzes, sprich den vertraglichen Übertrag der Unternehmensanteile aus staatlichen in private Hände. Der eigentliche substanzielle Misserfolg der stattgefundenen Transaktionen wird an dieser Stelle verheimlicht.

Die tatsächliche Transition und Privatisierung in Serbien begann *mit großer Verspätung* erst im Jahre 2001, 12 Jahre nach der Tschechischen Republik. Währenddessen hatten die potentiellen strategischen Investoren die Region Südost- und Osteuropas für sich entdeckt und darin investiert. Abgesehen von den hochprofitablen Branchen, wie beispielsweise Mineralöl-, Tabak- oder Alkoholindustrie, war es danach sehr schwer, potente strategische Investoren nach Serbien zu holen. Von den inländischen Investoren, die die Privatisierung von größeren Unternehmen hätten bewältigen können, gab es in Serbien einfach zu wenige.

Serbien musste aufgrund der desolaten wirtschaftlichen Situation so schnell wie möglich den vielen Verpflichtungen nachkommen und möglichst rasch *Liquidität* generieren. Demzufolge wurde der Direktverkauf des staatlichen Kapitals als eine angemessene Methode für das serbische Privatisierungsvorhaben angesehen.

Das Privatisierungsmodell aus dem Jahre 2001 hatte von Anfang an schlechte Aussichten. Die Privatisierungsrahmenbedingungen waren schlecht aufgestellt, die Mehrheit der Unternehmen befand sich in schlechter wirtschaftlicher Verfassung, ein großes Interesse strategischer Investoren

blieb aus und eine Reihe von ungeklärten Problemen beherrschte die Privatisierungsthematik. Diese Probleme sollen anschließend erläutert werden.

Ein elementares Problem bilden die *fehlenden rechtlichen Rahmenbedingungen* betreffend der Konversion des gemeinschaftlichen in das private Eigentum sowie die daraus resultierenden unklaren Besitzverhältnisse der Immobilien. Erwerben die Investoren das Unternehmen, stellt sich sehr oft die Frage, ob die gekauften Objekte überhaupt in das Grundbuch eingetragen werden können. Diese Ungewissheit hielt immer wieder die Investoren von weiteren Privatisierungsbemühungen ab.

Ein weiteres Problem war, wie auch in den Fallstudien dargestellt, der *Personalüberschuss* in den Zielobjekten. In der ersten Zeit nach Einführung des Privatisierungsmodells 2001 wurde die Problematik des Personalüberschusses an die Käufer abgewälzt. Nachdem immer weniger potentielle Erwerber bereit gewesen waren, diese teuren personellen Restrukturierungsmaßnahmen durchzuführen, übernahm der Staat die Lösung des Problems. Die finanzielle Ausstattung des dafür eingerichteten Arbeitnehmer-Transitionsfonds konnte aber dem Bedarf nicht nachkommen und somit blieb die Lösung des Problems bei den Käufern selbst.

Die *Verschuldung* der Zielunternehmen war das dritte große Problem des Privatisierungsmodells. Die Privatisierungsverfahren wurden anfänglich mit nicht zweckgemäßem Verhalten von einigen staatlichen Gläubigern konfrontiert Die öffentlichen bzw. staatlichen Unternehmen hatten hohe ausstehenden Forderungen gegenüber vielen Unternehmen im Privatisierungspool. Sie blockierten die Privatisierungsprozesse, da sie nicht bereit waren, notwendige Schuldenschnitte zu gewähren. Dieses Hindernis machte eine Vielzahl von Transaktionen unattraktiv. Schließlich wurde der rechtliche Rahmen verändert und ein zwingender Schuldenerlass von staatlichen Gläubigern eingeführt. Der Schuldenschnitt konnte einen zusätzlichen Anreiz auf die Kaufentscheidung des Investors ausüben und sich positiv auf den Privatisierungsprozess auswirken.

Die Privatisierung in Serbien wurde und wird noch immer von der ständig wechselnden *politischen Stimmungslage* und dem *korrupten staatlichen Privatisierungsgerüst* beeinflusst. Diese Konstellation eröffnete sehr viele Türen für korrupte Handlungen. Besonders sichtbar wurde dieser Missstand bei der Selektion der Investoren und der Bevorzugung dubioser, inländischer natürlicher Personen durch die Privatisierungsagentur. Die Einführung der möglichen *Ratenzahlung* des Kaufpreises verstärkte die kriminellen Machenschaften zusätzlich. Als ein Lockmittel für Investoren sowie als unterstützende Maßnahme am Kaufprozess für die Arbeitnehmer angedacht, wurde die Ratenzahlung dementgegen als ein Stimulus für Tunneling und weitere kriminelle Machenschaften ausgenutzt.

Eine weitere Erkenntnis der Fallstudienanalyse war der ausschlaggebende Einfluss, den potente strategische Investoren auf die Privatisierung ausüben können. Die *Qualität der Investoren* entscheidet über das Gelingen des Verfahrens und die Zukunft des privatisierten Objektes.

Die Fallstudien offenbarten ferner, dass Privatisierungen mit *einfachen Eigentümerstrukturen* erfolgreicher waren. Konsortien von Firmen oder natürlichen Personen, wie im Falle des

Unternehmens Zavarivac AD, bringen unklare Zusammensetzungen des Kapitals mit sich ohne notwendige, ordentliche hierarchische Strukturen. Obendrein waren die verschachtelten Besitzverhältnisse sehr oft klare Indizien für dubiose Absichten der Investoren.

Eine weitere Erkenntnis der Fallstudienuntersuchung ist die untergeordnete und manchmal zur Gänze fehlende *Rolle des Staates* im Privatisierungsprozess. Der Privatisierung wurde vielmals eine unausgereifte staatliche Unterstützung beigestellt. Bei vielen Transaktionen war der Staat durch gewisse Fonds oder die Privatisierungsagentur der größte Minderheitsaktionär der verkauften Objekte. Die wesentlichen Entscheidungen konnten demzufolge ohne die Teilnahme oder die Einwilligung des Staates nicht durchgeführt werden. Das Desinteresse des Staates führte bei einer Vielzahl von Privatisierungen zu negativen Resultaten. Der Staat war mit dem Privatisierungskontingent überfordert und hatte meistens keine Möglichekiten klare Handlungsregeln vorzuschreiben, Kontrollmaßnahmen festzusetzten, gemeinsam mit dem Management Ziele zu definieren oder in irgendwelcher Weise als Aktionär an der Führung des Unternehmens teilzunehmen.

Der Misserfolg serbischer Privatisierung wurde schlussendlich auch durch die Tatsache verursacht, dass die Privatisierung selbst das Ziel war und die Durchführung *ohne Rücksicht auf Konsequenzen* vollzogen worden ist. Das Programm wurde anfänglich nur auf die Verkaufserlöse abgestimmt, nicht auf die Steigerung der Unternehmenseffizienz oder Senkung der Arbeitslosenzahlen. Eine gewissenhafte Selektion der Käufer durch die Privatisierungsbehörden wurde bei vielen Transaktionen vollkommen vernachlässigt, viele Unternehmen wurden schnell und unüberlegt an dubiose Investoren ohne Branchenbezug verkauft.

Alle diese Tatsachen sind für die Langsamkeit und Fehlerhaftigkeit im serbischen Privatisierungsprozess ausschlaggebend.

7. Empfehlungen für die serbische Privatisierung

Obwohl sich das tschechische Privatisierungsmodell vom serbischen Pendant in vieler Hinsicht unterscheidet, liefert der Vergleich der beiden Privatisierungsprogramme keine völlig neuen Erkenntnisse für die serbische Privatisierung. Im Großen und Ganzen sind fast alle gewonnenen tschechischen Einsichten Erfahrungen, die Serbien bereits jahrelang selber gemacht hat. Die Fehler, die in Tschechien passierten, wurden in den meisten Fällen auch in Serbien produziert.

Serbien muss seine Einstellung gegenüber der Privatisierung in vieler Hinsicht ändern. Ein erster wichtiger Schritt in diese Richtung wäre die Fehler, aber auch die Erfolge der tschechischen und der eigenen Privatisierung bis dato zu erkennen und in den eigenen Prozess einzubauen bzw. diese nicht zu wiederholen.

In diesem Sinne wurden vier Optimierungsempfehlungen für die serbische Privatisierung erkannt und folgend erläutert.

Stärkung des Staates

Die wesentlichste Erkenntnis aus der tschechischen Privatisierung ist, dass ein schwacher Staat ohne einflussreiche marktunterstützende Institutionen sehr viel Unheil in den Privatisierungsprozess bringen kann. Ein auf die Privatisierung unvorbereiteter Staat offenbart sehr viele Lücken für korrupte und illegale Handlungen und ist mitverantwortlich für das Ausbleiben der ökonomischen Stabilität, die wiederum zum Fernbleiben ausländischer Investoren führt. Die Fallstudienanalyse und die Privatisierung in Tschechien haben gezeigt, dass besonders diese ausländischen Geldgeber für die erfolgreichsten Privatisierungsprojekte zuständig waren.

Eine langfristige Lösung der Privatisierungsproblematik für Serbien liegt dementsprechend im Aufbau effizienter staatlicher verwaltungs- und politischer Kapazitäten, um den Privatisierungsanforderungen gerecht werden zu können. Der Staat als Verkäufer sollte die Unternehmen auf die Privatsierungen (optimal) vorbereiten und nicht ohne vorbereitende Aktivitäten zum Verkauf anbieten. Die Fallstudien haben gezeigt, dass insbesondere die finanziellen und organisationellen Restrukturierungsmaßnahmen die strategischen Investoren angelockt haben. Obendrein soll der Staat in den ersten Jahren nach der Transaktion verstärkt als Kontrollgremium fungieren und die Privatisierungsabkommen intensiver überwachen. Diese Aktivität sollte schlechtverlaufende Privatisierungen schneller erkennen und vor weiteren Eskalationen bewahren.

Das Ziel der erwähnten Bemühungen sollte die Kanalisierung bevorstehender Privatisierungstransaktionen in sozial-produktive und akzeptable Projekte sein. Zugleich würden stillstehende und nicht erfolgreiche Privatisierungsaktivitäten wieder in geordnete Bahnen zurückgebracht werden. Das mittel- bis langfristige Ziel sollte somit ein effektiver Staat mit weniger fehleranfälligem institutionellem Privatisierungsgerüst sein.

Abgesehen vom Aufbau der effizienten verwaltungs- und politischen Kapazitäten für die ordnungsgemäße und faire Durchführung der Privatisierung bedarf es in Serbien nach Meinung der Autoren, mehrerer parallellaufender Prozesse, die nicht nur neue Privatisierungstransaktionen, sondern auch die bereits verwirklichten Privatisierungen betreffen. Im Folgenden werden sie erörtert.

Fall-zu-Fall-Privatisierung

Eine schnelle Lösung der Privatisierungsproblematik in Serbien kann es nicht geben. Serbien sollte von den Erkenntnissen der Tschechischen Republik lernen und von der schnellen Privatisierung absehen. Obwohl Tschechien anfänglich auf das Tempo ihrer Privatisierung stolz war, kamen nach Beendigung der Privatisierung sehr viele Probleme auf. Die Kritiker sind sich einig, dass wenn die Privatisierung langsamer durchgeführt worden wäre, es keine so ausufernde Insider-Domination, weniger Widerstand gegenüber externen Investoren, mehr Schutz für Minderheitsaktionäre und weniger unkontrollierte Handlungen der Invetsment-Privatisierungfonds gegeben hätte. Solange

der Staat Mängel bei Privatisierungsrahmenbedingungen offenbart, sollte die langsame Fall-zu-Fall-Privatisierung nach international bekannten Verfahren durchgeführt werden.

Als Hauptmethode der serbischen Privatisierung empfiehlt sich der bedächtige und wohlüberlegte direkte Verkauf durch öffentliche Ausschreibungen. Diesen Tendern sollen mehrere Auswahlverfahren vorgelagert werden, an denen nur strategische Investoren mit Branchenbezug teilnehmen dürfen. Das Ziel müsste sein, den optimalen und nicht den ersten Käufer zu finden. Serbien sollte sich mit anstehenden Privatisierungen unbedingt Zeit lassen, der kontrollierte Verkauf darf der schnellen, aber kurzfristigen Erholung der Staatskasse nicht weichen.

Externe Unterstützung

Kurzfristig sollte Serbien mehr externe Unterstützung in Form von privaten Beratern oder internationalen Organisationen, wie beispielsweise der Weltbank, einholen. Die erfahrenen Konsulenten können die serbische Privatisierungsagentur bei Vorbereitung, Durchführung und Überwachung der Privatisierungsprojekte unterstützen.

Einige Transitionsstaaten engagierten am Anfang ihrer Privatisierungsprozesse außenstehende Berater und haben auf diese Weise Wissenslücken und mangelnde Erfahrung kompensiert. Estland hat beispielsweise Unterstützung und technische Expertise von der deutschen Treuhandanstalt erhalten. Nach anfänglichen Schwierigkeiten legten die Esten die Entwicklung des gesamten Privatisierungssystems in die Hände der Treuhandanstalt, was mit großem Privatisierungserfolg belohnt wurde. Ein anderes erfolgreiches Beispiel der externen Unterstützung findet man in Bulgarien. Die bulgarische Privatisierungsagentur übertrug die Verantwortung der Privatisierung von 30 Großunternehmen an Agenten und Berater (Nellis, 1999). Tschechien hatte dagegen auf die fremde Hilfe verzichtet, was Serbien unbedingt vermeiden sollte. Die Unterstützung durch Konsulenten kann aber nur dann funktionieren, wenn innerhalb der verantwortlichen Strukturen der Wille nach Transparenz des Privatisierungsprozesses besteht.

Reprivatisierung

Im Gegensatz zu Serbien hat sich Tschechien entschieden, die Privatisierung mit geringer Rücksicht auf die Arbeitnehmerinteressen zu vollziehen. Serbien entschloss sich hingegen, die Beschäftigten stärker in die Privatisierung zu involvieren und viele Unternehmensanteile der Belegschaft zu überlassen. Diese Bevollmächtigung verlieh den Arbeitnehmern das trügerische Gefühl, die Unternehmen zu besitzen. Die beschriebene Eigentümerstruktur erwies sich bei vielen Unternehmen in Serbien als ineffizient und resultierte in mangelnder Kontrolle der Unternehmen. Dieser Status quo führte schließlich zur schnellen und tiefgreifenden Ausbreitung der Korruption, die dem Privatisierungsprozess enorme Schäden zufügte.

Als Ausweg aus dieser Misere empfiehlt sich die sogenannte Re-Privatisierung der betroffenen Unternehmen. Die Reprivatisierung soll die Firmen aus den Händen der Insider, die übermäßige

Eigentumsanteile halten aber mangelnde Finanzmittel und Anreize besitzen, entreißen. Das Hauptinstrument der Reprivatisierung in dieser Beziehung ist die Kapitalerhöhung. Die Kapitalerhöhung kann durch den Verkauf neuer Aktien an externe Investoren eine Verwässerung der bestehenden Insider-Anteile verursachen. Es stellt sich aber die Frage, wie die neuen Anteile ohne die freiwillige Zusammenarbeit der Eigentümer ausgegeben werden können. Die meisten privatisierten Unternehmen mit schlechter Performance haben Steuerschulden. Eine Umwandlung der Steuerschuld in Aktienkapital würde den Staat mit umfangreichem Aktienpaket in den jeweiligen Unternehmen ausstatten. Der Weiterverkauf der Aktienpakete an strategische Investoren könnte somit neue Besitzverhältnisse erzeugen und die träge, komplexe und wirkungslose Insider-Domination verwässern (Nellis, 1999).

8. Schlussbetrachtung

Die Privatisierung ist überall, besonders jedoch in den ost-südosteuropäischen Transitionsökonomien eine Frage der Politik. Schlussendlich werden die von Ökonomen entwickelten Privatisierungsmethoden von jeweiligen Interessensvertretern und Politikern ausgewählt. Die Erkenntnisse aus Tschechien und Serbien zeigen uns, dass eine Anleitung für die richtige Privatisierung nicht existiert. Privatisierung ist immer ein Kompromiss unterschiedlicher Ziele, die je nach Präferenz klassifiziert und in der bestimmten Reihenfolge verfolgt werden müssen. Ein auf die Privatisierung und daran nachgelagerte Prozesse unvorbereiteter Staat kann in diesem Bestreben nur scheitern. Der Erfolg zukünftiger Privatisierungsprozesse in Serbien wird von der Existenz notwendiger politischer und staatlicher Strukturen abhängen. Die Privatisierung darf nicht mehr als eine systematische Veränderung angesehen werden mit dem Ziel der schnellen Veräußerung des Unternehmens an den erstbesten Eigentümer. Ohne die rasche Implementierung der markwirtschaftlichen und –regulatorischen Reformen, der Revision inkorrekt abgelaufener Privatisierungsaktivitäten sowie vermehrter externer Unterstützung wird die Privatisierung in Serbien weiter misslingen.

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IS THERE A RELATION BETWEEN ENTREPRENEURIAL PERCEPTIONS AND NATIONAL INNOVATION PERFORMANCES? THE POSITION OF TURKEY IN EUROPE [*]

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Abstract

This study attempts to answer the main research question: "Is there a correlated relation between entrepreneurial perceptions and national innovation performances within European countries?" In this scope; "perceived entrepreneurial opportunities", "perceived capabilities", "fear of failure" and "entrepreneurial intentions" are discussed as "entrepreneurial perceptions". National innovation performances of EU and non-EU member countries were gathered from "The Innovation Union Scoreboard 2011". Specifically, Turkey's position in Europe for this subject was analysed.

Keywords: Entrepreneurship, entrepreneurial perceptions, perceived entrepreneurial opportunities, perceived capabilities, fear of failure, entrepreneurial intentions, and national innovation performances.

GİRİŞİMCİLİK ALGISI İLE ULUSAL İNOVASYON PERFORMANSI ARASINDA BİR İLİŞKİ VAR MIDIR? TÜRKİYE'NİN AVRUPA'DAKİ KONUMU

Öz

Bu çalışma "Avrupa ülkeleri genelinde girişimcilik algıları ile ulusal inovasyon performansları arasında korelatif bir ilişki var mı?" sorusuna yanıt bulma amacını taşımaktadır. Bu kapsamda; "algılanan girişimcilik fırsatları", "algılanan kabiliyetler", "başarısız olma korkusu" ve "girişimcilik niyeti" alt boyutları "girişimcilik algıları" olarak ele alınmıştır. AB üyesi olan ve olmayan Avrupa Ülkelerinin ulusal inovasyon performansları, Avrupa Komisyonunca hazırlanan "İnovasyon Birlik Skorbordundan" temin edilmiştir. Türkiye'nin araştırmaya konu değişkenler açısından Avrupa içerisindeki konumu özellikle analiz edilmiştir.

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Anahtar Kelimeler: Girişimcilik, girişimcilik algıları, algılanan girişimcilik fırsatları, algılanan kabiliyetler, başarısız olma korkusu, girişimcilik niyeti, ulusal inovasyon performansı

1. Introduction and Emergence of the Research Question

According to Drucker, "*innovation is the specific function of entrepreneurship*" (Drucker, 1985, p.20). We cannot deny the relation between entrepreneurship and innovation. According to Kuratko and Hodgetts, "*innovation is the process by which entrepreneurs convert opportunities into marketable ideas. It is the means by which they become catalysts for change* (Kuratko and Hodgetts, 1998, p.122).

There is no doubt that Schumpeter is a pioneer of the term innovation. According to him; *"To produce means to combine materials and forces within our reach. To produce other things or the same things by a different method, means to combine these materials and forces differently"* (Schumpeter, *tr.* Redvers Opie, 1978, p.65). He used the concept "new combinations" for this explanation. We can clearly see a strong relation between the meaning of innovation that we use today and Schumpeter's "new combinations". According to Schumpeter, these "new combinations" can be; a new good that is one with which consumers are not yet familiar; a new method of production, that is one not yet tested by experience in the branch of manufacture concerned; a new market; a new source of supply of raw materials or half-manufactured goods; or a new organization of any industry. As can be seen clearly, innovation cannot be related only with "new products" (Türker, 2012, pp.147–159).

Drucker clearly distinguish the concepts; "entrepreneurship" and simply "launching a new venture". Every new small business is not entrepreneurial or do not represent entrepreneurship. He emphasizes that, creation of new markets and new customers are the basic qualifications of "entrepreneurship" (Drucker, 1985, pp.21-22). Shane and Venkataraman also emphasize that "*entrepreneurship does not require, but can include the creation of new organizations*" (Shane and Venkataraman, 2000, p.219). These two above mentioned approaches of Schumpeter and Drucker -when combined- can be considered as an evidence of the relation between innovation and entrepreneurship.

According to Shinnar et.al, the culture of a nation shapes entrepreneurial perceptions and intentions of people live in that nation. And consequently, entrepreneurial perceptions and intentions differ across nations (Shinnar et.al, 2012, pp.465-466). In addition, we know that; environmental conditions and entrepreneurial perceptions play an important role in start-up processes (Edelman and Yli-Renko, 2010, p.835). If the entrepreneurial perceptions and intentions differ across nations than it is logical to think that this difference may correlate with the outputs of entrepreneurship like innovation performance of these nations. This proposition is the starting point of this study.

Measuring innovation performances is difficult to do well with a single measure because innovation can be achieved in many ways (Shapiro, 2006, p.42). According to Brouwer and Kleinknecht, innovation measurement formerly tended to be confined to Research and Development (R&D) activities. This is frequently considered unsatisfactory since the innovation process also requires a number of non-R&D activities such as the acquisition of patents and licenses, design, training of personnel, market research and investment in new production capacity. While such non-R&D expenditure may be of considerable quantitative importance, innovation policy as well as theorizing and modelling still has to rely on R&D statistics as the major source of information systematically collected over time and across all OECD countries. In many of these countries, information about non-R&D expenditure on innovation is virtually non-existent (Brouwer and Kleinknecht, 1997, p.1235).

The Innovation Union Scoreboard (IUS) is the instrument developed at the initiative of the European Commission, under the Lisbon Strategy, to provide a comparative assessment of the innovation performance of EU Member States. The IUS includes innovation indicators and trend analyses for the EU27 Member States, as well as for Croatia, Iceland, the Former Yugoslav Republic of Macedonia, Norway, Serbia, Switzerland and Turkey. It also includes comparisons based on a more reduced set of indicators between the EU27 and 10 global competitors (Innovation Union Scoreboard 2011). The innovation indicators in IUS 2011 are assigned to three main dimensions and shown in Table 1. In this study, "European countries' innovation performances" index from IUS 2011 was used to measure national innovation performances.

Table 1: IUS 2011 Indicators

1. ENABLERS
1.1 Human resources
1.2 Open, excellent and attractive research systems
1.3 Finance and support
2. FIRM ACTIVITIES
2.1 Firm investments
2.2 Linkages & entrepreneurship
2.3 Intellectual assets
3. OUTPUTS
3.1 Innovators
3.2 Economic effects

As seen in the figure below, Turkey as a non-EU member country has the least national innovation performance after Bulgaria, Latvia, Lithuania, Romania and Former Yugoslav Republic of Macedonia. All those countries labelled as "Modest innovators" in IUS 2011.

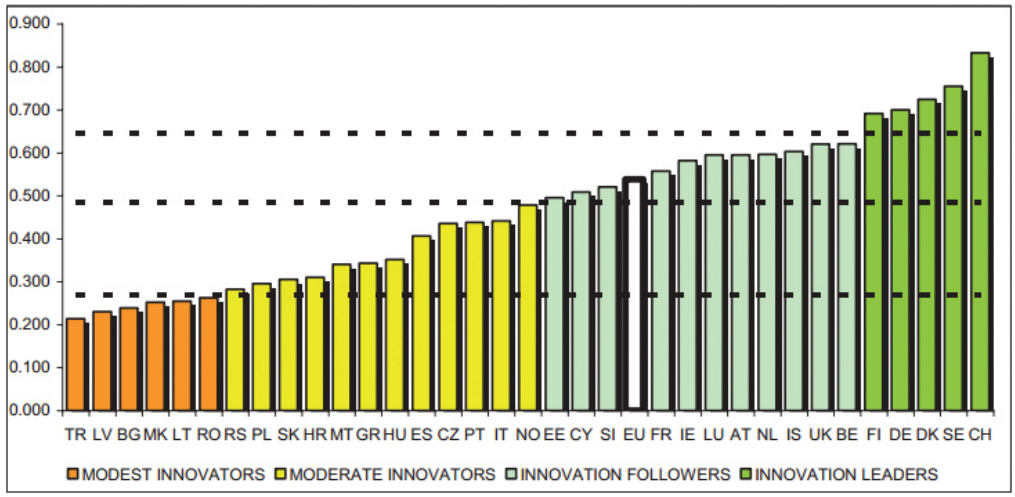

Figure 1: European Countries' Innovation Performances (Innovation Union Scoreboard 2011).

In order to find the answer of the question that; "What are the main factors that correlate with the low national innovation performances in Turkey and similar other -*modest innovator*- countries?" we proposed that there can be potential linkages between entrepreneurial perceptions (e.g. perceptions of potential entrepreneurs about opportunities and capabilities in their own country) and innovation performance of that nation.

2. Hypotheses of the Study

This study will attempt to answer the main research question: "Is there a correlated relation between entrepreneurial perceptions and national innovation performances?" Therefore, the main variables of this study are; the entrepreneurial perceptions of both entrepreneurs and potential entrepreneurs in a country and national innovation performances. The main hypothesis of this study is;

H_0: There is not a significant correlation between entrepreneurial perceptions and national innovation performances.

H_1: There is a significant correlation between entrepreneurial perceptions and national innovation performances.

The sub-hypotheses of this study are as follows;

$H_{1.0}$: There is not a significant correlation between "perceived entrepreneurial opportunities" in a country and "national innovation performance" of that country.

$H_{1.1}$: There is a significant correlation between "perceived entrepreneurial opportunities" in a country and "national innovation performance" of that country.

$H_{2.0}$: There is not a significant correlation between "perceived capabilities of individuals" in a country and "national innovation performance" of that country.

$H_{2.1}$: There is a significant correlation between "perceived capabilities of individuals" in a country and "national innovation performance" of that country.

$H_{3.0}$: There is not a significant correlation between "perceived fear of failure" in a country and "national innovation performance" of that country.

$H_{3.1}$: There is a significant correlation between "perceived fear of failure" in a country and "national innovation performance" of that country.

$H_{4.0}$: There is not a significant correlation between "entrepreneurial intentions" in a country and "national innovation performance" of that country.

$H_{4.1}$: There is a significant correlation between "entrepreneurial intentions" in a country and "national innovation performance" of that country.

3. Methodology of the Research

This study can be defined as a quantitative research. The sample of this study is 17 foremost member countries of EU27 with 2 non-EU27 countries; Norway and Turkey (as of 2012). Data was collected from these secondary data sources; PRO INNO Europe (The innovation policy initiative of European Commission), and The Global Entrepreneurship Research Association (GERA).

The Global Entrepreneurship Monitor was conceived in 1997 by Michael Hay of London Business School (LBS) and Bill Bygrave of Babson College. LBS and Babson funded a prototype study that year. Ten national teams conducted the first GEM Global study in 1999 with Paul Reynolds as the principal investigator. The Global Entrepreneurship Research Association (GERA) was formed in 2004 to serve as the oversight body for GEM (Bosma, et.al, 2012).

There are four main dimensions in GEM Global study; three of them related with individuals' perceptions; "opportunities, capabilities and fear of failure". And the fourth one is "entrepreneurial intentions". The "perception of entrepreneurial opportunities" reflects the percentage of individuals who believe there are opportunities to start a business in the area they live in. "Perceived capabilities" reflect the percentages of individuals who believe they have the required skills, knowledge and experience to start a new business. The measure of "fear of failure" applies to those who perceive opportunities only. Finally, "entrepreneurial intentions"; defined by the percentage of individuals who expect to start a business within the next three years differ widely across the economies in each stage of economic development (Bosma, et.al, 2012). In this study, the findings of GEM Global study were used to measure "entrepreneurial perceptions".

4. Findings

In the first sub-hypothesis, we proposed that there is not a significant correlation between "perceived entrepreneurial opportunities" in a country and "national innovation performance" of that country. We used Spearman's Nonparametric Correlation test for the first sub-hypothesis and as a result $H_{1.0}$ was not supported. Results are shown in Table 2.

Table 2: H_1 Correlations Table

			National Innovation Performance	Perceived opportunities
Spearman's rho	National Innovation Performance	Correlation Coefficient	1,000	,679(**)
		Sig. (2-tailed)	.	,001
		N	23	19
	Perceived opportunities	Correlation Coefficient	,679(**)	1,000
		Sig. (2-tailed)	,001	.
		N	19	19

** Correlation is significant at the 0.01 level (2-tailed).

As a result we found significant positive correlation between "perceived entrepreneurial opportunities" in a country and "national innovation performance" of that country. Scatter diagram of the cluster analysis is shown in Figure 2.

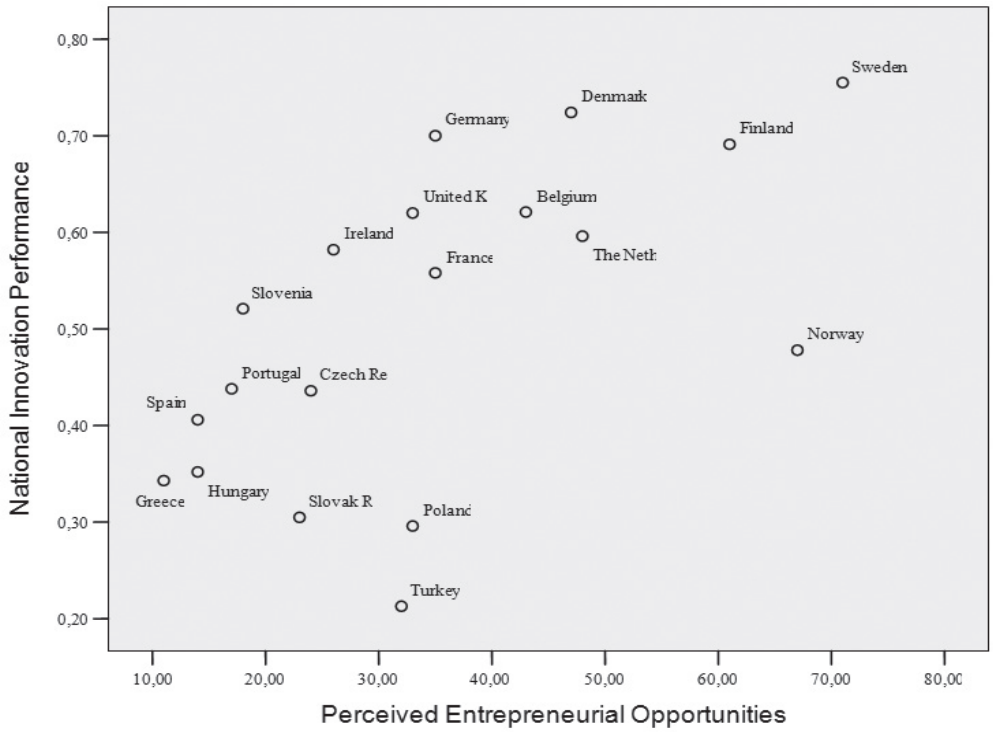

Figure 2: H_1 **Scatter Diagram**

In the second sub-hypothesis we proposed that there is not a significant correlation between "perceived capabilities of individuals" in a country and "national innovation performance" of that country. We used Spearman's Nonparametric Correlation test for the second sub-hypothesis and as a result $H_{2.0}$ was not supported. Results are shown in Table 3.

Table 3: H_2 **Correlations Table**

			National Innovation Performance	Perceived capabilities of individuals
Spearman's rho	National Innovation Performance	Correlation Coefficient	1,000	-,559(*)
		Sig. (2-tailed)	.	,013
		N	23	19
	Perceived capabilities of individuals	Correlation Coefficient	-,559(*)	1,000
		Sig. (2-tailed)	,013	.
		N	19	19

* Correlation is significant at the 0.05 level (2-tailed).

As a result we found significant negative correlation between "perceived capabilities of individuals" in a country and "national innovation performance" of that country. Scatter diagram of the cluster analysis is shown in Figure 3.

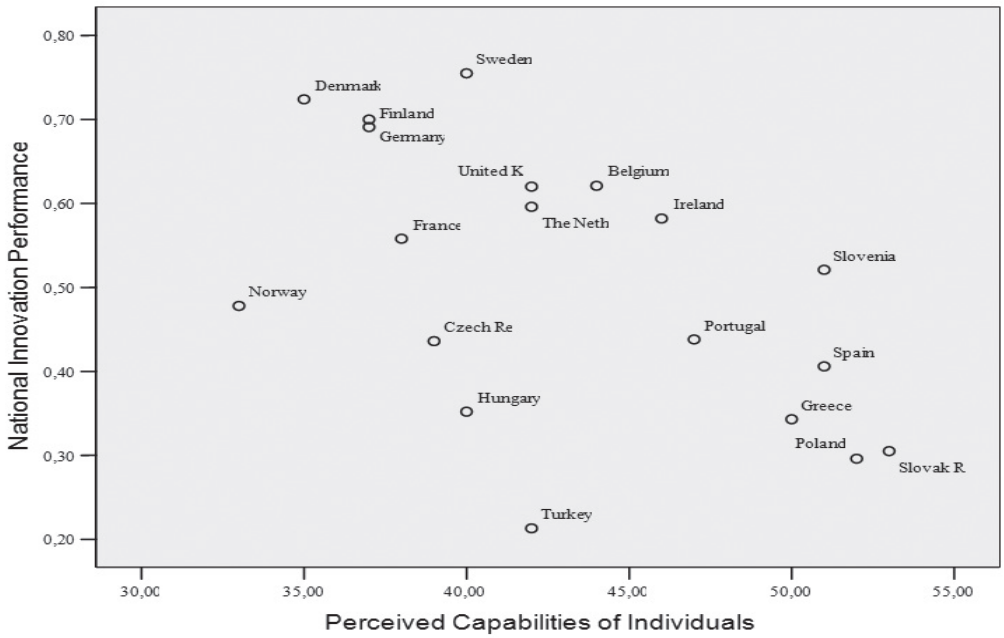

Figure 3: H_2 **Scatter Diagram**

In the third sub-hypothesis we proposed that there is not a significant correlation between "perceived fear of failure" in a country and "national innovation performance" of that country. We used Spearman's Nonparametric Correlation test for the third sub-hypothesis and as a result $H_{3.0}$ was supported. Results are shown in Table 4.

Table 4: H_3 **Correlations Table**

			National Innovation Performance	Fear of failure
Spearman's rho	National Innovation Performance	Correlation Coefficient	1,000	,163
		Sig. (2-tailed)	.	,504
		N	23	19
	Fear of failure	Correlation Coefficient	,163	1,000
		Sig. (2-tailed)	,504	.
		N	19	19

As a result we couldn't found a significant correlation between "perceived fear of failure" in a country and "national innovation performance" of that country. Scatter diagram of the cluster analysis is shown in Figure 4. The position of "Turkey" in this scatter diagram is remarkable.

Figure 4: H_3 Scatter Diagram

In the last sub-hypothesis we proposed that there is not a significant correlation between "entrepreneurial intentions" in a country and "national innovation performance" of that country. We used Spearman's Nonparametric Correlation test for the third sub-hypothesis and as a result $H_{3.0}$ was not supported. Results are shown in Table 5.

Table 5: H_4 Correlations Table

			National Innovation Performance	Entrepreneurial intentions
Spearman's rho	National Innovation Performance	Correlation Coefficient	1,000	-,529(*)
		Sig. (2-tailed)	.	,020
		N	23	19
	Entrepreneurial intentions	Correlation Coefficient	-,529(*)	1,000
		Sig. (2-tailed)	,020	.
		N	19	19

* Correlation is significant at the 0.05 level (2-tailed).

As a result we found significant negative correlation between "entrepreneurial intentions" in a country and "national innovation performance" of that country. Scatter diagram of the cluster analysis is shown in Figure 5. The position of "Turkey" in this scatter diagram is remarkable.

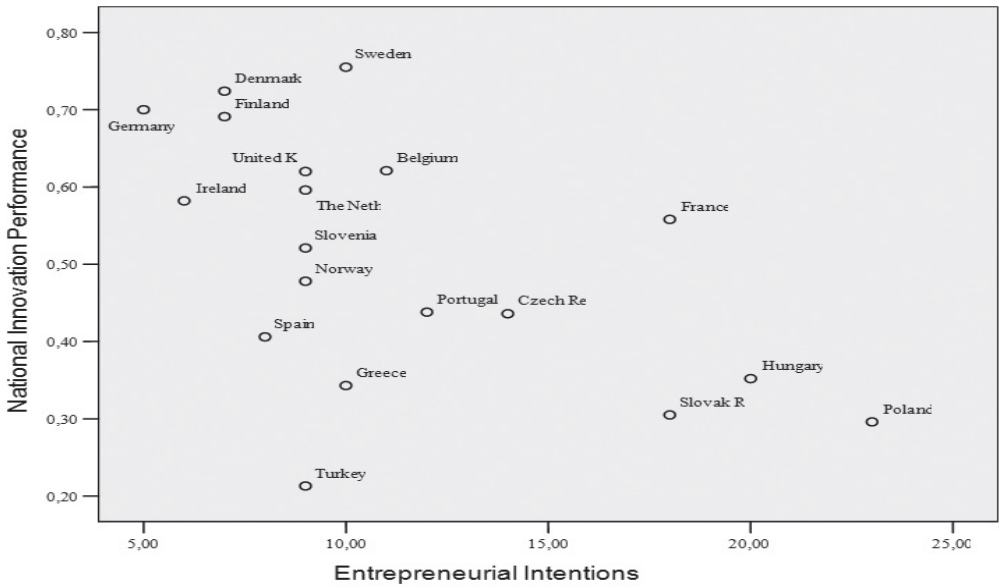

Figure 5: H_4 **Scatter Diagram**

In addition we made a Hierarchical Cluster Analysis using Ward Method in order to determine the position of Turkey within European Countries by "entrepreneurial perceptions". As a result we found five different clusters when we considered all four dimensions of entrepreneurial perceptions (the four main dimensions in GEM Global study). The cluster membership is shown in Table 6.

Table 6: Cluster Membership of all four dimensions of entrepreneurial perceptions (opportunities, capabilities, fear of failure, entrepreneurial intentions)

Case	Clusters
Belgium	1
Denmark	1
France	1
Germany	1
The Netherlands	1
United Kingdom	1

Czech Republic	2
Greece	2
Hungary	2
Ireland	2
Portugal	2
Slovak Republic	2
Slovenia	2
Spain	2
Finland	3
Norway	3
Sweden	3
Poland	4
Turkey	5

5. Conclusion

Of course there are many factors that correlate with the national innovation performances of European countries but as a conclusion; the dimensions of entrepreneurial perceptions partially related with national innovation performances. Especially, the significant positive correlation that we found between "perceived entrepreneurial opportunities" in a country and "national innovation performance" of that country is meaningful when we consider entrepreneurial opportunities as the percentage of individuals who believe there are opportunities to start a business in the area they live in.

Secondly, the significant negative correlation between "perceived capabilities of individuals" in a country and "national innovation performance" of that country may be contrary to expectations. But the logical reason of this finding is simple. In the countries that has higher national innovation performances, potential entrepreneurs may think that, it will be more complicated and there is a higher risk to start a new business in those competitive economies. On the other hand, in the other countries that have lower national innovation performances, potential entrepreneurs may have the courage to believe that they have the required skills, knowledge and experience to start a new business.

Thirdly, we couldn't find a significant correlation between "perceived fear of failure" in a country and "national innovation performance" of that country. But the position of "Turkey" in this comparison is highly remarkable. This interesting result may be an issue that should be taken into consideration for further researches.

Fourthly, we found significant negative correlation between "entrepreneurial intentions" in a country and "national innovation performance" of that country. Entrepreneurial intentions

defined by the percentage of individuals who expect to start a business within the next three years differ widely across the economies in each stage of economic development. So here, the logical reason of this finding is similar to the reason of second sub-hypothesis. In the countries that have higher national innovation performances, potential entrepreneurs may avoid to start a new business in those competitive economies. On the other hand, in the other countries that have lower national innovation performances, potential entrepreneurs may have the courage to start a new business. The similarity between second and fourth sub-hypothesis is logical.

In this study, we found that, the entrepreneurial perceptions in Turkey is significantly differs from other European countries. Not only Turkey differs from others in this manner. For example "Western European" countries like; Belgium, Denmark, France, Germany, Netherlands and United Kingdom are differing from other European countries and make a cluster among them. Similarly, "Southern European" countries like; Greece, Portugal, Slovenia and Spain are also included in the same cluster. Similarly, "Northern European" countries like; Finland, Norway and Sweden differ from other European countries and make a cluster among them. We think that, the differences between country clusters of all four dimensions of entrepreneurial perceptions will be an issue that should be taken into consideration for further researches.

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HEDONIC, UTILITARIAN AND SYMBOLIC DRIVES BEHIND PLACE CHECK-IN ACTIVITY OF MOBILE CONSUMERS

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İrem Eren ERDOĞMUŞ [**]

Abstract

Turkey with 67 million mobile subscribers is an important target market for mobile marketers. Check-in applications which is an important part of mobile marketing are the main subject of this study. The aim of the study is to measure the the impacts of hedonic, utilitarian and social motivations behind mobile check-in activity, along with the impact of familiarity with check-in application and socialiability level of a person. These impacts are examined over frequency of check-ins and loyalty to a specific mobile check-in application. The relationships were tested with Structural Equation Modeling (SEM) by using Amos 21 software program. The outcomes show positive effects of familiarity with check-in application on check-in frequency; hedonic, utilitarian, conspicuous values and socialiability on loyalty to a specific check-in application. The results of the study is believed to be helpful to mobile marketing managers in terms of crafting right marketing strategies in mobile environment.

Keywords: Mobile marketing, Consumer behaviour, Location based applications, Check-in applications.

MOBİL TÜKETİCİNİN YER BİLDİRİMİ YAPMA DAVRANIŞINDA HAZCI, FAYDACI VE SOSYAL MOTİVASYONLAR

Öz

Türkiye, 67 milyon cep telefonu abonesi ile mobil pazarlama için önemli bir hedef pazardır. Bu araştırmanın ana konusu mobil pazarlamanın önemli bir parçası olan yer bildirimi (check-in) uygulamalarıdır. Çalışmanın amacı, mobil yer bildirimi yapma davranışına hazcı, faydacı ve sosyal motivasyonların etkileri ile beraber kişinin yer bildirimi uygulamasına olan aşinalığı ve sosyalleşebilirlik düzeyinin etkilerini ölçmektir. Bu etkiler, yer bildirimi yapma sıklığı ve belirli bir mobil yer bildirimi uygulamasına olan sadakat üzerinden incelenir. İlişkiler Yapısal Eşitlik Modellemesi (SEM) ile Amos 21 yazılım programı kullanılarak test edilmiştir. Sonuçlar, aşinalığın yer bildirimi yapma sıklığına; hazcı, faydacı, sosyal değerler ve sosyalleşebilirliğin ise belirli bir check-in uygulamasına olan sadakat üzerinde

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pozitif etkileri olduğunu göstermektedir. Çalışmanın sonuçlarının mobil pazarlama yöneticilerine mobil ortamda doğru pazarlama stratejileri hazırlamaları konusunda yardımcı olacağına inanılıyor.

Anahtar Kelimeler: Mobil pazarlama, tüketici davranışı, lokasyon bazlı uygulamalar, yer bildirimi uygulamaları

1. Introduction

Recent developments in global mobile communication technologies ensure an easy access to the Internet and social media anytime and anywhere (Bauer *et al.*, 2005; Varnali and Toker, 2010). People can connect to the Internet with their smart phones or mobile devices and look for news while walking, or check for the weather while traveling, or buy or sell an item, or withdraw money from the bank, or find places with location based services (LBS). The change in technology and consumer behaviour pushed marketers to apply mobile marketing, which is defined as a form of marketing, advertising or sales promotion activity aimed at consumers and is conducted over a mobile channel (MMA, Mobile Marketing Association, 2003). This research concentrates on a widespread tool of mobile marketing, LBS (Virrantaus *et al.*, 2001; Vasconcelos *et al.*, 2012) and tries to explain the factors that affect consumer usage and loyalty.

LBS as a form of mobile marketing, works with mobile Internet and third generation (3G) mobile technology and helps people to connect with each other using geolocation. Consumers sign up for a LBS account and download an application for their smart phones. Then users can check-in, broadcasting their location to their friends. Check-ins are done in special venues, physical places such as restaurants, universities, or monuments. Check-in venues are visible to everybody whereas check-ins can be available to a large audience or kept as private (Scellato *et al.*, 2011). People check-in for many different reasons; they inform friends and family, they do it for fun, they meet new friends, they share opinions and tips about places and so on (Vasconcelos *et al.*, 2012).

There are only a limited number of studies on LBS, since the medium is quite new and in its introduction stage (Vasconcelos *et al.*, 2012). Most of the existing studies, on the other hand, focus on user check-in dynamics (e.g., Tang, 2010; Lindqvist *et al.,* 2011; Smith *et al.,* 2005; Consolvo *et al.,* 2005; Barkhuus *et al.,* 2008; Ludford *et al.,* 2008) to understand the consumer behaviour drivers and characteristics. This study is also in line with this stream of research, seeking an answer to 'why do people really check-in?' taking into consideration the impact of utilitarian, hedonic and symbolic values, familiarity with check-in applications and personal characteristic of socialiability on check-in frequency and loyalty to check-in application. Previous research indicate mainly the utilitarian and hedonic motivations of check-in activities (Consolvo *et al.* 2005; Smith *et al.,* 2005; Ludford *et al.,* 2007; Tang *et al.,* 2010; Lindqvist *et al.,* 2011). In addition to those values, this study incorporates symbolic values, familiarity with check-in applications, and socialiability as a consumer characteristics into the model to provide a wider perspective on the subject. Thus, the significance of the study is its wide content about people's check-in motivations

and its discussion about brand loyalty to check-in applications. Another related significance is contribution to general studies on understanding how and why people use social media. The study is also conducted in an emerging market setting, where social media usage is at an increasing rate, and the results may provide guidance to venue owners in marketing and communication.

The context of the study is chosen as Turkey because it has high potential for mobile marketers. According to the report of Institution of Turkish Information Technologies and Communications, there are approximately 67 million mobile subscribers in Turkey as of December 2014. 41 million of those subscribers are 3G users and 10 million of them are mobile Internet users (www.tk.gov.tr). Besides, according to Pew Research Centers's report (2010), mobile check-in application users in Turkey and in other countries have similarities in terms of demographics and this may help generalize the results of this study. In Turkey by 2014 , there are over 35 million Internet users and approximately 36 millions active Facebook accounts. Internet usage rate in Turkey is 45% of the population. People spend 4,9 hours on the Internet from PC's and 1,9 hours from mobile devices. People spend approximately 2 hours and 32 minutes on social media (http://www.dijitalajanslar.com). According to Google, Turkey is also ranked the first in social media usage for 2014 (http://webrazzi.com).

2. Check-in Applications

Foursquare, later named as Swarm, is the prime example of LBS, along with Facebook Check-in, Gowalla, Google Latitude as some examples. As videos and images are the main objects of Youtube, as tweets are the main objects of Twitter and as photographs are the main objects of Instagram, one can claim that check-ins at venues are the main objects of LBS. The check-ins are awarded with points, badges, mayorships as well as receiving special promotions from brand owners. In some types of LBS, users can also make comments and leave tips in the venues that they check-in. Sharing is an ongoing process and a lot of subjective information is passed on to social media by users about places all the time. Some location-sharing platforms also allow for the creation of a brand user account, whereby companies can create their own content such as tips, comments, and photos, promoting themselves, their products and services. Special offers are also created to attract the attention of the users (Vasconcelos *et al*., 2012).

LBS can create three different types of interactions: firm-consumer interaction, consumer-firm interaction, and consumer-consumer interaction. In addition to LBS being a platform for firm-consumer interaction, special offers may also be made on the LBS to attract the attention of the users of this platform (Humphreys and Wilken, 2015). Study by Vasconcelos *et al.* (2012) also states that businesses may also post unrelated links at a large variety of venues to derive consumer traffic to their venue, and actually succeed in doing so. User-posted tips, on the other hand, mean that consumers are interacting with businesses, exposing the weaknesses and qualities about their business to everyone, including potential customers and competitors. Those tips can act as feedbacks collected from consumers, may help for opportunities for improvements, and impact the factors creating the future of the business. The check-in frequency also works like the 'like'

button on facebook, expressing support and affective feelings towards the brand owners. Finally, the check-ins and tips of others affect the venue choice of consumers through a word-of-mouth effect (Cramer *et al.*, 2011). Thus, the value of location-sharing is not tracking or communicating location, but lies on its potential to influence businesses, and consumers; it is about how it is read, used, viewed, and sometimes manipulated.

Check-in is usually a byproduct of many different purposes and also individual characteristics (Cramer *et al.*, 2011). The extant literature has tried to identify some of these characteristics (e.g., Tang, 2010; Lindqvist *et al.,* 2011; Smith *et al.,* 2005; Consolvo *et al.,* 2005; Barkhuus *et al.,* 2008; Ludford *et al.,* 2008) such as utility seeking, hedonic and social motivations. Thus, it is important for brand owners to understand what user motivations, capabilities, or characteristics drive check-in frequency, and then work on these drivers to induce more check-ins and possibly positive reviews on their venues.

Therefore, the aim of the study is to try and understand the consumer motivations behind the mobile check-in activity and examine how this activity may affect a business's life in a consumer driven manner. Another aim of this study is to try and guide businesses to manage and improve their consumer related marketing efforts better and more effectively.

3. Hypotheses of the Study

While developing the model, uses and gratifications theory was taken into consideration which is based on the idea that a media user seeks out a media source that best fulfills the needs of the user (Katz, Blumler and Gurevitch, 1974; Reinhard and Dervin, 2009). Uses and gratifications research show that the media users have different motivations to consume media and satisfy their needs such as social integration, entertainment, information, interaction with their media choices (Blanchflower and Watchravesringkan, 2014). According to LaRose and Eastin (2004), Internet usage has extended and challenged the uses and gratifications approach to understanding media attendance by discovering "new" gratifications and introducing powerful new explanatory variables. Mobile media, a comparatively new technology, has also revealed many uses and gratifications attached to them such as affection/socialiability, entertainment, instrumentality, psychological reassurance, status seeking (Leung and Wei, 2000). Furthermore, studies on social networking sites (SNS) utilized the uses and gratifications theory and showed a relationship between consumers motivations such as immediacy and interactivity and attitudes toward SNS (Muntinga, Moorman and Smit, 2011; Vrocharidou and Efthymiou, 2012; Oloo, 2013). This study similarly draws from uses and gratifications approach and expands with this new research area to understand the user behavior behind mobile check-in activity, by measuring the impact of tridimensional conceptualization of value (hedonic, utilitarian, symbolic). The uses and gratification approach acknowledges the individual characteristics as another variable that effects the differences in user responses to the same or similar media (Stone *et al.*, 1999). Thus, interactivity inherent to social media usage and communication may emphasize the active role of socialiability, the tendency to affiliate and to prefer being with others (Santesso *et al.,* 2004; Wadman *et al.,* 2008; Rai, 2011), as an individual characteristic.

2.1. Impact of Hedonic, Utilitarian and Symbolic Values on Check-in Behaviour

Grounded in consumer behaviour research that deals with attitudes towards products and services, it is suggested that consumer attitudes can be decomposed into a cognitive (utilitarian value that a person associates with the product or service) and an affective (hedonic value that a person associates with the product or service) component (Hirschman and Holbrook, 1982; Simonson *et al.*, 2001). Furthermore, some marketers prefer a tridimensional conceptualization of consumer behaviour, adding the symbolic component (self-expression or social recognition) to cognitive and affective values. They argue that symbolic perceived value appears to be a fundamental dimension of consumption experience of products and services (Mathews, Ambroise and Brignier, 2011; Keller, 1993; Park, 1986).

Empirical studies suggest that both utilitarian value (Bauer *et al.*, 2005; Kleijnen *et al.*, 2007) and hedonic value contribute to consumer adoption of mobile marketing. Utilitarian consumption and thinking is directed by the logical, rational, cognitive thinking, correct choices, and is instrumental (Bazerman *et al.*,1998; Strahilcvitz and Myers, 1998; Dhar and Wertenbroch, 2000). Chiou (2004) and Chen *et al.* (2008) mention that technology usage such as mobile services increase users' utilitarian values. Studies show that people gain utilitarian values while using check-in applications such as place discovery, keeping track of places, informing friends and family and road assistance (Lindqvist *et al.*, 2011; Ludford *et al.*, 2007; Tang, 2010; Smith and Consolvo *et al.,* 2005; Barkhuus *et al.,* 2008; Ludford *et al.*, 2008; Chiou, 2004; Chen *et al.,* 2008). Thus the following hypotheses may be developed:

H1: *Utilitarian user values have a significant and positive effect on check-in frequency.*

H2: *Utilitarian user values have a significant and positive effect on loyalty to a specific check in application.*

Hedonic paradigm sees the consumer as an emotional and subjective person who tries to satisfy some experiential and intrinstic needs, seeking fun, amusement, fantasy, arousal, and sensual pleasure (Levy, 1959; Holbrook and Hirschman, 1982; Hanzaee *et al.,* 2011). Studies on check-in application usage show that people's hedonistic values for check-in behaviour are social connection, tracking other people at the same place, and fun (Lindqvist *et al.,* 2011; Smith and Consolvo *et al.,* 2005; Barkhuus *et al.,* 2008; Ludford *et al.,* 2008). It is also found that the influence of hedonic value is stronger when compared to utilitarian value in building attitudes towards mobile technology in general (Bruner and Kumar, 2005) and especially among mobile users with low trust of mobile technology and low internet experience (Park and SuJin, 2006). We thus hypothesize:

H3: *Hedonic user values have a significant and positive effect on check-in frequency.*

H4: *Hedonic user values have a significant and positive effect on loyalty to a specific check in application.*

Symbolic consumption behaviour in Levy (1959)'s definition is buying things not only for their functions, but also for what they mean and symbolize and the value they offer. In other words, the product or service symbolizes something different to them like being accepted to a social class or a certain group and have social meanings that give the feeling of belongingness to a social group or to a certain lifestyle (Mason, 1981; Levy, 1959; Belk, 1985, 1988). In this study, symbolic values are expected to increase check-in frequency and loyalty to a check-in application, because the places that people check-in can be a symbol of their lifestyles and tastes. It is already known that people prefer to check in at nice, popular, interesting, or luxury places to show others that they are socially and economically independent and available to go those places (Lindqvist *et al.,* 2011; Barkhuus *et al.,* 2008; Brown *et al.*, 2007). Check-ins are done to perform and enhance oneself in the society since social media platforms make it possible to construct identities that they think is appropriate for themselves and for the audience (Cramer *et al.*, 2011).Thus:

H5: *Symbolic user values have a significant and positive effect on check-in frequency.*
H6: *Symbolic user values have a significant and positive effect on loyalty to a specific check in application.*

2.2. Impact of Familiarity on Check-in Behaviour

In marketing literature familiarity is described as "how much a person knows about the product and how much a person thinks he knows about the product" (Park and Lessig, 1981, p. 223). Another definition is that product familiarity is an estimated result of various product related experiences in terms of consumers' cognitive structures (Marks and Olson, 1981), and individuals that have greater familiarity show higher loyalty (Flavián *et al.,* 2007). Thus, Casalo *et al.* (2007) study shows that individuals that have greater familiarity show higher loyalty to websites they visit. A similar effect can be proposed for check-in applications.

Familiarity with a product or service is an important indicator of consumer behaviour, decreasing time and research cost, increasing usage amount and loyalty (Kotler and Armstrong, 2013; Wu *et al.,* 2012). It is believed that familiarity will also extend its influence over social media usage.

Thus:

H7: *Familiarity has a significant and positive effect on check-in frequency.*
H8: *Familiarity has a significant effect on loyalty to a specific check in application.*

2.3. Impact of Socialiability on Check-in Behaviour

Socialiability and social interactions have been studied by psychologists and sociologists since very old times tracing back to Simmel (1949)'s studies. Cheek and Buss (1981) define socialiability as the tendency to affiliate and prefer being with others. The interactions and relations that people have with other people and their social environment are composing their social capital, which

according to Field (2008) shows a person's socialiability level. As the number of people he/she knows and the amount of information he/she shares with others increase, the richer he/she is in social capital, the more social the person is. According to Tang *et al.* (2010), location sharing is motivated by social capital. Brown *et al.* (2007) consider location sharing as a social negotiation with people that you share your location with. Joinson's (2008) study shows that socialiability is an important motivation to use and be a part of social networks such as location sharing. Thus:

H9: *Socialiability has a significant and positive effect on check-in frequency.*
H10: *Socialiability has a significant and positive effect on loyalty to a specific check in application.*

3. Methodology

Sample and Data Collection

The population of the study is all mobile check-in application users in Istanbul. Due to time and monetary constraints, sampling was used. The sample of this study consisted of 500 individuals among people using mobile check-in applications. For the study convenience sampling method was preferred as it is fast, readily available and cost effective. A structured questionnaire was utilized to collect data between May 2013 and June 2013 through face to face interviews. The sample size was determined taking into account the data analysis technique. In this study Structural Equation Modeling (SEM) is used and the proper sample size for SEM is dictated by some factors affecting sample size requirements like misspecification, model size, departures from normality and estimation procedure. For this study model size sampling is used which has a 10:1 ratio. The survey questionnaire has 50 variables so a 500 or over sample size is required to have a valid result from SEM thus this study has a sample size of 500.

The sample consisted of respondents whose age range was 25 to 28. The gender distribution of the sample was 249 female (53 %) and 243 male (47 %) respondents. Most preferred check-in application is Facebook Check-in with 69.4 % and Foursquare (4s) followed by 12.4 %.

Model and Measures

As given in Figure 1, the research model involves five major dimensions and each dimension is measured by scales taken from extant literature.

Commitment dimension of Lastovicka and Gardner (1979)'s Components of Involvement (CP) scale was used to measure *consumer loyalty towards a specific check-in application*. *Check-in frequency* was measured by asking people 'how often do you use mobile check-in applications?' and converting the variable to a five-point Likert-type scale. Two different scales were adapted to measure *utilitarian values* and *hedonic values:* HED/UT scale that measures user attitude towards mobile information services developed by Spangenberg *et al.* (1997) and Lindqvist *et al.* (2011)'s scale measuring 'why do people check-in'. To measure *symbolic values* that users provide from

check-in activities, the Conspicuous Consumption Orientation Scale (CCO) of Chaudhuri *et al.* (2011) was paraphrased and the statements were adapted for mobile check-in activity. *Familiarity with check-in applications* was measured using the scale of Components of Involvement (CP) developed by Lastovicka and Gardner (1979). To measure *socialiability* of the respondents, Cheek and Buss (1981)'s socialiability scale, Leary *et al.* (2003)' scale of 'desire for social contact', Cohen (1967)'s CAD scale (Interpersonal Orientation) and Gosling, Rentfrow and Swann's (2003) Personality Inventories scale were used and adapted for check-in activity. For the scales, a back-translation technique was used to establish meaning consistency (Brislin, 1990). The scales were first translated into Turkish, and then back into English and they were checked by a language professor.

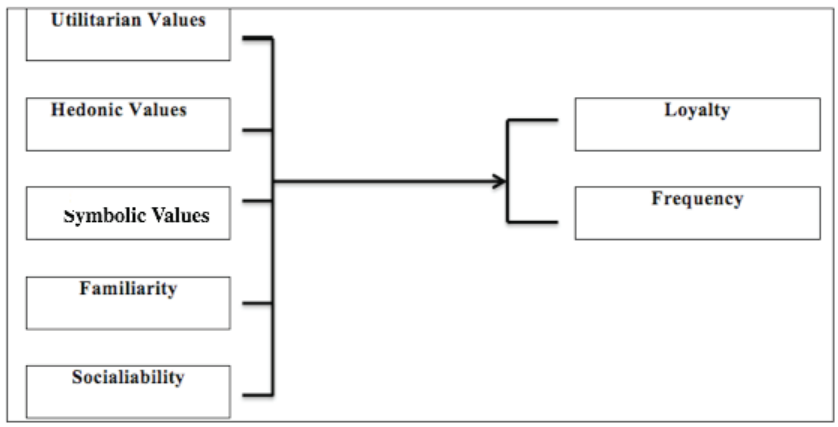

Figure 1: Proposed Research Model

4. Research Findings

Sample Profile and Behavioral Tendencies of the Sample

Descriptive statistics shows the profile of the sample in terms of age, gender, education level. The sample mostly consists of the respondents who are aged between 17-25 age group. Also the respondents whose ages are between 25-30 present the second big part of the sample.

Gender profile consists of 249 female and 243 male respondents which is a good distribution. Also, 78 % of the respondents are university students who are at graduate level.

When looking at the behavioural tendencies of the sample, statistics show that respondents use Internet almost all the time and every day and most preferred check-in application is Facebook's check-in application with 69,4%. Foursquare (4s) follows Facebook with 12,4% and Twitter comes third with 4,6%.

Check-in frequency of respondents shows that most of the respondents check-in often (32%), the number of respondents who claim that they check-in sometimes and always are almost equal with 26%.

Reliability and Validity

Reliability was conducted via SPSS 21 and the results are satisfactory. Reliability was evaluated by assessing the internal consistency of the items representing each factor using Cronbach Alpha. It is good for a reliable scale to exceed the minimum standard of 0.80 or 0.76 reliability (Marsh and Hocevar 1988, Wang and Tang, 2003).

Table 1: Reliability and Composite Reliability of Scales

Dimensions	**Cronbach's alpha**	**Composite Reliability**
Hedonic/Utilitarian Values	0.919	0.86
Symbolic Values	0.938	0.92
Familiarity	0.903	0.80
Loyalty	0.847	0.89
Socialiability	0.876	0.85

The study is valid for convergent validity because the items under the factors have significant factor loadings (Gefen and Straub, 2005; Fornell and Larcker, 1981; Farrell and Rudd, 2009) and is valid in terms of content validity as well because all items in this study are measured by reliable and commonly used scale items in marketing literature (Carmines and Zeller, 1979). This study is also valid in terms of discriminant validity because all the AVE (avarage variance extracted) scores are higher than 0,5 and square roots of AVE are higher than all the correlations of factors (Gefen and Straub, 2005). For example, for F1, AVE is 0,541 which is higher than 0,5 and square root of AVE is 0,734 which is higher than all correlations of F1.

Table 2: AVE and Square Root of AVE

Correlation Matrix					**AVE**		**Sq.R.AVE**
	F1	F2	F3	F4			
F1 (uti-hedo)	*	0,637	0,637	0,138	**F1**	0,541	0,734
F2 (symbolic)		*	0,615	-0,053	**F2**	0,790	0,888
F3(familiarity)			*	-0,052	**F3**	0,666	0,812
F4 (socialiability)				*	**F4**	0,800	0,894
F5 (loyalty)					**F5**	0,660	0,812

EFA - CFA Results

Exploratory factor analysis (EFA) was conducted with SPSS 21 including all the items measured: Hedonic, Utilitarian and Symbolic values, Familiarity, Socialiability and Loyalty. The items that have low communality (under 0.5) were eliminated (3 items from Utilitarian-Hedonic, 2 items from Socialiability, 1 item from loyalty scales were eliminated) because low communalities are suspected of low explanatory power (Hair *et al.,* 1998; Warner, 2007; Costello and Osborne, 2005; Velicer and Fava, 1998). In EFA, five factors were extracted with the hedonic and utilitarian values grouped under the same factor. KMO (Kaiser-Meyer-Olkin) measure of sampling adequacy score for EFA is 0.946 which indicates good fit (Field, 2000; Pedhazur, 1991). EFA was also conducted for each dimension separately and each dimension gives the fit above 0.9.

In CFA (Confirmatory Factor Analysis), five factors were extracted from EFA previously as Utilitarian-Hedonic values (F1), Symbolic values (F2), Familiarity (F3), Socialiability (F4) and Loyalty (F5) were inserted into path diagrams by using Amos 21 and the analysis was run. Model fit summary for CFA gave the measures of baseline comparisons like CFI (0.958), NFI (0.938), RFI (0.909), IFI (0.958) and TLI (0.938) which indicate good fit (Hooper *et al.* 2008, Hair *et al.* 1998, Bollen and Long 1993). RMSEA was satisfactory with 0,062 and Hoelter's critical N was significant being 0.05 and 0.01(Hair *et al.,* 1998).

Table 3: EFA and CFA Factor Loadings

rian/Hedonic Values	U2: I check-in to inform about what I am currently doing.	0,683
VE=14,59, CR=0,86, Vextr=0,54)	U6: I check-in to tag my friends.	0,641
	H1: Checking-in is fun.	0,697
	H3: I check-in to track people.	0,624
olic Values	C5: I check-in at trendy places.	0,663
VE=13,55, CR=0,92, Vextr=0,79)	C6: My check-ins show my original taste of living.	0,671
	C7: My check-ins reflect my personality	0,799
arity	FM2: I can compare check-in applications with each other.	0,691
VE=9,8, CR=0,80, Vextr=0,66)	FM4: I have a knowledge about check-in applications.	0,755
y	L2: I am committed to my check-in application.	0,603
VE=9,7, CR=0,89, Vextr=0,80)	L3: I will keep using my check-in application.	0,743
	L4: I recommend my check-in application to others.	0,588
olity	S4: I prefer an active and social life.	0,82

SEM Results

Utilitarian-Hedonic values (F1), Symbolic values (F2), Familiarity (F3) and Socialiability (F4) that build the independent variables of the study were drawn in the structured model on Amos 21 by adding "frequency" and Loyalty (F5) as dependent variables. The model fit measures for SEM model are acceptible as CFI (.958), NFI (.938), RFI (.909), IFI (.958) and TLI (.938) all show good fit (Hooper *et al.,* 2008; Hair *et al.*, 1998; Bollen and Long, 1993). RMSEA is satisfactory with 0,062 and Hoelter's critical N is significant as expected being 0.05 and 0.01(Hair *et al.,* 1998).

The hypotheses are discussed by looking at the significances and weights of the relationships. Only H9 is rejected, indicating that socialiability does not have a significant effect on frequency of check-ins. H1(β=-0,16), H3(β=-0,16), H5(β=-0,17) are partially and H7(β=0,87) is fully accepted. Thus, utilitarian, hedonic, conspicuous values have significant, but negative effects on frequency of check-ins. Familiarity, on the other hand, exerts a signifcant positive effect on frequency of check ins. H2(β=0,3), H4(β=0,3), H6(β=0,12), H8(β=0,32), H10(β=0,10) are all accepted, meaning that utilitarian, hedonic, conspicuous values, familiarity and socialiability have significant and positive effects on loyalty to a specific check-in application. The squared multiple correlations of dependent variables show that loyalty explains 58% and frequency explains 48% of the structured model.

Table 4: SEM Results

Relationships			P	St. Estimates	Hypothesis
Loyalty	<---	Sociability	***	0,1	H10-Accepted
Loyalty	<---	Familiarity	***	0,32	H8-Accepted
Loyalty	<---	Symbolic Values	***	0,12	H6-Accepted
Loyalty	<---	Utilitarian-Hedonic Values	***	0,3	H2,H4-Accepted
Frequency	<---	Sociability	0,956	-0,02	H9-Rejected
Frequency	<---	Familiarity	***	0,87	H7-Accepted
Frequency	<---	Symbolic Values	***	-0,17	H5-Partially Accepted
Frequency	<---	Utilitarian-Hedonic Values	***	-0,16	H1,H3-Partially Accepted
*** = Significant at 0,05 significance level Squared Multiple Correlations: loyalty: 0,588; frequency: 0,483					

5. Discussion and Implications

Mobile marketing is one of the newest developments in marketing and is growing in importance, offering many different tools for the utilization of marketers. Customer behaviour is also rapidly evolving in the mobile environment with the advent of mobile devices and 7/24 outreach

of the Internet. Thus these developments force marketers to invest in marketing initiatives to communicate with and build relationships with customers in the mobile environment. However, still little is known for what drives consumer behaviour in the mobile environment. This paper addresses this gap and tries to explore the drivers of frequency of check-in and loyalty to check-in applications, a widespread tool of mobile location based services. Drawing from uses and gratifications theory, the proposed model includes utilitarian, hedonic and symbolic values as motivations to use the application. Additionally, it incorporates familiarity with check-in applications and socialiability as personality characteristics in the model. Thus, it proposes a comprehensive model to understand check-in frequency and loyalty to check-in application. The findings provide interesting insights to our understanding, and offer cues for strategy development for check-in application creators and venue marketers.

The main finding of the research is that consumers tend to use and become loyal to check-in applications mainly because of familiarity with the application. In other words, people tend to use "check-in applications" as they become aware of them, know and use them. Thus, businesses have to break the ice between themselves and the check-in applications and start to use the application in the first place. Loyalty and usage rate increases directly with usage. This finding implies the need for awareness communications and initial trial promotions. An interesting finding of the research was the merge of the utilitarian and hedonic motivations into one component. This joint factor had an effect on both frequency of and loyalty to check-in applications. The reason for this outcome may be linked to the specific characteristics of location sharing services what requires functionality of the service mix with hedonic characteristics (Cramer *et al.*., 2011). Check-in is like gaming, what produces an entertaining effect even when it is used for functional purposes. Therefore, the utilitarian and hedonic values may have merged in this research.

An important finding of the study is that utilitarian-hedonic values and symbolic values both negatively affect check-in frequency even though their effect on loyalty to a check-in application is positive. As people seek more utilitarian-hedonic or symbolic benefits in venues, they tend to check-in less or check-in selectively. This might be a result of consumers' thinking that not all places produce utilitarian-hedonistic or symbolic benefits to them. Cramer *et al.* (2011)'s study shows similar results that some people act selectively and tend to check-in at places that seem interesting to them and try to minimize annoyance to others caused by uninteresting check-ins. Lindqvist *et al. (*2011) also pointed out that people often found it more reasonable to check-in at places that were new, unique, and non-routine. Places, such as fast-food restaurants were not interesting or worthy to check-in since they were not impressing to others; some people were even embarrased to check-in at those places. Most people also did not prefer to check-in at places such as work or home because it was both routine and non-interesting, and also private.

On the other hand, both utilitarian-hedonic, symbolic values and also the socialiability characteristic have a positive effect on loyalty to check-in applications. People tend to stick to the same application probably because they want to socialize with the same group of people who also use the same check-in application. Check-in application becomes a platform where the same

people meet and show each other where they go, what they eat or do. In a way the activities they perform on the application form the identity they want to communicate to their social circle. Therefore, it is important that the same application (which is used by their friends) is utilized each time they check-in. The utilitarian-hedonic benefits also drive loyalty to a check-in application. Thus, joy, variety of actions, information reach and other functions are key in forming positive attitudes and behaviour towards a check-in application.

Implications for mobile marketers: This study shows that drivers of frequency of check-in and loyalty to a specific check-in application may change from each other even though familiarity is depicted as the most important driver for both. Thus, application producers should work better to communicate their application to users and induce initial trial. Utilitarian-hedonic values elevate check-in application loyalty. Thus, it is important to include fun, engaging, and socializing factors in the application services. Socialiability and symbolic values also have an impact on check-in application loyalty. Thus, partnerships with other social media platforms to communicate check-in status or learn about others may be essential for check-in application creators. They may as well focus on customized applications that people from several different social groups can use according to their preferences. Some people may prefer to see the ideas and tastes of others in the same social or cultural group, thus a customized application (based on segmentation) which allow people to create groups and to be a member of the groups that they feel close with can be useful. This may also increase the loyalty to the applications.

For venue marketers: Since it is understood that familiarity is an important factor for people to use check-in applications, it is expected that in the future when the awareness and familiarity towards check-in applications increase, people will use them more. Research shows that the consumer-generated content and reviews assist the online buying process, acting like a re-intermediary between the firm and consumers since they become a major way to learn about company offerings (Ahearne and Rapp, 2010; Branes, 2014). Thus the venue marketers or managers should consider the importance of check-in applications, and the user generated reviews, ratings etc., related to their brand. People use the check-in services like a public forum, whereby consumers can raise their own voices and also listen up other product information that affects their purchase decisions. Thus, businesses like restaurants should also be conscientious about their staff and services given the fact that check-in and leaving tips, reviews may increase in the future. People in marketing and operating of locations should follow the check-ins of people and their preferences from several check-in applications, therefore they may create strong customer relationships. For example, they may differentiate themselves on specific meals or drinks by looking at the favourites of people.

Businesses should also encourage location sharing and may award positive reviewers or mayors among the users. Awareness and familiarity is needed to induce check-in activity. Hence, businesses may offer offline campaigns to encourage check-in and reward consumers who check-in online. Hedonic and utilitarian motivations stand out as strong drivers of check in behaviour. Thus, check-in campaigns related to fun and socialization may also work well to increase check-in

frequency. Interestingly, symbolic values are negatively related to check-in frequency. Venue owners should emphasize uniqueness and originality (in terms of menu, location, staff, ambiance etc.) in their communications so that people do not view them as a third place alternative to work and home, but view as interesting and attractive enough to share their presence to friends in online environments.

Limitations of the Study and Implications for Further Research

This study was based on self-reported survey results, research based on actual past behavioural history of the participants could provide more accurate results, coupled with patterns that are not possible with survey data. This study also considered frequency of check-in behaviour. Other research may elaborate this subject further by studying motivations taking into consideration where people check-in, as well as which activities they do on LBS application (such as earning badges, liking other people's check-ins, commenting etc.).

Because of the budget and time limitations, convenience sampling method was used for the study which creates difficulties for generalizability of the study.

In addition to this, the study is conducted to 500 respondents consisting mostly of university students in Istanbul, therefore it may not totally be representative of the population. Even though the study catches the check-in users in the world in terms of demographics, it is not representative worldwide because of cultural and economic differences with other countries.

The study also has several implications for researchers who will study the same or similar subjects in the future. Because the study involves consumer behaviour dimensions, focus group studies and in-depth interviews are highly recommended to understand users' feelings and insights deeply. Further studies should also observe the respondents' social environment well. The attitudes toward check-in applications, popularity of check-in applications in that environment should be considered. Cultural, economic and social situations of people can be considered while measuring the motivations of check-in behaviour.

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PROTECTION OF THE NON-REGISTERED TRADEMARKS IN THE FRAMEWORK OF THE DECREE LAW NO: 556 IN TURKEY

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Abstract

Decree Law effective in the year 1995 in our country "Decree Law on the Protection of Trademarks No 556" has taken the registration system as a base in the protection of trademarks. For this reason, trademarks registered at the trademark registry established under the Turkish Patent Institute in Turkey, provide their owners the right of monopoly. However, it does not mean that a trademark that is not registered as to the clauses of the Decree Law No: 556 are not protected within the borders of our country. Even though the protection of trademarks depends on the registry basis as to the Decree Law No: 556; a trademark not registered in accordance to the procedure is also protected as to the mentioned legislation. In this study the regulations of the Decree Law No: 556 permitting the protection of a non-registered trademark within the borders of Turkey related to the topic will be discussed.

Keywords: Non-registered trademark, The Decree Law No: 556 in Turkey

556 SAYILI KHK KAPSAMINDA TESCİLSİZ MARKALARIN TÜRKİYE'DE KORUNMASI

Öz

Ülkemizde 1995 yılında yürürlüğü giren "556 sayılı Markaların Korunması Hakkında Kanun Hükmünde Kararname (KHK)" markaların korunmasında tescil sistemini esas almıştır. Bu nedenle Türkiye'de Türk Patent Enstitüsü nezdinde kurulan marka siciline tescil edilen markalar sahibine tekel hakkı verir. Ancak Türkiye'de bir markanın 556 sayılı KHK hükümlerine göre tescil edilmemiş olması o markanın ülkemiz sınırları içinde korunmayacağı anlamına gelmemektedir. Her ne kadar 556 sayılı KHK uyarınca markaların korunması tescil esasına dayanmakta ise de usulüne göre tescil edilmeyen bir marka da anılan mevzuat uyarınca korunabilmektedir. Bu çalışmada Türkiye sınırları içinde tescilsiz bir markanın korunmasına izin veren 556 sayılı KHK'nın konuya ilişkin düzenlemeleri ele alınacaktır.

Anahtar Kelimeler: Tescilsiz marka, Türkiye'de 556 sayılı kanun

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1. Introduction

Economic value, in the current century where the transformation from the industrial society to the information society is experienced, is expressed by intellectual capital rather than financial capital. In the knowledge economy formed during the globalization process, the production based on concrete entities was replaced by production based on information formed by abstract entities. In the global world system where trade borders are eliminated day after day and technology develops at an unbelievable pace, intellectual capital ownership has become an important means in the determination of the competitive power in the international field. It is fundamental to protect intellectual property rights, which carry great importance both in the domestic and in the international trade, in an equal and effective manner worldwide. In order to enable the effective and widespread protection of these rights, the establishment of the intellectual rights conscience in the wide section of the society must be conferred. Two things are important in the protection of intellectual rights. The first one of these is that the person spends a specific effort to create a work. The second one is that as the protection of the created work encourages the person in the subject of creation, she/he earns a financial income at the result of these activities. The person creating a work has both the material and moral rights on her/his work. The creative power of the human mind and will is the source of the works in both industrial and artistic fields. For this reason, it is very important for these works to be protected. Effective protection of the intellectual rights is one of the most important elements in the establishment of a healthy and strong industry. In order for the countries to realize a sustainable development, the protection of intellectual rights and the principle of respect to the intellectual rights must be established.

There are two fundamental systems; one based on registry and the one not based on registry, in the protection of the rights based on intellectual property in the world. According to its law tradition, intellectual property protection could be based on registry or based on non-registry in different countries. One of these systems is also chosen in obtaining the right on trademark which is also an intellectual property. In our country, according to the Decree on the Protection of the Trademarks No. 556, effective on 1995, the protection of trademarks is possible with registry. For this reason, trademarks registered at the trademark registry established under the Turkish Patent Institute (TPI) give their owner the right of monopoly and are protected within the borders of the country. However, if a trademark is not registered according to Decree No 556 in Turkey, it does not mean that that trademark will not be protected within the borders of the country. Basically, as to Turkish Law, there is not an obligation to use a trademark, it is not mandatory for every trademark used to be registered at any official institution. The nonexistence of registration obligation in our law has made it a must for the non-registered trademarks to be protected. As to Decree No. 556 even though the protection of trademarks is based on registry, a non-registered trademark is also protected according to the provisions of the mentioned decree within the bounds of the country as well. In this study, the regulations related to the subject of the Decree No. 556 permitting the protection of a non-registered trademark within the borders of Turkey will be considered. What is meant by the concept of non-registered trademark is a trademark not registered at the TPI in accordance to Decree No. 556. The basic principles governing the

protection of the trademark will be considered in the study, along with the conditions in which a trademark non-registered at TPI will benefit from the regulations of the Decree No. 556.

2. Basic principles for the protection of trademarks

- Registry principle; as to the registry system, the means of having a right on the trademark is based on it being registered. The system accepted by the Decree No. 556 is this system because the trademark protection conferred by this Decree is acquired by registration. In this system, in terms of the creation of the right, the trademark registration is of an establishing nature and not explanatory (Ayhan, 2008). As a result of this, the person registering the trademark first has the right of monopoly on that trademark. The right of monopoly gives owner of trademark the right to prevent third parties to use their trademark without permission.

- Territoriality principle; the system which is the basis of intellectual property rights protection is the territoriality principle. According to this principle, the registration confers protection only in that country in which the registry of the trademark is made. That is a trademark is accepted as a non-registered trademark outside the borders of the country in which it is registered.

- Limited protection principle; the protection conferred by the trademark registrations is limited with the trademark to be registered and the goods and services in which the trademark shall be used. As a result of this principle, a trademark is protected in the class of goods and services it is registered and classes of the like. With the objective to confer for the ease and harmony in the registry of trademarks, "Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks" agreement has been organized. This agreement has been effective in Turkey, as of 1.1.1996. Trademarks in which protection is not limited to class are well known trademarks. Well known trademarks confer protection in all classes regardless of being registered or not.

- Preemptive right principle; what is meant by preemptive right is that if the trademark registry application is based on an application made in one of the countries that is a member of the Paris Convention, it is the preemptive right arising from the first application. This right must be used within six months of the date of the first application. As to the territoriality principle, the trademark owner must register her/his trademark in every country separately. If the trademark owner has made a trademark application in a country which is a member of the Paris Convention, in the applications made in any one of the other countries being part of the Convention within 6 months of the date of the application, the application date is accepted as the first application date. In other words, trademark of trademark owner, in the country which is a part of the Convention, is taken under protection starting from the date of the first application. Its trademark is under protection in other countries that are parties to the Convention within six months after this date.

3. The concept of non-registered trademark

In its most general definition, a trademark is named as all kinds of introductory signs providing its goods and services of an enterprise to be distinguished from the goods and services of another enterprise. As all meaningful or meaningless signs consisting of elements like names of persons, words, shapes, numbers, emblems, pictures, letters, colors etc, can be used as trademark, sings that can be visualized by drawing and that can be published and reproduced by printing can also be used as a trademark (Decree a. 5). The most important characteristic of trademarks is that they have a distinctive nature. This characteristic is the characteristic that confers the trademark to become a trademark required for the presence of trademark to be formed (Tekinalp, 2003) [1]. Provided that it has the distinctive condition; it is possible for all kinds of signs to be registered as trademark (Çolak, 2014).The distinctive characteristic of the trademark refers to characteristics and elements of any sign providing it to be different from the others. As a sign can be distinctive at the beginning, it can achieve this characteristic later on (Özdilek, 2007). With the Decree No. 556 the ownership of right on the trademark is obtained with registration (Decree No. 556 a. 6). As to this regulation, the owner of a non-registered trademark cannot benefit from the protection provided by the Decree. Even though the basic principle is the registry system, it will not be false to say that, the trademark is protected under the coverage of the Decree under certain extraordinary cases which are the subject of this study. However if the trademark owner wants to take advantage of the special regulations provided by the Decree No. 556, in that case the registry of the trademark is mandatory. The registry is made at the TPI. What is meant by the concept of non-registered trademark which is the subject of this study, are those domestic or foreign trademarks which are not registered in Turkey according to the Decree No. 556. The domestic or foreign non-registered trademarks of the goods and services that are not in the classification of the trademarks of those goods and services that are registered are also included in this concept.

4. Methods of protection for non-registered trademarks in Turkey

Even though the protection of trademarks is based on registry as to the provisions of Decree No556, trademark right can also be obtained by usage as to the mentioned regulation. It is also possible for a domestic or foreign trademark obtained by usage to be protected in Turkey as well. Then the trademark owner does not register her/his trademark but she/he has made it well known in the market by using it. In this case, the real owner of the right on the trademark is the first person to use the trademark [2]. The fundamental basis of this protection is the unfair

1 The fact that a sign to be registered bears the distinctive condition shall eliminate the absolute registration barriers and some nullity reasons along with it.

2 The priority right of obtaining the right on a trademark belongs to the person bringing the trademark to the known position where this is called the real right owner, and in this case the right on trademark is born before registration. Registration in here has an explanatory rather than establishing effect. In contrast, the registration of a trademark before using that trademark has an establishing effect. In this case the registration confers the owner a conditional right at the beginning only. The thing is that such an act is regarded as violation of the real trademark right of the real right owner against the person obtaining the right by registration of the same and non-distinctively similar trademark how so ever registering as a trademark. The real right owner can prevent this action by the provisions of the Decree No 556 as well.

competition provisions of the Turkish Commercial Code (TCC). Unfair competition provisions are the general provisions in the TCC No 6102 a. 54 etc. Actually, whether a trademark is registered or not, it is protected as to unfair competition provisions in all conditions. But non-registered trademarks cannot take advantage of the provisions of Decree No. 556 as a rule. The protection of non-registered trademarks as to unfair competition provisions is not the subject of this study. The subject of this study is the protection of non-registered trademarks under the light of exceptional regulations in Decree No 556. Actually, trademarks not registered at TPI in Turkey can be protected within the borders of the country as to Decree No 556. However, the coverage of such a protection varies according to the type of the non-registered signs (Tekinalp, 1997.). The exceptional conditions of the protection of non-registered trademarks in Decree No 556 will be considered in the next section of the study.

5. Protection of a non-registered trademark as to the regulations of Decree No. 556

Although Decree No. 556 has accepted the registry basis, the same Decree has moved away from the principle of registry at some points. In other words, it has granted superiority to the registered trademark over the non-registered trademark. These conditions providing superiority to the registered trademark are these:

- Well-known trademarks in the scope of Paris Convention (Decree No 556 a. 7 (1) i),
- Well-known trademarks in terms of different goods or services (Decree No 556 a. 8 (4)),
- Trademarks benefiting from pre-emptive rights (Decree No 556 a.25-28),
- Signs used in trading (Decree No. 556 a.8 f.3 pp. a and b),
- Signs obtaining a distinctive nature (Decree No 556 7 (2)),
- Trademarks against unauthorized filing by agents (Decree No 556 a. 8 (2)),
- Trademarks vested in third parties (Decree No 556 a. 8(5)).

As it can be understood from these conditions, Decree No 556 has given place to the usage of non-registered system at an important ratio (Yasaman, 2004, p. 155 etc.). However, it must be mentioned that the non-registered trademark owner cannot take advantage of all the protective clauses of the Decree No. 556. The owner of the non-registered trademark can benefit totally from the clauses of the Decree No. 556, after registering her/his trademark by only using the possibility of filing a nullity action and cancellation of registration granted to her/him (Tekinalp, 1997).

5.1. Protection of well-known trademarks as to the Paris Convention (Decree No. 556 a.7 (1) i)

The trademark protection present at a. 7, paragraph 1, clause (ı) of the Decree No.556 is among the exemptions of the registry system.

According to Article 7(1)(i), trademarks that have not been authorized by their owners and well known marks within the meaning of Article 6 of the Paris Convention shall not be registered.

According to this, a trademark duly registered and known in any one of the countries being parties to the Paris Convention is accepted to be under protection is protected in the other countries that are parties as well. In other words, the countries that are members to the Convention have accepted to prevent the registration of well-known trademarks in the name of others. But in order for a trademark non-registered in Turkey to benefit from this protection, it is a must that it is a trademark recognized under the Paris Convention primarily, and that this trademark must be recognized in Turkey as well. In this case, the well-known trademark owner can object to the registry of its trademark by third parties for the same goods and services in Turkey because of the well-known nature of its trademark. If the third party registry has become aware of registration, in that case a nullity case can be filed. Protection of the same, same type, similar or related goods and services are provided under the coverage of a. 7/1 (i) of the Decree No. 556 basically.

As a result, Decree No. 556 provides the owner of a trademark not registered in Turkey but well known in the countries which are one of the parties of the Paris Convention, both the registration in the registry of the trademarks of other the goods and services in the same or similar classifications and the prevention of the use of the trademark by others the protection coverage of a. 7 (1) is the non-registered foreign trademarks in Turkey.

5.2. The protection of well-known trademarks in terms of different goods or services (Decree No 556 a. 8 (4))

As to the limited protection principle where trademarks are protected in the registered goods and services classifications, they are not protected in the non-registered goods and services classifications. For this reason the use of same trademark or a similar trademark that is registered or that is applied for registration in a different classification of goods and services does not create an irregularity according to Decree No. 556. However if the trademark that is registered or that has been applied for registration is a well-known trademark, then upon the opposition of the trademark owner, even though it shall be used in different goods and services, the registration application of the latter trademark will be refused or that trademark will be annulled if it has been registered. The objective of this regulation is to prevent of taking unfair advantage of the reputation and distinctive power of the well-known trademark as well as the prevention of the detriments that could be made to the reputation and the distinctive character of the trademark (Decree No 556 a. 8 (4)). As to the mentioned clause, the trademark under the coverage of protection must be a trademark registered and well known in Turkey. But the existence of these two conditions alone is not enough. Even though a trademark is so well known, if one of the conditions listed on a. 8 (4) is not present, then that trademark will not be protected in the different goods and services classifications it is not registered. Consequently, in order for a well-known trademark to be protected in goods and services classifications in which it is not registered at, at least one of the conditions mentioned in the provision must exist. These conditions are; the possibility of the unfair benefit of the trademark which is the same and similar to the well-known trademark, from the well-known situation of the level of the well-known situation of the well-known trademark in

the society, the condition of the reputation of the well-known trademark to be damaged, or the condition of the creation of results that may result in the damaging of the distinctive characteristics of the well-known trademark (Dirikkan, 2003). Under the coverage of this provision, the rejection of the latter registry application even for different goods and services with the existence of the mentioned conditions creates the result of the provision of this protection for the same or similar goods and services as well.

The protection of well-known trademarks provided under the coverage of the Paris Convention is different from the protection of well-known trademarks provided in here. Before everything else, where the trademark protected under the coverage of a. 7 (1) is the trademark which is the foreign trademark used in the member countries of the Paris Convention but not registered or not used in Turkey, the trademark protected under the coverage of a.8 (4) is the domestic or foreign trademark registered and well known in Turkey. Where the basis of the protection under the coverage of a. 8 (4) is oriented for the class of different goods and services of the well-known trademark not registered in Turkey, the well-known trademarks under the coverage of a. 7 (1) i are towards the trademarks of the same or similar goods and services (Dirikkan, 2003).

5.3. Protection of trademarks as to pre-emptive rights principle (Decree No 556 a. 25-28)

As we have stated at the subtitle 2 of this study, as a requisite of the territoriality principle in the registry of the trademark, the trademark is protected only in the country it is registered. Therefore, the trademark owner to supply the good or service in many countries must register her/his trademark in those countries and must perform the required application for this. As a rule, the protection of a registered trademark starts from the moment the registration application is made. The exception to this rule is the pre-emptive right in trademarks. Pre-emptive right is a right with priority owned in the subject of registering a trademark (Bozgeyik, 2007).

Two kinds of preemptive rights have been articulated in Decree No 556. The first one of these is the application priority arising from the registry application made in a foreign country, the second one is the one arising from the display in exhibitions. What is meant by application priority is that if a person citizen of one of the countries which is a member of the Paris Convention or even if not a citizen ,residing in one of these countries or is a real or judicial person who has a commercial establishment operating in one of these countries, has duly applied to the authorities in one of the countries which is a member of the Paris Convention, for the registry of the trademark; and if applies for the registry of the same trademark in Turkey within six months from the time of this application date, the initial application date is accepted as the application date (Decree a. 25). In order for this result to arise, the trademark owner must claim the pre-emptive right in the first application and must realize the application in Turkey within six months from that date. In case a claim is made for pre-emptive right in Turkey because of a trademark application made in a foreign country, the pre-emptive right document received from the authoritative body in the country where the initial application was made and the Turkish translation of this document

must be presented to the TPI during the registry application. The pre-emptive right acquired in this way is related only to the goods and services for which the registry is requested for its owner. For different goods and services other than this, there is no pre-emptive right (Çolak, 2014).

What is meant by exhibit priority is that those exhibiting the goods or services that will be used in the registry application of the trademark at national or international exhibitions or at exhibitions accepted as official or non-official in countries that are members of the Paris Convention, can benefit from the pre-emptive right in case they make an application for trademark registration in Turkey within six months from the date of the exhibit at the exhibition. The beginning of six months period is the date of exhibition. However, if the goods and services have been displayed before the official opening day of the exhibition in a visible manner, the period of the priority right starts from the date the goods are placed in the exhibition stand or the service is displayed. Those real or judicial persons having a residence or those having an industrial or commercial activity within the borders of The Republic of Turkey can take advantage of this right. Moreover, persons having the right to apply within the provisions of the establishment agreements of the Paris Convention or the World Trade Organization (TRIPS) can also benefit. The trademark owner must request the pre-emptive right in this area during the initial application. If there are more than one priority right applications of goods and services displayed in an exhibition, the first displayer, if the exhibition has occurred at the same date; the one making the application first is the right owner (Decree a. 26). As in the application priority, the pre-emptive right in the exhibition priority is present in terms of the goods and services exhibited and then applied for registration (Çolak, 2014).

5.3. Protection of the non-registered trademarks or signs (Decree No 556 a. 8 (3) a-b)

The protection of non-registered trademarks or sign is articulated clearly in a. 8(3) regulating the relative rejection reasons:

"Upon opposition by the owner of a non-registered trademark or of another sign used in the course of trade, the trademark applied for shall not be registered provided that:

a) the rights to the sign were acquired prior to the date of application for registration of the trademark, or the date of priority claimed for the application for registration;

b) the sign in question confers on its owner the right to prohibit the use of a later mark"

As to this provision the existence of two conditions is necessary for the protection of non-registered trademarks. The first one of these is the case where a right has been acquired before the date of the application of a non-registered trademark or sign by a third party to take advantage of the provision or before the priority date specified on the date of the application. Hence, if only a previous usage is the case, the person owning this right can oppose to the registration of the sign. The second one is the fact that it confers on its owner the right to prohibit the use of a later mark. The owner of a trademark not registered according to Decree No 556 a. 8 (3) can prohibit

the registry of the trademark by others later on at the existence of the requisites of the provision. As it is listed among the relative rejection reasons TPI cannot decide ex officio rejection of the registry request with the reason that the trademark requested to be registered is same or similar as to have a likelihood of a trademark used without registration. The one that might prevent from registration in here is the real owner. The real owner can prevent the registration and he can also file a nullification case as well. It must be stated that the nullity decision must be made only for those goods and services classification and for those similar to it, on which the real owner has used the trademark (Çolak, 2014). As the trademarks not registered in Turkey can take advantage of this arrangement, those trademarks registered in a foreign country but not registered in Turkey, however are used in that country and has acquired familiarity as a result of this usage (Uzunallı, y. 2012).

The provision aims to protect the real owner using the trademark or the sign first and introducing it commercial life. What is meant by the non-registered trademark in the provision is the signs not registered as to Decree No 556 but are used specifically as the trademark. What is meant by the term another sign used during trade is the distinctive signs used in commercial life apart from the trademark, like the commercial title, business name etc. (TPI, 2011)

5.5. Protection of signs acquiring distinctive quality as a result of usage (Decree No 556 a. 7 (2))

As to this provision implemented later on with Law No 4128,

> "the provisions of subparagraphs (b), (c) and (d), may not be invoked to refuse the registration of a trademark that has been used before registration and through such use has acquired distinctive character in relation to the goods and services for which it is to be registered."

With this provision present among the absolute rejection reasons of the trademark registration, even if a trademark does not have a distinctive power initially, if it has been used before the registry date and has acquired a distinctive quality related to the goods and services for which it is to be registered, the registry cannot be refused by the TPI (Yılmaz, 2008). However, the trademark owner is required to prove the acquisition of distinctiveness of the trademark intended to be registered, by usage. Acquiring distinctiveness by usage can be possible in only 3 conditions. These conditions are as follows.

- trademarks lacking distinctive character (7 (1) a),
- being descriptive (7 (1) c),
- being customary in trade /usable by everyone in commercial field (7 (1) d).

The case of distinctiveness as a result of usage is in the character of exemption of absolute rejection conditions articulated in the coverage of Decree No 556 a. 7 (1) a, c and d. These conditions are

limited in number. In cases other than these wherein signs cannot be registered as trademark as a result of absolute registry restraints, they cannot acquire distinctive characteristic as a result of usage (TPI, 2011). Moreover this case can be included among the exemptions of this provision with the assumption that a trademark which has been registered or that is applied for registry can acquire distinctive power by usage before registry from the trademarks which are the same or so similar trademarks as not to be distinctive. This extraordinary condition cannot be taken into account ex officio by the TPI. For this reason, this case must have been stated clearly during the application or in case of the phase of opposition for the rejection of the application (Karahan, 2002).

5.6. Protection of non-registered trademarks against unauthorized filing by agents (Decree No 556 a. 8 (2))

This arrangement, present at a.8 second paragraph setting out the relative representation reasons, protects the trademark owner against unauthorized filing by agents. As to the provision in question, in case of the unauthorized filing by agents with the intention of registering the trademark in its name without the consent of the trademark owner, the trade owner has the right to prevent the registration of the trademark by opposition. Concepts of agent, commercial proxy or representative in the provision should not be interpreted in the narrow sense. Commercial proxy/ representative can at the same time be the exclusive seller, distributor, agent etc. of the trademark owner in Turkey (Çolak, 2014).

In order for the trademark owner to use the opposition right arising from this provision, it is mandatory to have a prior trademark right acquired but which has not been registered at the TPI. Along with this, a relation in the nature of a proxy or representation characteristic must exist between the trademark owner and the person wishing to register the trademark in her/his name. The person opposing her/his commercial proxy /representative must prove that she/he is the legal owner of the trademark on the date of the opposition. That is, the opposing person must present evidence relating to the fact that herself /himself is the real owner of the trademark (Karahan, 2002,). It is mandatory for a commercial proxy/representative filing for registration without the permission of the trademark owner not to be able to present a valid justification. In case there is a valid justification, the opposition of the trademark owner is refused. Even if conditions like the commercial Proxy or the representative to perform important activities for the foreign trademark to be introduced in Turkey and the trademark owner not renewing the trademark in Turkey etc. can be mentioned as examples for valid justifications, the determination of what the valid reason is in every solid case must be determined as to the conditions of the agreement between the parties (Çolak, 2014). It must be mentioned that as a requisite of the limited protection principle in trademarks, the trademark owner can oppose only to the applications including same or similar goods and services in which there is the probability of the goods and services of the trademark to be confused with those of the trademark.

5.7. Protection of the personal rights, copyrights and other industrial property rights vested in third parties (Decree No 556 a. 8(5))

Decree No 556 Article 8(5) provides for the protection of other non-registered rights, such as rights to a name, photograph, copyright work or any other industrial property rights vested in third parties. Such rights can result in the rejection of a trademark application through opposition.

Geographical signs, commercial title, design register etc. can be mentioned as examples for industrial property rights. The special rights subject to the provision need not be registered in the protected field necessarily. Special right owners mentioned in the registration or non-registration provision can oppose to the trademark registration application citing these rights. It is adequate for the trademark subject to the opposition to cover one of the rights listed above without requiring any other condition. In case of the rejection of the opposition by the TPI, as the person having one of these rights can file for a cancellation case against the TPI decision, she/he can also file a nullity case if the trademark registry has been made (Karahan, 2002).

6. Legal and penal sanctions in the protection of non-registered trademarks

6.1. Legal sanctions

Even though the Decree No. 556 based on the registry system for the protection of trademarks is permitting the protection of non-registered trademarks, the protections conferred for such trademarks are limited. As the owner of a trademark registered as to the provisions of Decree No 556 can benefit from all protections in a. 9/2, the owner of a non-registered trademark does not have these protection areas. The protection areas conferred for the non-registered trademarks by the Decree No 556 consist only of opposition to the registry, filing an annulation case, filing for a damages case articulated in a. 44/2 in case of the presence of nullity case and its conditions.

It is articulated in Decree No 556 a. 35. In this method, the third party applies to the TPI to register her/his trademark. TPI, which process the application, refuses the application if the conditions are present after performing a preliminary examination, if there is not any rejection reason publishes the trademark together with the registry application at the related bulletin. Non-registered trademark owner who will be experiencing a loss from the registration of the trademark published at the bulletin can object with the reason of the existence of the absolute and relative rejection conditions articulated in articles 7 and 8 of the Decree or with the reason of a trademark application with bad faith. The opposition must be made in writing and with reason within 3 months starting from the publishing of the trademark applications to the TPI. Upon opposition, TPI makes a positive or negative decision. It is also possible to object to the decision made by the TPI. The owner of the non-registered trademark not obtaining a positive result from the opposition procedure can file a nullity case at the court.

Nullity case is articulated at Decree No 556 a. 42 and others and the grounds for this case are limited. The nullity case at the mentioned provision is for the trademarks registered at the TPI

in Turkey. Therefore, nullity cases can be filed only for trademarks registered at the TPI (Çolak, 2014). That is, the subject of a nullity case is the annulation of the registration entry of a registered trademark registered by TPI after it has been understood that the registry conditions have not been fulfilled (Karahan, 2002.). For this reason, the annulation of a non-registered trademark is not possible. But the basis of this study is the protection of non-registered trademarks under the coverage of Decree No 556. We had mentioned that non-registered trademarks are protected under the coverage of Decree No. 556 at the presence of some conditions as a requisite of our study. According to this, if a trademark that must not be registered is registered by the TPI, then in that case the owner of the non-registered trademark can sue for this registry to be annulled at the presence of rightful reasons. For example, if the trademark subject to nullity is a well-known trademark as to Decree No 556 a. 7 (1) then in that case even if that trademark is not registered at the TPI, it cannot be registered for the same or similar goods and services by others. In this case, the non-registered trademark owner can file a nullity case within5 years starting from the date of registration against the person registering the trademark in her/his name basing it upon the absolute rejection reason (Dirikkan, 2003, p. 259). If there is bad faith in the registration of the trademark, in that case it has been stated by both doctrine and in the Court of Cassations decisions that the 5 year period shall not be applied (Karahan, 2002, p. 80; Court of Cassations Assembly of Civil Chambers Outset 2011/11-529, Decision 2011/643, Date 19/10.2011). As to limited protection principle which is the basis of trademark law, the nullity of trademark is related to the part of registered goods and services. The court decides on this case for nullity related only for the registered goods and services subject to nullity. In case court rules for the nullity of the trademark, the ruling is retroactive except for some situations. The final decision of a court related to the nullity of a trademark, incurs a provision for everyone (Decree a. 44). It is a must for the nullity decision to be ruled by the court. The results of a decision ruled at the nullity case are retroactive without prejudice to the exceptions. Compensation for damages claim can also be asserted related to the compensation of the loss incurred from bad faith activity of the trademark owner (Decree a. 42/2).

Other than this, in case of the presence of the conditions at Decree No 556 a. 8/4 setting out the protection of the well-known trademark registered in Turkey in other non-registered classifications , the trademark owner can claim the prevention and elimination of the violation, the compensation of the losses, the impoundment, the destruction, the notification of the court decision to the related and announcement to public by publishing of the goods which require penalty of violation of rights because of production or usage as well as the vehicles and the means etc. required for those goods. Moreover, as the trademark owner can claim for the impoundment of the goods at the customs, she/he can also claim the detection of evidences and precautionary measures (KHK a. 9-61 etc.). It must be stated that if the non-registered trademark is a well-known trademark within the meaning of Decree No 556 a. 7 (1), the trademark owner even though cannot benefit directly from the rights conferred by the mentioned clauses against monopoly and violation against the trademark, as to Decree a. 4, can prevent her/his trademark to be used in Turkey (Dirikkan, 2003.)

6.2. Penal sanctions

As well as the legal sanctions of the violation related to trademark, there are also penalty sanctions as well. Penal sanction at Decree No 556 a. 61/A has been amended by Law No5833 effective on the date 28.01.2009. Law No 5833 has articulated the pre-condition of registration, differing from the old regulations [3]. In crimes requiring preconditions, it is not possible for the crime to be committed without the occurrence of the precondition (Soyaslan, 2005). Therefore, a person not registering the trademark cannot benefit from the penal protection proposed in Decree 556 as a rule. That is, even if a trademark is not registered in Turkey at the TPI, it has legal protection whereas it does not have penalty protection. In this case, the person not registering the trademark can benefit from the penalty protection as to general provisions. Nevertheless, there is not a regulation preventing the trademark owners not registering the trademark from benefiting from the general provisions. The mentioned general provisions are the tort provisions in The Code of Obligations 49 and the following articles and the unfair competition provisions in a. 57 and the following, as well as the unfair competition provisions in the TCC a. 54 and the following. However, the trademark owner can benefit against the violator against the registered trademark only from the provisions in the TCC because the Code of Obligations does not include any penal sanctions. In this case, the trademark owner can only benefit from the penal protection in the TCC regulation related to unfair competition. According to TCC No 6102 a. 62 (1) a, those committing one of the conditions of unfair competition stated in a. 55 deliberately are sentenced with imprisonment up to two years or criminal fines. Unless the activity subject of unfair competition does not require a heavier punishment.

7. Evaluation and Conclusion

Even though the protection in Turkey based on Decree No 556 is based on registry, in some cases a non-registered trademark can also benefit from the protection in the aforementioned legal regulations. As can be noted from the exemptions of registry principle that is the subject of our study, there are provisions contrary to the registry principle in the Decree. These provisions almost have the character of weakening the registry principle on which the Decree is based on. In Turkey, it is possible for both the domestic and the foreign non-registered trademarks to be protected upon the presence of the conditions we have considered in our study. However, the protection coverage of non-registered trademarks is narrower as to registered trademarks. The protection areas conferred for the non-registered trademarks of the Decree No 556 consist only of opposition to registry, claim of nullity of a registered trademark, and filing compensation case set out in a. 44/2, in case of the existence of the conditions. However if the trademark owner wants to take advantage of the special protective provisions of Decree No 556, in that case the registry of the trademark is mandatory. While the non-registered trademarks

[3] Preconditions are those elements that must be present before the criminal elements. Stated otherwise, precondition is the precondition of the activity creating the crime. Hence, it is not possible for a crime to be committed without preconditions.

have legal protection even if they are limited, as to Decree No 556, they do not have penal protection. According to this, in order for the penal sanctions in Decree No 556 to be applied, the condition of the trademark to be registered in Turkey has been set. For this reason, the person not registering the trademark shall benefit from the general provisions instead of the Decree No 556 in the case of penalty sanctions.

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