

Chapter 12

Legal Definition of the Concept of Private Productive Investment: An Inter-Comparison Study

Vasiliki Delitheou
Panteion University, Greece

ABSTRACT

This chapter attempts to analyse the concept of private investment through the regulations and legislations paying emphasis to the Greek legal system. It also attempts to analyse the whole framework, through an inter-comparison study, in order to reach some safe conclusions regarding this issue.

LIMITATIONS AND GUIDELINES

The concept of private investment in general and by extension the concept of private productive investment despite their obvious importance for every Economy, especially in times of crisis, have not become so far in Greece object of thorough and systematic research, particularly regarding their legal dimension. The same goes for other, relative to them concepts (eg intangible investment, etc.).

Surveys and studies of experts on the topic scientists raise important aspects within the framework of specialized references but they do not “complete it” obviously due to the different purpose and goal of these ventures¹.

The matter of the precise as possible definition especially from the legal aspect of the concept of private productive investment is particularly important due to the multiple and diverse issues related to it. Among them, dominant position hold those of property expropriation, private productive investment, its economic (and other) support by the State, the applied special (privileged) legislation, its “protection” by the State etc.

Those subjects and many other relative to them have special and certainly peculiar importance when discussion is made about productive investment, which attracts its procreation from capitals imported

DOI: 10.4018/978-1-5225-2458-8.ch012

Legal Definition of the Concept of Private Productive Investment

in the “establishment” country from other or others countries, or from international Organizations or from Economic Joint Ventures or from Vertical Business Partnerships² or from citizens of the “establishment” country who live or act as entrepreneurs in another country or from affiliated Business whose headquarters are in another country than the “establishment” country while “Mother – Company” has its headquarters in the “establishment” country or from more than one of the above mentioned “resources”.

Thorough research regarding what applies “to us” leads to the conclusion that concerning definition of the concept of private productive investment, apart from scientific approaches, neither Constitution, nor legislation in force are engaged in a systematic, meaningful and relevant way with the subject.

Current administrative practice of Public Services related with Administration and Organization of Development follows this line of “disinterest”. Administrative practice, in order to solve the - from time to time -revealed problems finds salvation lifejacket or a place of refuge either in the political intervention of the respective Minister, translated usually in issuing of (Ministerial Decisions) or in the suggestion to the (possibly affected) interested to refer to the Council of State with uncertain and possibly inappropriate for them outcome of the matter.

Therefore, the only left “solution” for a first, if not definitive approach of the concept of private productive investment is to search for the from time to time and from legislation to legislation given “definitions” (despite the fact that they conflict or confute each other). The formed jurisprudence especially from the Supreme Court and the Council of State wherever it is found, the followed administrative practice and finally as possible, the applied regulations in other countries mostly in European Union and certainly within the framework of International Law.

Below are only mentioned, due to luck of space, the Greek statutes, which are some of the 190 approximately statutes which were applied during the period 1952- 2014, the relative definitions of the concept of private productive investment of the most important of them (with rollover test either the results obtained, or their longevity).

Decree 2687/1953 (GOV 317, A´, 10/11/1953) Regarding investment and protection of foreign capitals: Productive investments are those which aim to the development of national production or other that contribute to the financial progress of the Country including the development of popular roof, which also includes the roof of salaried workers (article 2)³.

Decree 1312/1972 (GOV 232, A´, 24/12/1972) regarding amplification of regional Development: Productive private investment is: “Erection of premises or purchase of new assets for establishing of an enterprise, or expansion, or modernization, or relocation of it from an area for which it is provided smaller amplification including - in this last case the expenses of relocation as they are defined by decision of the Monetary Committee... The expense of investment in assets, excluding the value of the plot must be at least 10 million drachmas in the case of establishment and five million drachmas in the case of expansion or modernization of the enterprises (article 12).

L. 289/1976 (GOV 76, A´, 3/4/1976) Regarding motivations to develop borderlands and regulate relative issues. Investment is the one within area E’ for erection of premises or purchase of real estate or new machinery or other new assets, useful for establishment, extension, modernisation or generally development or the enterprise or for its relocation from another area to area E’ (article 3).

L. 849/1978 (GOV 232, A´, 22/12/1978) Regarding motivation for amplification of regional and Economic Development of the Country: “Investment which could be supported by aid loan is erection of industries, storage or cold store and generally establishments as well as purchase of other new assets for production process. It is does not considered as investment which could be supported by aid loan the purchase of site, furniture and implements, office furniture and passenger cars up to six (6) sits...” (article 7).

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