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CENTER FOR ECONOMIC DEVELOPMENT

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TRANSPARENCY IN THE SLOVAK ECONOMY I.

Bratislava

September 1998

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Transparency in the Slovak economy I.

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The Center for Economic Development, (CED), is a non-profit, non-governmental organization specializing in economic research. Founded in 1993, CED focuses on supporting freedom in business and democracy as decisive conditions for the successful development of the Slovak economy.

In addition to researching economic issues, CED organizes seminars and publishes articles in the daily press, economic newspapers and business journals to advance its objectives. CED supports a more transparent economic process and the integration of Slovakia into international economic and political organizations.

The future growth of the Slovak Republic requires transparent processes in business, government and society. CED promotes these ideas and fosters mutual understanding between Slovakia and other countries. Its researchers cooperate with renowned international economic institutions in joint research ventures and work with domestic and foreign non-profit organizations and sponsors throughout the world.

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TRANSPARENCY IN THE SLOVAK ECONOMY I.

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I. INTRODUCTION

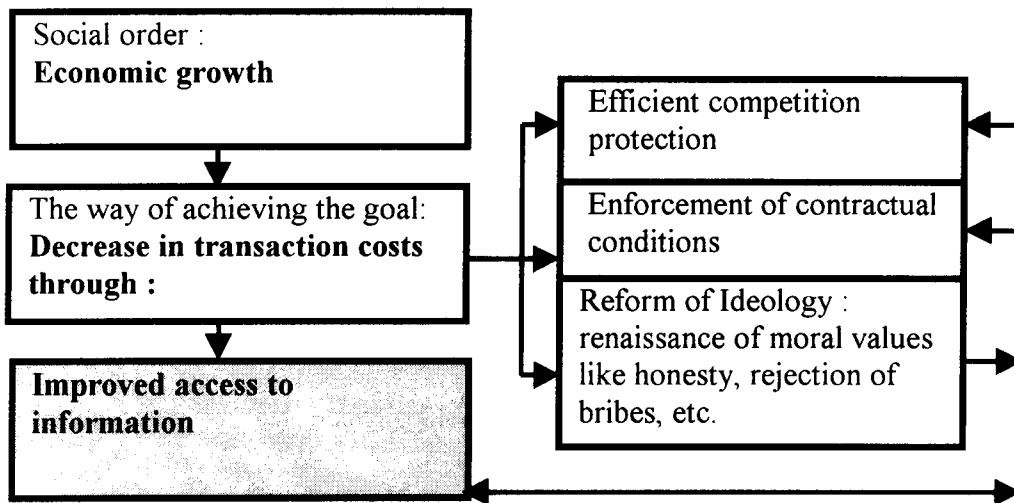
For a couple of centuries, economists have, by a social order, been consciously and purposefully analyzing barriers to economic growth and ways of their removal. Many of them came to different conclusions and various theories have been, to a various extent, confirmed in an everyday practice. It seems that as the twentieth century draws to the close, the so-called new-institutional economy (NIE) represented by Douglass C. North, Nobel Prize award, begins to prevail. This theory sees as a decisive factor influencing generation of wealth the total costs that a society has to permanently bear in order to create and adhere to, "the rules of the game" based on which it functions.¹ According to the theory of new institutional economy, societies that manage to minimize transaction costs are much more successful: in some countries, transaction costs are estimated to represent nearly half of the GDP; moreover, transaction sector influences wealth distribution significantly. NIE also holds that high-priced information and poor or asymmetric access to them contribute visibly to increasing transaction costs. Part of economic information can be viewed as a commercial item being bought and sold on a daily basis. The other part, part that lies at the very center of this material, is a public goods or at least, should be. Information of such nature should be provided by a public administration to the citizens completely for free or at a price covering only administration costs. The following picture displays relations between economic growth, transaction costs and transparency:

"... many – indeed most – participants in an economy do not produce anything that individuals consume. But lawyers, bankers, accountants, clerks, foremen, managers, and politicians..., ...that are largely or wholly engaged in transacting, are essential parts of the operation of an economic system. "

Douglass C. North

"Tell me," asked Staszko, "What is a bad deed?" "If somebody steals my cow," replied Kali. "And a good one?" "If I manage to steal somebody else's cow."

**Henryk Sienkiewicz:
In the Desert and Virgin Forest**



Scheme No.1: Increase in transparency of economic processes is one of the basic preconditions of economic growth¹

Lack of timely and objective information causes a deterioration of economic performance in several ways:

- lately, asymmetric access to information has increasingly distorted competition through strengthening dominance of the advantaged subjects-firms.

Consequences are similar to those resulting from other forms of competition failures. To show only a few examples of a discriminatory provision of information by state administration, we can mention unclear system of license granting (only 10% of entrepreneurs-

No, the State does not provide enough information. I am, however, satisfied with that. I know how to get hold of the information.

Slovak entrepreneur

respondents consider current licensing system in Slovakia as an optimum one²), insufficient information about public procurement (only 10% of Slovak entrepreneurs views public procurement sector as fair), mismanagement of public funds, refusal to provide information to certain media, foreign "business trips" of public officials aimed at deepening international cooperation but never mentioned in a form of official report, etc. Sometimes, information collected during such trips are only handed over to a selected group of businessmen. It is clear from the research completed by the Center for Economic Development that almost 96% of entrepreneurs or businessmen consider information sharing on the side of public administration insufficient. (see Annex No.3 - results of the research).

¹ Transparency shows significant influence on many non-economic phenomena that are not examined by this study (criminality, democracy, security, etc.).

² Research conducted by the Center for Economic Development.

- keeping names of the real owners secret is the another negative consequence of non-transparency that is directly linked to privatization process and possible distortion of competitive environment. One of the main goals of competition protection is to prevent from happening excessive ownership concentration in companies-potential competitors on the market. However, if the office responsible for enforcement of competition rules does not have a legal access to relevant ownership information, process of concentration gets out of control in the whole economy. To provide an example, it is enough to mention foggy environment surrounding some media ownership structures or unknown owners of major strategic enterprises.
- ambiguous criteria used in appointing key public officers lead to deteriorated efficiency and credibility of public administration;
- every subject (company) operating in the economy needs information to make new decisions or correct the old ones. Quality of decision making is in fact quality and timeliness of relevant information. In case public administration poorly performs its informational role, decision making and functioning of the whole economy is threatened. For the purposes of illustration, frequent methodology changes in calculation of macroeconomic indicators may serve as a good example. Incorrect decisions taken as a result of informational vacuum make it possible to engage in asset-draining, inefficient sale of dubious state assets, or cause capital market to lag behind, possibly create a space for wrong regulation of natural monopolies, etc.
- non-transparent economy establishes best conditions for stable or even gradually increasing corruption,³ abuse of power over somebody else's assets, or over rights in order to obtain private benefits.⁴ The extent and especially low predictability of corruption causes⁵ⁱⁱⁱ misallocation of resources and gradual diminishing of country's wealth⁶ⁱⁱⁱ and may, in extreme cases, lead to the rent-seeking gap - a trap to which a society can fall as a result of the rules that allow for distribution of wealth through lobbyism and corruption.

Dear sir, it is very bad for your future in Slovakia, if a rumor spreads around about you not giving bribes. The only worse thing might be the fact that your not taking ones.

Slovak MP

³ Corruption - from Latin word "rumpere" - to break.

⁴ Unlike the generally used description (corruption as an abuse of public funds for personal benefits), this definition also covers the so-called "private corruption" seen, for instance, in provision of bank loans.

⁵ According to World Economic Forum's Global Competitiveness Survey for 1997, intensive corruption also means that businessmen have to spend more time coping with the red tape in state office buildings. The survey also rejects arguments about optimum corruption being higher than zero (such corruption is sometimes seen as an element facilitating functioning of public administration).

⁶ If the corruption predictability index (measured by standard deviation) lowers. GDP goes down.

If, for example, beer imports are restricted, domestic producers get extra rent - profits that do not stem from their special contribution to the country's wealth but are rather a sign of their ability to make the government pass such a restrictive measure. Of course, extra rent going to the domestic breweries is not the only consequence of such step, less wealth generated in the country is much more important. This leads to a "smaller cake" to be shared which in turn means more aggressive lobbying⁷ - rent-seeking which brings about further deterioration of country's etc. Corruption often worsens economic parameters through general destabilization of political conditions in the country. According to various foreign studies, corruption is linked with slowed down economic growth,^{8iv} investment decrease and their misallocation, redirection of activities of those "most able" from productive work to rent-seeking, serious deformations in social care system, worsening status of small and medium-sized enterprises,⁹ smaller state budget revenues (and increase in nominal tax burden), lower quality and higher price of infrastructure projects^{10v} that are run and selected by managers without scruples.

As for reason why corruption takes place, the following might draw the picture:

- demand prevailing over supply which was traditionally the case in the Slovak Republic and which has been artificially maintained through import or export restrictions;
 - non-transparent organization of privatization process;
 - size of potential profit in a form of bribe;
 - high share of public finances (or finances controlled by public administration) on gross domestic product;
 - the fact that corruption protects well-established firms from potential competitors because bribe giving/taking usually requires a long lasting informal relations between the concerned parties;
 - tolerance towards bribery - informal structures within a given institution does not fight corruption;
 - low risk related to bribe giving/taking¹¹
 - realization of a huge state-financed projects;
 - speed by which a bribe can be given/taken.
-
- insufficient access to information expressed by education rate may even cause lower life expectancy - an indicator more and more used amongst basic parameters describing economic situation of given country (see Annex No. 1).

⁷ Meaning often rocketing crime rates.

⁸ Countries that improved their corruption index from 6th to 8th degree also recorded 0.5% GDP growth.

⁹ Not only through limited access to resources, but also by increasing costs of doing business.

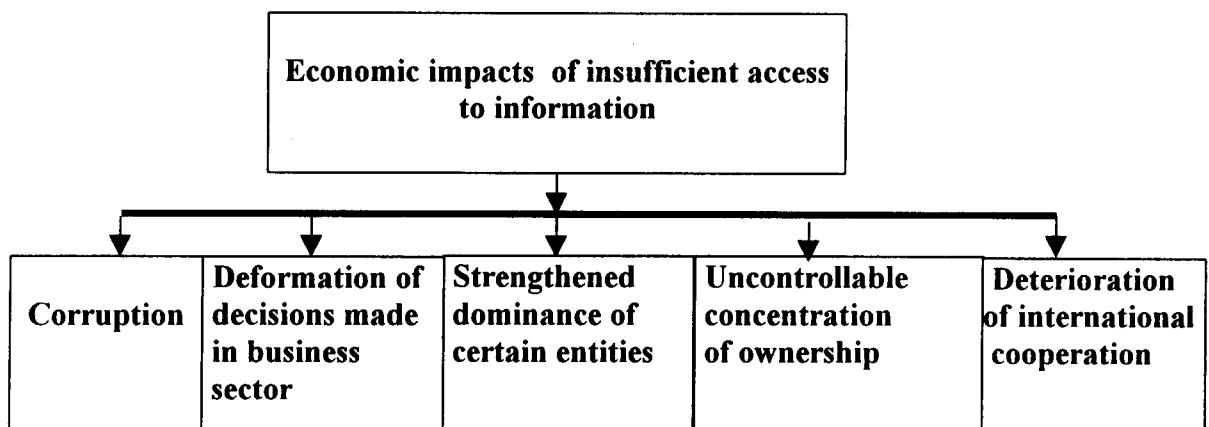
¹⁰ Bribes may increase costs and deteriorate quality of public works by 30 to 50%.

¹¹ For the purposes of this material, by bribery we mean any form of bribe, not only financial form (cash). This includes : job offer made to relatives, appointment to a public administration position, coverage of costs linked with business trips, extending an advantageous bank loan, etc.

It is very complicated, if not impossible, to measure corruption rate or level. In spite of this there have been some empirical researches in the Slovak Republic that illustrated situation in this country: graph published in 1997 Transition Report prepared by EBRD shows that size of corruption and its low predictability is worse than in case of the Czech Republic, Poland, Hungary and Slovenia. According to this study, Slovakia is at one level with the former USSR state, like Estonia, Latvia and Lithuania. Research conducted by the CED revealed that 78% of Slovak businessmen had faced the issue of corruption in state administration. 66% of those having international entrepreneurial background claimed that there was a bigger corruption in Slovakia than in other countries. According to foreign resources, the most frequent corruption cases can be seen in the following sectors:^{vi} military supplies, aircraft, ship and telecommunication devices, investment projects, parts of large industrial or agricultural projects (highways, artificial dams and bridges), licenses, consultancy fees, repeated state purchases - crude oil, fertilizers, cement, school textbooks, and medicaments.

- lack of reliable economic information makes it more complicated for the foreign investors to come which is reflected in a less safe coverage of current account balance, harder access to foreign markets, lower know-how influx, lowered competitiveness or slowed down growth of the whole economy, absence of strong and sound foreign political lobby, etc.

Economic impacts of non-transparency are shown in the scheme below. Particular impacts have, of course, more than one reason (lack of information), but their mutual co-relation is very high.



Solution to any problem requires knowledge of reasons that caused the problem. Non-transparency is caused on one hand by deficiencies in formal (institutional) framework, but on the other, we can find culture, way of thinking and traditions as informal elements. Law of today does enable citizens to get an access to information, however, this is often only a theoretical possibility. In practical life, vague legal norms mean a minimum public access to information held by public administration, even if those information are not confidential by

nature. Law or regulation can be changed in no time while it takes dozens of years or even centuries to change informal institutions.¹² Thus, it is impossible to finish changes in a few weeks time but it is possible to get started immediately. Experience from some countries prove that fight for higher transparency can be successful within a relatively short time horizon (Hong-Kong, Singapore).^{vii} Taking into account nature of the problem, a solution can hardly be made possible without a civic initiative represented by politicians and non-government organizations. Public as a whole is not enough organized to defend its rights, especially in a situation where public administration system traditionally does not provide relevant information. Businessmen manage to form themselves into efficiently-functioning organizations, but here we have to remember that a lack of information is for many of them advantageous, securing them a protection against the less-informed competition.

Based on the above, it is possible to say that solutions leading increased transparency in Slovakia will have to be linked with both legal framework and creation of a new way of thinking. The first group of measures relates to legal norms allowing for efficient public access to information. It also concerns amendments to procurement legislation, license granting legislation, mandatory information about real owners of privatized property, mandatory foreign trip reports submitted by public officers, revision of a system of mandatory public release of accepted gifts and tax returns filed by public officers, isolation of certain state administration bodies from natural monopolies, etc. The second group of measures should center around "fight for public opinion"¹³ but it also means getting journalists involved in transparency support activities, advocacy and involvement of businessmen and young people in the fight against corruption and for transparency (preparation of Codes of Conduct for public officers). Within the framework of formal and informal architecture of the Slovak economy, a further liberalization should proceed in order to transfer certain public administration tasks to the commercial sector. In addition, inefficient subsidies should be removed, state purchases reduced and third sector (non-government organizations) further strengthened. Besides causes resulting in a low access to information, it is necessary that negative consequences be coped with through intensive anti-corruption efforts and protection of fair competition.

When trying to increase transparency, we should focus on non-economic positives (deepening democracy, reduction of crime rates) as well as on the impacts on economic parameters: GDP growth, lower unemployment, reduced state budget deficit, relieved pressure on increasing tax burden, higher FDIs, strengthened fair competition principles, efficient use of public finances, etc. Transparency leads to strengthening equal chances principle which means that wealth distribution in

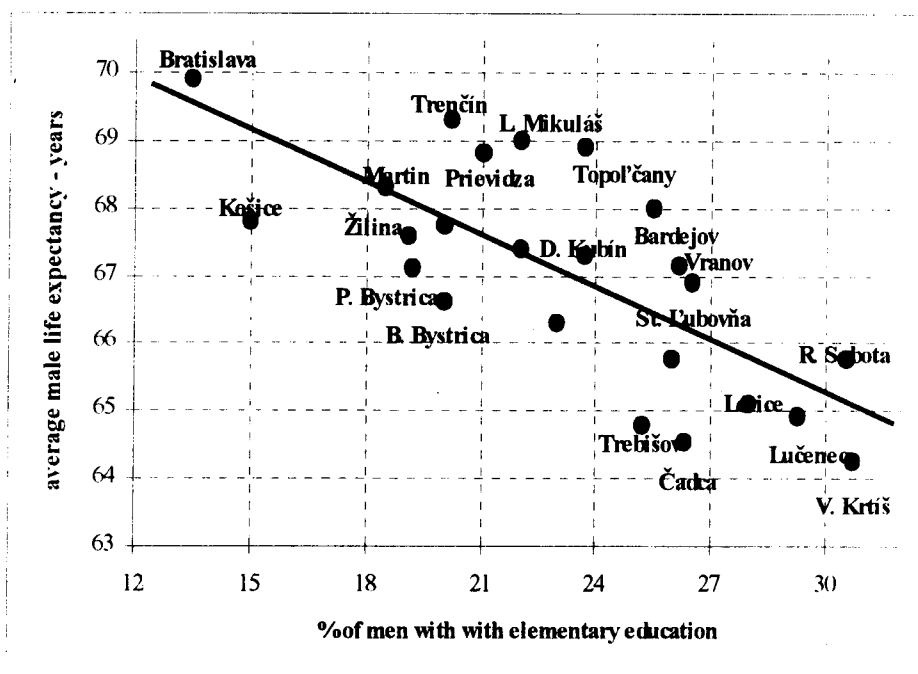
¹² Speech of Juraj Stern, establishing meeting - Alliance for Transparency and Fight Against Corruption, July 20 1998.

¹³ Speech delivered by Zdenko Kováč - establishing meeting - Alliance for Transparency and Fight Against Corruption, July 20 1998.

a given country is heavily dependent upon contribution that each and every subject made when creating part of this wealth.

Annex No. 1:

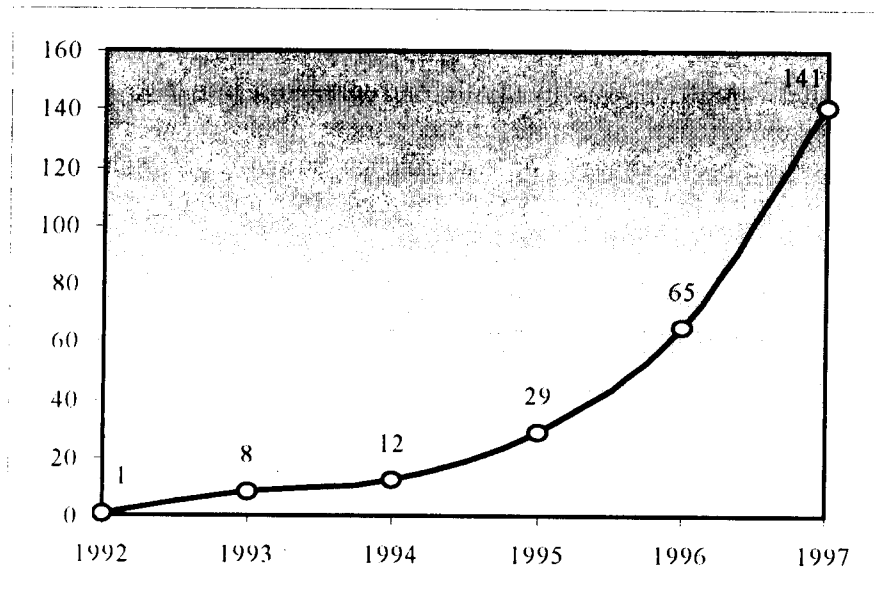
Relation between education and life expectancy in Slovakia^{viii}



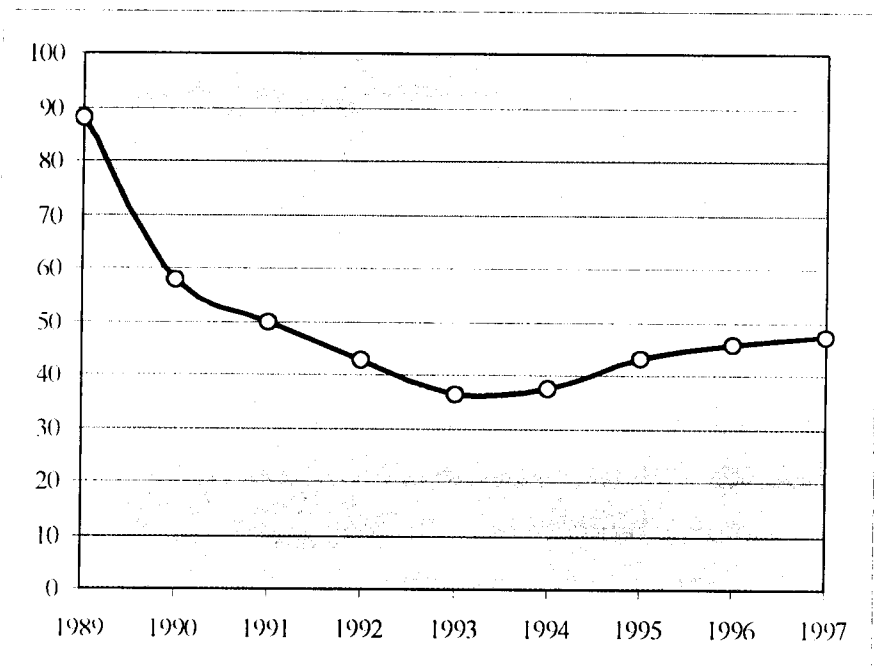
Annex No.2:

The following graphs illustrate criminality situation in Slovakia. Crime rates are also results of increasing aggressiveness in rent-seeking.^{ix}

Number of explosions in the Slovak Republic:



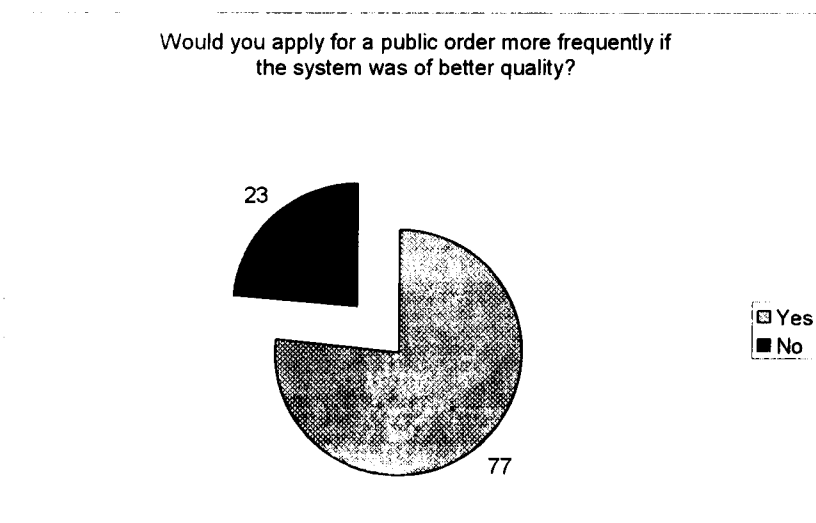
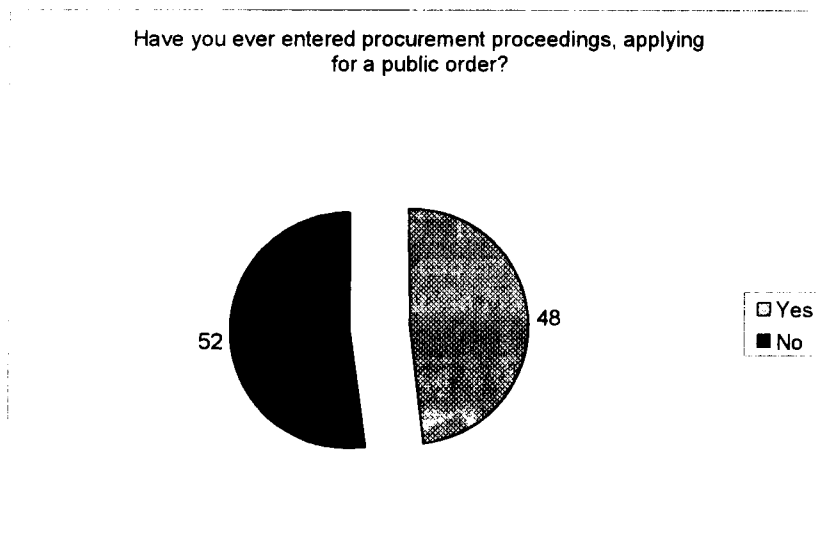
Percentage of solved cases:



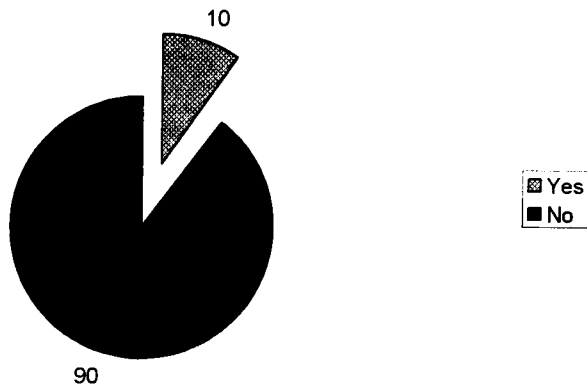
Annex No.3:

As a part of this project, the *Center for Economic Development* conducted research concerning businessmen's access to information that are (or should be) provided by public administration. We have contacted 500 companies, out of which approximately 25% returned the filled-out questionnaires. Amongst the respondents, there were also entrepreneurial associations which even increases value of the whole research. Data in graphs are shown in percentages.

The first "filter" question was to divide entrepreneurs into two groups - those having some experience in public procurement issues and those not participating in tendering proceedings. The research has shown that regardless of their experience in the given field, they saw procurement system incorrect.

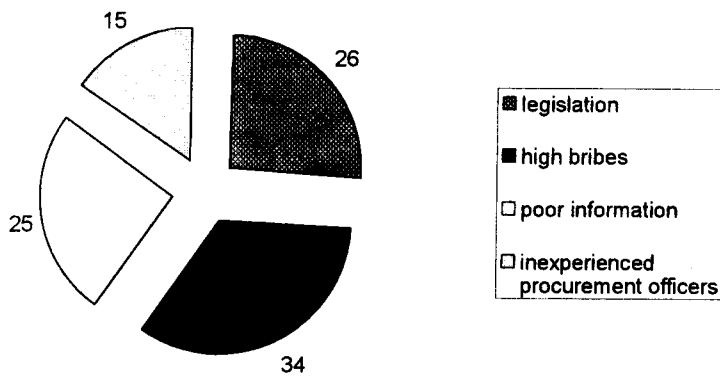


Do you consider present system of public procurement correct?

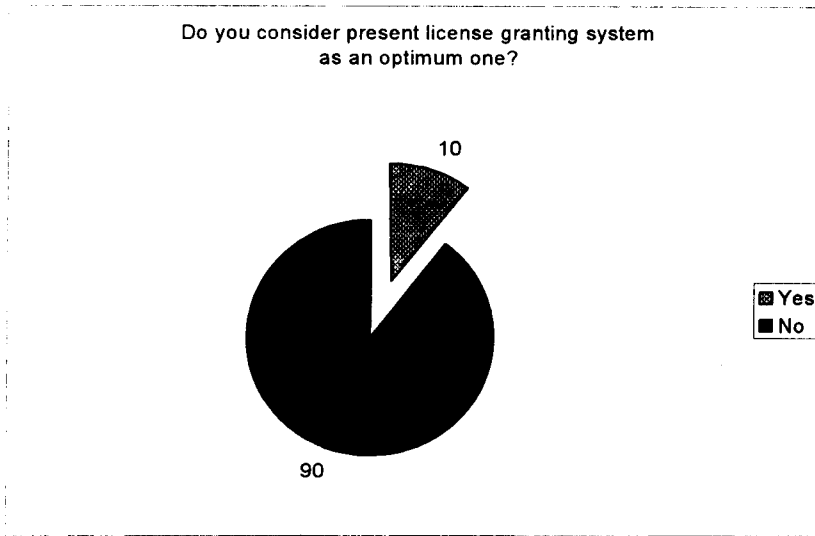


Besides the reasons below, some other issues were viewed as causing problems in public procurement (public orders), but they were statistically negligible.

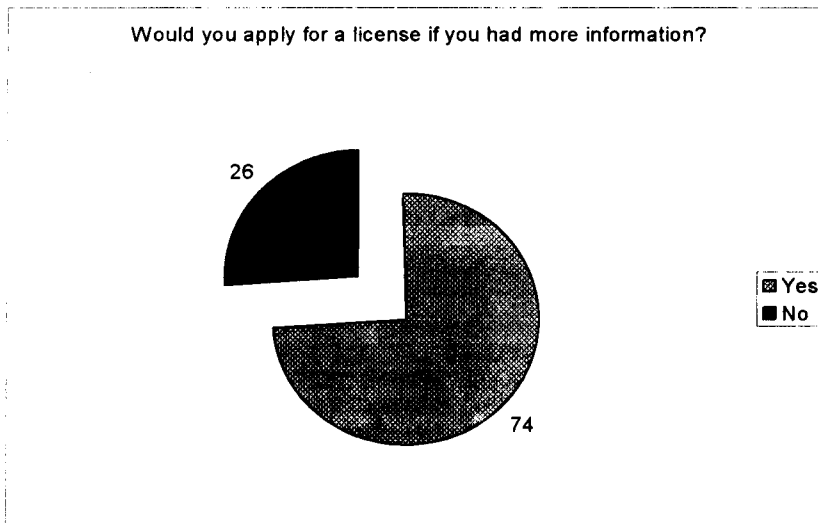
Main reasons why public procurement is problematic



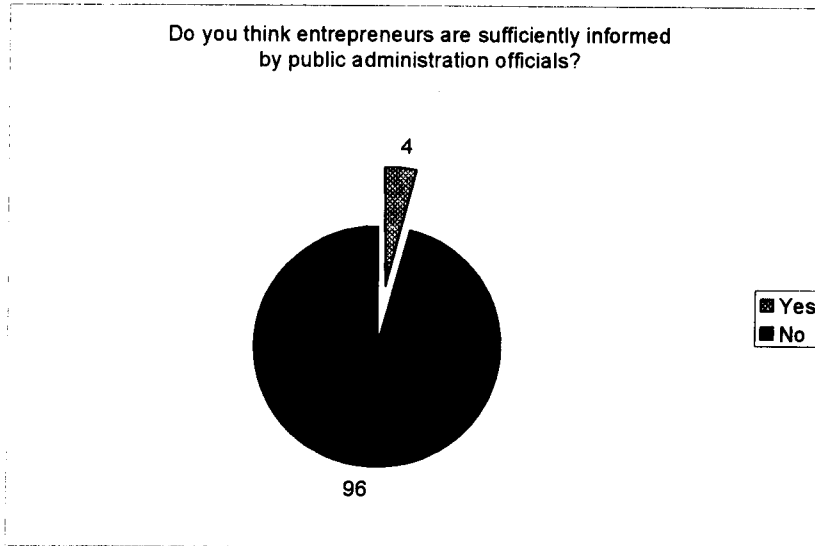
Almost the same views were expressed in case of license granting system:



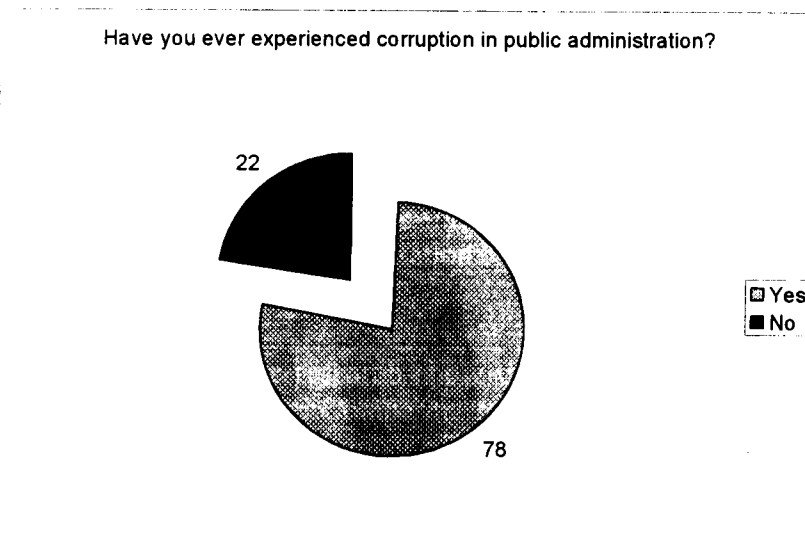
Were the entrepreneurs better informed about licenses, the number of potential applicants-bidders would probably increase which would in turn make it possible to optimize state budget revenues from licensing and improve selection of license holders (here, the answers were again similar to those concerning public procurement)



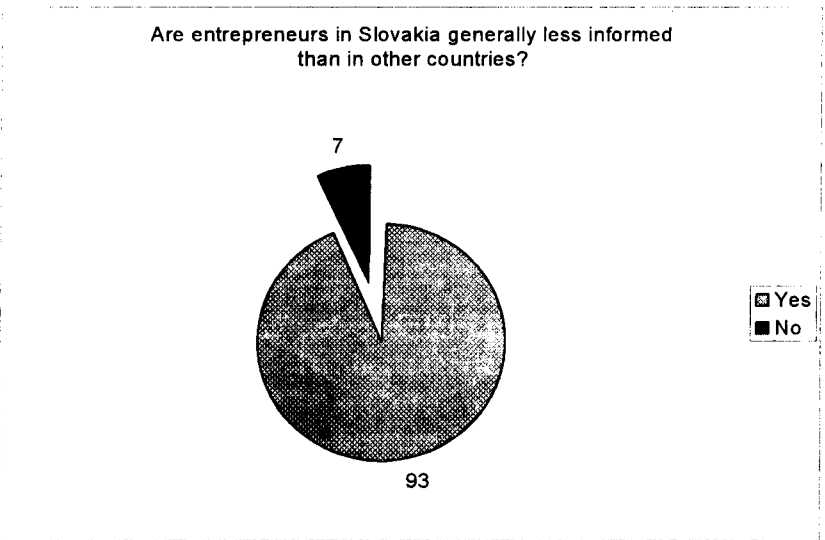
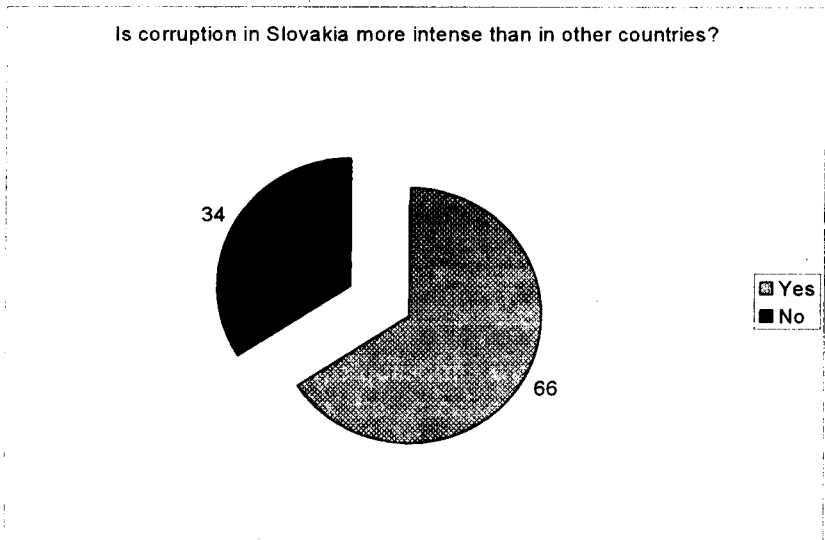
Entrepreneurs expressed total dissatisfaction with information-provision on the side of public administration. Only 4% of the respondents considered information satisfactory:



Results of the research show that corruption in public administration has grown to alarming size. Comparing to official statistical figures, the outcome was in a direct opposite, the number of those who already experienced bribery in public administration was much higher. This fact may have been caused by the different statistical samples.



The following two questions were posed only to companies dealing on the international arena. To be precise, some respondents even suggested that "international arena" be specified more closely (which part of the world do we have in mind?). It is so because in some countries corruption is worse while in others its size is smaller than in Slovakia.



Despite problems with the above chosen methodology, it is possible to conclude that access to information in our country is visibly limited comparing to other countries, while corruption is much more spread.

II. MAP OF NON-TRANSPARENCY IN THE SLOVAK ECONOMY

One of the main goals to be achieved through extensive social and economic changes launched after 1989 was to secure better transparency in public administration and improve informational feedback with respect to citizens and their knowledge of public administration in the broadest sense.

At the time, very few really knew what to expect of economic changes linked with transition from centrally planned economy to market-based economic system. Price liberalization was the first measure significantly rebuilding economic relations. It was in itself a creation of a new informational basis for the citizens when it came down to making decisions about where the free financial resources were to be allocated. Free movement of prices automatically enables public and business sectors to competently decide where this financial resources can be put in a most efficient way.

Economic transformation had just started with the above measure. To citizens, a state commitment to make the social transition a public issue was also important which, in turn, meant that it had to be a matter of all citizens and it had to be transparent. A natural requirement voiced by the citizens was the one asking that enough information be provided about unprecedented transformation of state assets and banks, as this was probably the most sensitive part of the economic transition. In the long run, the state committed itself to inform taxpayers, physical and legal entities, about state budget administration and management of other state target funds. All activities of government financed from taxpayers' pockets should be easily controllable by a common public, with a help given by the media.

In the economy, invisible hand of market may be supplemented by a hand of government. But the hand of government must be visible!

Each of the so-called post-November Slovak governments committed itself to secure highest possible transparency in the decision making. Reality, however, shows very often something else.

The following pages describe cases of non-transparency of public administration activities. The goal here is to provide readers with forms and fields of non-transparency in our public life, thus showing through the concrete cases the impacts of non-transparency.

The map is an open document that will in the future be gradually added to. The only criterion for its enlargement is a degree of non-transparency and related economic impact.

1. Privatization

Privatization process in Slovakia has a major and (at least twofold) influence on institutional framework established in the economy and society. First, ownership rights represent a core part of the institutional architecture of any economic system, while the same goes for privatization being a key to successful institutional transition. Second, privatization methods, forms and ways do form entrepreneurial and executive ethics or culture.^x In the Slovak economy, privatization does not only reach economic system itself, it also has an impact on the whole society.

Privatization process started in 1989 and its course ever since has proved to have been one of the areas most affected by non-transparency. In this process, it has been very hard to halt corruption, since enormous transfers were being made under the conditions of gradual deterioration of old institutions and only a slow process of establishment of the new ones. Besides volume of the transferred and privatized property, privatization transparency has also been impacted by a speed of privatization, used methods and the existing informal institutional framework. Potential for a corruption in a given privatization method is directly dependent upon the extent of rights for privatization transfers that are held by politicians and the way their decisions are controlled or reviewed.

Restitutions were one the most transparent privatization methods. Restitution claims related to physical persons - owners of the property nationalized after 1945 or nationalized even before that date, but in contradiction with the laws valid back then. If there was any restitution debate, it was only a matter of legal interpretation, i.e. whether the restitution claim was justified pursuant to the law. The so-called small privatization was the second method used in our privatization process. It was implemented through public auctions so the space for non-transparency and corruption was very limited. Of course, there were such cases even in such method, but violations had a direct criminal character (some bidders were scared away or placed bids were not paid down, etc.) and were easily punished. Third method - coupon (voucher) privatization was, from property distribution point of view, the most transparent and quick way of property (shares) distribution to people. Later problems, in most cases, were not caused by a coupon method itself, they were rather connected with the problems of legal regulations (capital market supervision and insufficient protection of minority shareholders).¹⁴ In the light of transparency problems, direct sale is by far the most troubled privatization method. It is, however, possible to introduce transparent, competitive and controllable procedures into direct sales method.^{xi} It can be done, if a clear set of rules is defined to evaluate and select interested parties and if the rules and criteria are adhered to, or permanently controlled during the process.

¹⁴ These problems are dealt with in more detail in the part concerning capital markets.

By passing the anti-constitutional amendment to the Act on Large-Scale Privatization in November 1994, privatization had become even more uncontrollable and non-transparent. Public had been excluded from the control over privatization. The draft proposing a control of the National Property Fund (NPF) by Highest Audit Office had been turned down several times. Thus, nine people from the ruling coalition (members of the NPF board) had been given an exclusive power to decide who (and at what price) was to get the state property. No register of privatized assets was established in order to provide information about privatized property to all those concerned.

In the late 1995, the government of Vladimír Mečiar decided to change the privatization strategy, turning coupon privatization into bonds and restricting the volume of assets to be privatized this way. Direct sales of state enterprises to predetermined owners started to totally dominate, being favored by government officials as a method "serving to create a domestic entrepreneurial class." Critics of this method questioned from the very beginning both transparency of such method and its impact on restructuring of the Slovak economy. Privatization had simply been changed into something completely non-transparent and uncontrollable, with the State losing tens of billions of Slovak crowns.¹⁵ During the privatization, small groups, political leaders included, were given preferential treatment.^{xiii}

In 1995-1997, Presidium of the National Property Fund (NPF) decided on 887 direct sales, transfers of shares of state companies, or state asset transfers with total book value of SKK 103bn. Their purchase price was, however, only SKK 48.8bn^{xiii} which means that all the sold assets were given away only for 48% of their regular book value. During the third government led by Mečiar, real NPF's privatization-related revenues reached only 28.7% of the balance price of privatized assets.^{xiv} Risks of corruption and unlawful conduct are therefore mostly linked to the direct sales of privatized property and the so-called public commercial tenders for privatized property. It is often seen that a bidder placing obviously the most advantageous bid does not get selected.

Following are the examples of non-transparent privatization:

Top politicians associated with the ruling coalition in Slovakia have privatized through friends and direct relatives. Father-in-law of current minister of culture Ivan Hudec is linked with the company that had privatized Slovakopress for only 42.65% of the book value. Brother of Ján Mráz (minister of construction and public works) took part in privatization of certain portion of Atypstav Košice company where book value reached SKK 76.3mn while the NPF sold it for only SKK 20mn (26% of the book value). Son of Milan Sečánsky (MP for ruling HZDS party) privatized Poľnohospodárske stavby, š.p., Bratislava for 41% of its book value in October 1996. Wife of V. Vicen (another HZDS MP) privatized Novofrukt, š.p., for a mere 6% of its book value. Two lucrative spas (Kováčová and Sliach) were bought by V Soboňa, ex-minister of health-care. Arguments

¹⁵ See book value of the state assets sold this way.

frequently used by coalition representatives that law does not prohibit privatization of relatives or friends would have been correct only if there had been equal chances for all and if those submitting better bids than actual privatizers had been selected in privatization.^{xv}

Another example centers around 39% stake in Slovnaft, country's second largest industrial enterprise. The stake was sold to Slovintegra company that was owned by 19 top managers of Slovnaft.

NPF had sold 39% of the shares to Slovintegra for SKK 6.42bn, but real purchase price paid down by Slovintegra was only SKK 1bn. The difference valued at SKK 5.42bn was forgiven on condition that Slovintegra would invest the same amount into Slovnaft. On July 24 1997, Slovintegra gained another 15% stake valued at SKK 2.47bn (market price) but actually should pay only SKK 385mn.^{xvi} Thus, Slovintegra had become a majority shareholder.

In January 1998, Slovintegra still owed most of those 385 millions (15% of the shares) to the National Property Fund (NPF). At a given level of market prices, Slovintegra decided to sell only 2.4% stake for market prices and paid off almost whole 15%. In other words, preferential privatization made it possible for Slovintegra to get 12.6% stake for free (15% - 2.4%).

As mentioned in the text above, Slovintegra bought 39% stake from NPF in 1995 for SKK 1bn. In both 1995 and 1997 transactions, it paid only SKK 155 per share although market price exceeded SKK 800. Thus, managers of Slovnaft who founded Slovintegra company acquired SKK 8.13bn worth shares but paid down only SKK 1.385bn. Through sale of part of the shares, Slovintegra paid back privatization-related loans and still managed to keep majority position in the Slovnaft company.

Repo trades with Slovnaft shares are also very interesting - in the late January of 1998, total 1.350.000 shares of the company changed hands. These shares were put as a collateral by the NPF and this institution had to pay creditors SKK 757mn to get them back. Just several days later, NPF decided that 1.350.000 shares of the Slovnaft company would be sold to Colorin, a.s., Žilina for SKK 620mn which was SKK 420 per share. At the same time, market price of those shares traded at both Bratislava Stock Exchange and RM system Slovakia topped SKK 800. Again, sale price was far below market one.^{xvii}

Following the process of such privatization, there is usually the so-called "third wave of privatization" taking place. This third wave is all about resale of the privatized property - domestic businessmen sell the assets to the foreign companies. In the autumn of 1997, Assi Domän, the Swedish wood-processing company, published an intention to purchase 90% stake in Juhoslovenské celulózky a papierne (JCP), a.s., Štúrovo. At the time, KK Profin Ltd. held 30% of shares in the company. KK Profin acquired these shares as a totally unknown company based in the small town of Bojnice, as a part of direct sales method and plan to "strengthen domestic entrepreneurial class." Sympap, an employee joint stock company, had also shown an interest to buy 30% shares but lost to KK Profin

Ltd. Trend, the Slovak economic weekly, turned to the NPF' spokesman, asking about conditions of 30% share transfer to KK Profin but neither written nor verbal answer were provided. NPF set a price of SKK 100 per share for this company plus an obligation to invest SKK 1bn into JCP by the end of 2001. The agreement on securities collateral was closed between the creditor (National Property Funds - NPF) and KK Profin. Under this agreement, the respective stake could not be resold by December 31 2001 which was confirmed by a JCP general director. However, his two sons were registered as managing directors at KK Profin Ltd - a company with its base located in a small village house.

In the end, KK Profin did not manage to withstand pressure exerted on it by huge Swedish concern whose behavior was perfectly rational and market-driven. On March 11, 1997 Assi-Domän announced acquisition of another 30% stake in JCP Štúrovo by which its total interest rose to 91%. It was a clear signal that KK Profin got rid of its stake. Thus, entrepreneurial history of this company lasted for not longer than 7 months. Logically, as a new owner, Assi-Domän remains silent about conditions of that transfer, which is perfectly OK since it is a fully private company. What is more interesting is that KK Profin does the same just like state-managed National Property Fund which made the original transfer of 30% to KK Profin under excessively advantageous conditions.^{xviii}

2. Provision of state aid and competitive environment

Sound competitive environment is considered an engine of prosperity in every market economy. Wide variety of goods and services brought onto the market by businesses represents ever improving basis for consumer's decision making. On the other hand, entrepreneurial elements exposed to competition are motivated to constantly increase quality of their outputs. In this process, the State should create conditions for, and rules of, competition, and at the same time should perform as a watchdog of their proper adherence. The goal here is to perform the above functions in a way transparent for all concerned parties.

State's role as a competition purity watchdog is extraordinarily demanding, especially during the transition that had started in the CEE countries in the late 80s. 8 years after the start of transformation in the Slovak Republic, both domestic and foreign observers express their doubts about viability of competitive environment in the country. Besides obviously non-transparent privatization process which was dealt with in the previous chapter, Slovak government is questioned in connection with ambiguous provisions of **the Act on Revitalization of Enterprises**¹⁶ that does not equally treat all the companies applying for revitalization of corporate finances. Non-transparency of this act is strengthened by the Article 16 there of: "Members of the Commission, commissioner and employees of the respective ministry are obligated to keep silent about all facts that they have gathered in the

¹⁶ The Act No.211/1997 Coll. on Revitalization of Enterprises and Amendment to Certain Laws, issued on July 2, 1997.

process of evaluation of revitalization request filed by the company." Even according to some officials from the Ministry of Economy, this legal norm with provisions like the above might become an obstacle to Slovakia's accession into highly prestigious Organization for Economic Cooperation and Development (OECD). In the meantime, Czech Republic, Hungary and Poland all managed to join the OECD. The above mentioned act was passed on July 2 1997, and it was presented by the government as an alternative to bankruptcies, as a last chance for companies heavily influenced by the past liabilities, but still efficient and prospective. Non-transparency, vagueness of revitalization criteria and open space for subjective selection approach can be proved by the fact that both loss-making and highly prosperous companies have so far shown interest to apply for revitalization. Those prosperous claim that if they receive further financial aid, they can boost exports which is, of course, worthwhile supporting. The very authors of the act say that criteria have been formulated in a way allowing each and every company to meet them. Paradoxically then, it can often be heard that specific problems (high insolvency rate) require specific solutions. These specific solutions, however, are different to the above act and meant only for a small group of companies. Again, we come to the application of different conditions to various groups of entrepreneurs, violation of fair competition principles and inefficient allocation of scarce resources which is in the end to the detriment of ultimate consumers.

Pursuant to the Slovak legislation, the government can not (besides a few relatively legitimate exceptions) **forgive taxes** that are to be paid by businesses. Ministry of Finance, however, has the power to forgive sanctions for unpaid taxes. Information of this kind are not released to the public and the Finance Ministry rejects publication of the list of those not paying taxes properly. Public has no opportunity to get an access to information about companies avoiding their mandatory obligations towards the state budget. Logically, a space for speculations and potential corruption is being created quickly.

The Act No. 286/1992 Coll. on Income Tax practically rules out any kind of **tax relief**. Such reliefs are, however, granted to certain legal entities indirectly. In case of certain agreements closed pursuant to the Act No.92/1991 Coll. on Transfer of State Property to Other Persons (privatization act), companies that bought the assets or state-owned firms from the National Property Fund (NPF) could deduct future investments from the sum to be paid down to NPF in order to get the assets privatized. In other words, investments to be made by the new owners in the future meant immediate reduction of financial obligations towards NPF. Some companies therefore manage to privatize while paying down nothing and promising to invest later on the amount equal to the purchase price of the privatized assets. On the other hand, such an opportunity (to deduct investments from the tax base) was not given to physical entities, small tradesmen or small/medium-sized enterprises. Unjust, unclear and unequal rules resulted in decreasing investment and worsening business environment. The overall result is that despite being given a clear preferential treatment, legal entities are paying less and less income taxes to the state budget. State budget revenues structure shows that physical entities (small

companies and one-man businesses) pay more income taxes to the budget than do legal entities.

Non-standard solution has been prepared in case of **import surcharge reliefs**. Originally, import surcharge introduced in summer of 1997 covered 80% of Slovak imports. Nevertheless, the Finance Ministry may decide to forgive import surcharge payment, on case-by-case basis, with no clear and publicly controllable rules in place. The only vague criterion formally present is that imports free of surcharge must become a part of production later exported from Slovakia. The list of the companies enjoying import surcharge exemptions has never been published by the Finance Ministry, except for Volkswagen, Ltd. Bratislava that had managed to get the exemption as the first company.

Ministry of Economy is also more than hesitant to publish the list of **granted export licenses**.¹⁷

The other example of Slovak national air carrier shows how non-transparent public administration activities negatively influence formation of competitive environment in the Slovak Republic:

Several years-long discussion about establishment of the national air carrier reached its climax in the early 1997. Based on the proposal by minister of transportation, posts and telecommunications, Slovak Airlines (SLL) has been chosen to become the national air carrier. In March 1997, the same minister had signed Statute of National Air Carrier for the same company. A unique and broad license with extensive powers in the field of "realization of state air transportation policy" had been awarded without public tender to the company that (at that time) had not owned a single aircraft, nor had it any aircraft rented. The government had not discussed its intentions with the three biggest private air carriers (performing both regular lines and charter flights) - TATRA Air, a.s., Bratislava, Air Slovakia, a.s., Air Transport Europe, Ltd. Poprad. These companies are concerned that the new carrier, being extensively supported by the State, will put all efforts to take over air connections (lines) that have been built by them without subsidies and under conditions of tough competition coming from Vienna and Budapest airports.

Right at the beginning of new operations, opinions were expressed that this new carrier would be subject to obvious preferential treatment, comparing to its competitors. It is not only the tariff-free imports of the equipment, but also the fact that aircrafts from Russia coming to Slovakia as a part of debt settlement will be given by the State only to SLL company with no public tender. Government officials have not rejected these concerns.

In the above mentioned Statute (which is at the Transportation Ministry, almost unavailable for the public), there are references to various additional agreements on air transport activities performed in public interest that have not yet been published. In the Statute, air carrier openly relies on subsidies and commits itself to " make

¹⁷ Problems of non-transparent license granting is analyzed in a separate chapter.

use of operational compensations to fulfill obligations in public interest", while the term "public interests" is not defined. This Statute was issued for an unspecified period of time in spite of the fact that in air transport sector, it is quite common to limit validity period so that the applicant should re-apply for the license after some time. Pursuant to the Statute, national air carrier license can only be withdrawn by the government should the carrier grossly violate ("gross violation" defined very vaguely) the rights and duties stipulated by the Statute.

The approval of the document was not preceded by any recommendation and commentary proceedings, despite the fact that at least the Finance Ministry will surely be affected. More than a year after the government's decision, it was absolutely unclear what relation was there between the State and Slovak Airlines (SLL). The only known thing is that SLL intends to build up its fleet by accepting Russian aircrafts coming from the debt settlement with the Russian Federation.

According to the materials prepared by the government, first year of SLL operation is expected to generate loss of SKK 280mn (or SKK 150mn if the government wants no condensation for the delivery of Russian aircrafts). Moreover, the government is also expected to subsidize specific lines run in "public interest" by giving away SKK 200mn (or SKK98mn should the above aircrafts remain the only government's investment into SLL).

Experts from other air companies warn that by putting three TU-154 (one of them has already gotten to Slovakia) into operation on new lines, the loss may rocket up to SKK 750mn. "Slovak government led by Vladimír Mečiar has created conditions for SLL's existence. As for economics and management, our company must be strong enough to function in the future, regardless of political situation. People from ministries and government can be proud of themselves for having taken such a risky step all on their own. All that matters is whether or not we can really make it." said author of SLL project and its president in the previous summer. He rushed to add that financing mechanism was confidential, totally forgetting about the fact that his company had not had a clear financial structure one year after its establishment, nor had it unambiguous connection to the state budget. This features of the business plan can hardly be defended by mentioning confidentiality, since activities financed wholly or partially, directly or indirectly, from public funds are not subject to commercial secret.

Having obtained concession certificate, Slovak Airlines (SLL) needed an approval from the transportation ministry. In the first stage, the Ministry was unwilling to issue such approval, because SLL had not had any aircraft back then. In conjunction with that, SLL President recollects: "We finally made it with the help of all those concerned. It is a great credit that goes to former minister Alexander Rezeš who was willing to spend his time working on the first stage of the project. The second stage was supervised by our prime minister in person. At the very beginning, I was the only person that believed in the project and there was nobody willing to finance it. I have done almost all the financing to this moment myself " claimed confident and purposeful SLL chief in the summer of 1997.

Despite several months of efforts by Trend (economic daily), state secretary at the Finance Ministry refused to answer questions concerning state's interest in SLL and rental agreements in favor of SLL closed on one Russian aircraft. It is a real threat to other carriers that SLL might be able to liquidate them, enjoying preferential treatment on the market. It was no sooner than in March this year that SLL President and co-owner told Pravda daily that all he wanted from the State was a three-years postponement in payments for the aircrafts brought to Slovakia as a part of the Russian debt. It remained unclear, however, whether SLL would become owner of the aircrafts, paying installments afterwards or would just get the aircrafts rented from the State.

Ambiguities around national air carrier made Alphas SA, a major stockholder in TATRA Air, think about leaving the Slovak market. "SLL does not hide the intention to take over our lines. They even put them on their route plans", says Charles Bemberg, president of Switzerland-based Alphas SA company, in his interview for Trend economic weekly. It is strange to him that such a new carrier with all political support is not entering the new markets and launching new activities. Why do they not start running new lines, instead of trying to take over the lines established and invested into, by TATRA Air ?

Shareholders of TATRA Air have not received an answer to the question whether they can keep developing in Slovakia or the country would have only one carrier established by political decision made by the State. Investors want to know whether TATRA Air can operate the existing lines without needing an authorization from SLL. "Again and again, I ask myself the question how could SLL have received such a unique license, while showing no abilities, know-how and financial background - only on the basis of belief and promises ?", asks Charles Bemberg.

"We have no worries to enter public tender, competing against any of the existing Slovak airlines. It seems strange to me though, that voices are now raised criticizing that some tender has not been held. So far, nobody has come up with the idea of using Russian equipment, nobody said it would be good to import Russian aircrafts. We do not need any tenders. We are able to pay for our future ourselves." declares SLL President, not answering the basic question why he has not confirmed the qualities in a regular public tender.

Main shareholder in TATRA Air considers it normal that the Slovak government wants to have a control over developments in airlines sector. "But a new market entrant should be transparent when being established and should communicate with the other carriers operating on that market," says Charles Bemberg. He notes that despite his efforts, he did not manage to meet with SLL President who thinks TATRA Air is too small a company.

Answering the question of Trend weekly about potential protests of the companies that had to invest into "warming up" the new lines just to see the new company coming in with a state support, general director of the civil aviation section at the ministry said:^{xix} " State decided so. Government is the State, you can do nothing about it." In his opinion, without the decision to establish new carrier, the existing companies would never have a space to run major lines from Slovakia "from key places that we have to have on our territory."

According to the last information from July 1998, foreign investor decided to stay in the TATRA Air and continue with regular line operations under new flight order valid for 1998. SLL, on the other hand, keeps postponing regular connections, arguing that agreed supplies of Russian aircrafts are late. The only exception is a regular flight Moscow-Bratislava introduced in May 1998. Statements of SLL President^{xx} show that his company intends to succeed especially in charter flights planned for the 1998 summer season. Conditions under which the State provides aircrafts to SLL will probably advantage the company over other private airline companies.

3. Management of Public Funds

Disposal of state assets and budgetary funds is governed by the respective laws in the Slovak Republic. The same goes for activities of the institutions obtaining funds from the state budget (for instance activities of budgetary and contributitional organizations). However, practical enforcement of these laws show frequent violations of certain mandatory provisions. Highest Audit Office (NKU SR) plays an important role, identifying illegal conduct. Although the real meaning of control is to publicize the findings, those by the NKU SR receive minimum publicity, because Art.16 of the Act No.39/1993 Coll. on NKU SR requires that taciturnity be kept even after service relationship with NKU SR has been terminated. Findings by NKU SR have frequently an unclear end. Upon completion of the control proceedings, cases of violation of laws are handed over to prosecution bodies that very often put them aside with words "no intent has been proved..."^{xxi} The above mentioned act does not allow for control protocols that would be directly usable by, and available for, the prosecution bodies. Chairman of the NKU SR said that "I would probably be the first one proposing that this Office be abolished, since my impression is that nobody really seem to need its results."^{xxii}

Inefficient mechanisms of control, review, sanction and correction procedures - that is, system of relations between NKU, police, and prosecution, is one of the reasons why there is a general opinion prevailing in Slovakia that usage and management of state funds is non-transparent and corrupt.

This general feeling can be supported by the following examples:

Analysis of the current status in the field of **efficient public procurement** shows numerous deficiencies and problems. According to NKU findings, procurement legislation is violated most frequently of all laws. Hesitant approach towards procurement displayed by all concerned parties reflects "commercial traditions" of the procurement that those parties experienced in the past. Introduction of transparency into procurement is one of the major tasks in order to achieve efficiency in purchases of goods, services and public works financed from public funds.^{xxiii} NKU report also described unsatisfactory status in non-transparent financing, management, and creation of state material reserves. Non-transparent

way of state finance disposal worth SKK 11bn connected with illegal personal gains was found in **The Office for State Reserve Administration**. From April 1996 to March 1997, four employees of the office (individually, or in a two or three-member groups) closed agreements on time deposits with several banks, including the National Bank of Slovakia. Based on agreements, state financial resources administered by the Office were transferred onto term deposit accounts at various interest rates. In 67 cases, sums from SKK 51mn to SKK 600mn were deposited. In four cases, two employees signed loan agreement on behalf of the Office, where material resources were put as a collateral for certain private joint stock company located in the city of Nitra. Based on these agreements, the respective banks executed their hypothecary rights and took over the finances deposited on term-deposit accounts. In four cases, the total sum lost this way amounted to SKK 400mn. Besides other things, the involved financial institutions were given unauthorized advantages.^{xxiv}

Since part of the regular contributions (payments) from taxpayers is subsequently transferred to the **state target funds**, the way these financial resources are used should be transparent. State target funds like Fund for Foreign Trade Support never published or displayed on the Internet a complete list of beneficiaries. Fund for Housing Development Support (ŠFRB) has been established as a tool to support construction of privately owned flats. Taking into account current interest rates, loans from the ŠFRB represent an advantageous form of construction and renovation (remodeling) financing. After putting down 20% of the estimated costs of construction, a citizen under 35 may apply for SKK 500,000 loan that should be repaid within 30 years at 3% p.a. interest rate (for young families with monthly income being less than 2.5 times living standard minimum, interest rate could be reduced to 1% p.a.). Despite of lower income families being treated preferentially, loans from the fund are extended also to the families with high incomes that could easily resolve their living problems without using this state target fund. Many experts agree that state money are spent on luxurious apartments. There are limited financial resources in the housing development program, so it is absolutely crucial that money go to those that need them most. The basic goal of ŠFRB is to process applications in time order, i.e. as they gradually come in. Current lack of financial resources, non-transparency and unresolved issues of submission and approval of applications, constitute fertile ground for various unfair practices. Doubts and suspicions are raised especially in conjunction with favored and preferential processing of certain applications filed by "selected" persons. Incomprehensiveness of decision making criteria along with inefficiency of district government offices (these serve as places for application submission) are also being harshly criticized. This fund also allocates finance for municipalities and villages to complete infrastructure and the so-called social-housing. Again, there are suspicions that these financial flows are decided upon political affiliation and connections of municipality officials. At the same time, feedback and review of the expenditures is missing.^{xxv} Minister of construction and public works told SME daily: "It is not a properly phrased question whether or not there is any lobbyism or unfair practices in application processing; to ask that, you would have to know the system and mechanism of application approval process

and potential interventions into it. Such thing is almost impossible, but I admit possibility of everything, this negative included. Something may have been going on, but I do not possess any concrete knowledge."^{xxvi}

EXIM bank, too, belongs to the institutions receiving budgetary resources on a regular basis. Expenditures should therefore be transparently presented in the bank's internal budget in order to maintain credibility in the eyes of general public and foreign investors. Pursuant to the law, bank's budget should be passed along with the total state budget. However, as a result of non-transparency in the data on export support programs, the Parliament had not approved the 1998 budget of this bank. The originally proposed budget did not contain any information about generation and usage of the resources which created a space for non-transparent policy of funds management. Representatives of the EXIM bank were supposed to have re-submitted the budget in the required form, while operating under provisory budget.^{xxvii} In the end and after more than six months in arrears, the Parliament passed bank's budget with almost no changes being made comparing to original draft.^{xxviii}

State funds are directed to self-governments mainly as shares from centrally collected taxes and through direct financial transfers. State budget annually regulates amounts and ways of their distribution. According to ZMOS representatives (association of cities and villages), share taxes, local taxes and fees should constitute a stable municipal revenues. Other items are not stable and therefore hard to estimate. However, structure of budgetary transfers is changing in favor of non-transparent (and less stable) subsidies and grants. Subsidies are channeled through various state funds. Self-government officials see such allocation as non-transparent, with no stable economic re-distribution criteria in place.

State funds are also present in state-owned companies, when the so-called "tunneling" (illegal asset drain) takes place. **System of tunneling in state-owned companies** is based upon skilled, intentional, and pre-prepared asset drainage directed from state companies to private ones - from public funds to private funds.

In practice, former or current top managers at state companies establish their own limited liability companies that generate enormous profits from activities actually conducted by the state firm. There are cases of various unnecessary business intermediation for state firms and often times, the only function of these limited liability companies is to secure cheap and undervalued transfer of the state property to private hands.

State-owned company like Slovak railways serves as a good example. It turned out that some of the Slovak railways' managers were also owners of the other companies that had become suppliers to this state firm under the conditions mentioned in the previous paragraph. There had been serious violations of corporate financial discipline in this state-owned company, where its chief economic manager issued bills of exchange for Slovenská doprava Košice and two

other companies under very disadvantageous conditions. Several loss-making share purchases took place and short-term loans were drawn at 16.7% interest rate (plus prime rate that increases to 23% should the company fail to fully repay loan within three days after due date). Such inefficient, unprofitable and disadvantageous loans resulted in a transfer of part of the respective liabilities outside the country and as a result, one London-based bank enforces its SKK 1.5bn claim in Slovakia.^{xxxix} That is only one of the reasons why the Slovak railways are now forced to borrow money just have enough for the monthly payroll.

Discount rates (or rebates) offered to particular companies for railway freight transport has also been subject to corruption. These rebates are not transparently extended and are clearly favoring. Ministry of transportation approved 13.5% railway freight discount for the VSŽ Košice (steel mill) at the time where minister himself held 47% stake in VSŽ. Thus, minister directly favored his own company at the expense of state-owned railways and more broadly, to the detriment of all taxpayers.^{xxx}

Many state companies **enter liquidation proceedings**. State property is usually sold through auctions, other forms can be used by liquidator only in exceptional situations and upon approval from the Ministry for Administration and Privatization of National Property. The goal in liquidation is to settle claims and satisfy creditors quickly and efficiently so that remaining assets can soon be used by the successive business.

NKU SR prepared a report on liquidation of state-owned enterprises. The report was full of negative findings. NKU chairman says: "There is no precise and direct responsibility set for the founding organizations (ministries) and their role in liquidation. Ministry of Economy and Ministry of Agriculture managed to collect 3.6% and 2.9% of the assets book value out of liquidation. Deadlines for liquidation are not followed, instead of one year, we have three years of liquidation proceedings which means extra costs to be borne. It can easily be that state would pay a few billions back when trying to auction its own assets. We have a lot of evidence concerning fictitious auctions. They were publicized in minor newspapers far away from the place, in a different region. Of course, it was declared unsuccessful and subsequently a direct sale request was filed. Sometimes, 10 and more per cent is written off at the very beginning, expert evaluation reports are disregarded, assets are liquidated immediately, irrespective of price bids."^{xxxix}

Case of Východoslovenské tehelne (brick making) showed blatant non-transparency and corruption present in the process of state companies' liquidation. Ministry of Privatization insisted that this company be sold to a pre-determined new owner - an insolvent company based in Senec (small city near Bratislava). It turned out later on that even before a potential auction purchase, this company had tried to find somebody who would buy freshly "purchased" assets for SKK 150mn. It has to be noted that the Ministry of privatization's price was SKK 115mn (or 101.1mn - nobody knows because there were two documents with the same registration number kept at the Ministry). To make the things more complicated, original price set at the Ministry of Construction (founding organization of brick

making facility) was SKK 142mn. Liquidator was of different opinion, being convinced that he could sell facilities more quickly and profitably than through a direct sale to pre-determined owner. He therefore asked the Privatization Ministry to cancel direct sale decision. The answer to his request came in six months later - direct sale was cancelled but then immediately renewed. Now Košice-based company was the lucky one, since only SKK 66mn was to be paid this time. But this company submitted false auction bond and the dubious transaction crashed only thanks to intervention of state auditors.

Controlling bodies found many cases like the above, identifying gross violation and misconduct during all stages of liquidation proceedings. Overall results talk about unsatisfactory adherence to basic legal norms and internal guidelines that leads to lengthy, inefficient and costly liquidation as well as devaluation of state assets. Assets scheduled for liquidation were worth SKK 27.4bn out of which property valued at SKK 13.3bn was sold through liquidation; total liquidation balance was only SKK 132mn which was only 1% of the book value of liquidated assets.^{xxxii}

The way how written-off or unused state assets (means of transportation, administrative equipment) are disposed is very non-transparent in Slovakia. Citizens are not informed about what happened to the **assets, if it was sold out**, etc. There is no Internet connection to get this kind of information and no company has so far been established to provide them.

Members of Parliament themselves conduct activities resulting in personal gains and misuse of state property. Some of them, for example, had bought apartments for unbelievably low prices (considering current market prices), using advantages of loans with 0% interest rate. Average citizen has absolutely no chance whatsoever to get either such apartment or loan. Three of the MPs bought the apartments for prices lower than the purchase price that paid beforehand by the National Property Fund. MPs now have 15 years to repay zero interest loan.^{xxxiii}

4. Appointment of Public Administration Officials

Appointment of officials for particular posts is frequently taking place based upon political affiliation and friendly relationships, rather than being implemented through clear and controllable criteria, like expert background. Following may serve as a good example:

At the beginning of 1998, after presidential powers had been taken over by the prime minister, appointment of 42 new ambassadors started along with another changes at 28 embassies that were free after the respective ambassadors had been recalled. According to SME daily, HZDS (ruling coalition leader) wanted approximately 30 posts to be held by "their people". One of the first ambassadors to receive appointment decree was an MP for HZDS who is now representing Slovakia in Hungary. Former Slovak Television reporter in Bonn, Germany and later leading moderator of prime minister's TV debates embarked on a diplomatic

mission in the Switzerland. Candidate for the Slovak ambassador to China was labeled as an agent in Italy during the velvet revolution and had to leave former federal ministry of foreign affairs. Other ambassadors came from circles close to the current minister of foreign affairs (HZDS). Other MPs for HZDS have already had their diplomatic agreements filed.

5. Financing of Political Parties

Economics and financing of political parties is governed by the Act No. 424/1991 Coll. on Association in Political Parties and Movements, as amended by later regulations. This act prepared during Czechoslovak federation has several legislative loopholes that can be abused, especially then provisions on financing and sources of income are insufficiently elaborated. More specifically, provisions about gift giving are very vague, with no need to prove source and origin of the gifts. In practice, mandatory requirement of submitting political parties' annual financial statements to the Parliament is frequently avoided. Such a situation creates conditions for law violation and results in a justified public distrust of legality of financial and economic operations conducted by political parties and movements (acquisition of financial resources and way of their spending).

So far, none of the Slovak political parties has ever published report on the ways of financing, nor has it revealed amounts of gifts, through which the whole financing would have become more transparent and public trust might have been won. Sponsorship gifts are surrounded by a fog, while taxpayers-voters are excluded from the control of financial transactions taking place in political parties. It can not be ruled out that financing in the Slovak politics is connected to moral decadence or that gifts are coming in from the companies having unpaid loans, avoiding their tax obligations or breaching provisions on mandatory social and health insurance payments. Often times, financing of political parties means undesired influence over politics as a whole, over privatization, public procurement, etc. Practical example here is related to the two agreements closed within privatization process between Trnava-based branch of ZRS (Slovak Workers Party) and company named Select Slovakia VSU Bučany (hereinafter only Select) . The first deal is an agreement on future purchase closed pursuant to the Article 289 of the Commercial Code and second one is the sponsorship agreement. Sponsorship deal was about privatization - if Select acquires (through direct sale or tender) 97.5% shares of privatized VSU, a.s., company, then annual sum of SKK 500,000 will be granted to the Slovak Workers Party for presentation of its political activities. ^{xxxiv}

Unlike in Slovakia, some political parties in the Czech Republic published on the Internet lists of their sponsors and the respective financial back-up coming in from these sponsors.

6. Natural Monopolies Regulation^{xxxv}

In case of natural monopolies (NM),¹⁸ we talk about market position held by an entrepreneur as a result of administration or ownership of technology, where related output (production) is most efficiently generated by a sole economic element.¹⁹ Natural monopolies play a key role in economic and democratic development of Slovakia. It is so because these are companies whose output is of top importance to the whole society, while their market behavior, prices, and structures are not optimized by a competitive pressure. In other words, they are not directly forced to behave efficiently, since there is no direct competitive pressure. Public control and transparency are therefore fully justified for natural monopolies.

Considering conditions of the Slovak economy, the following companies can be labeled as natural monopolies: Slovak Gas Industry, š.p., (Slovak abbr. SPP), Slovak Power Plants Company, a.s., Bratislava (SE), Western Slovakia Energy Facilities, š.p., Bratislava (ZSE), Central Slovakia Energy Facilities, š.p., Žilina (SSEZ), Eastern Slovakia Energy Facilities, š.p., Košice (VSE), and Slovak Telecommunications, š.p., (ST).

Regulation of the above state-owned companies is non-transparent and not governed by Administrative Proceedings Act, which means that there is no appeal against the "decisions"²⁰ taken by those companies. Conditions set by the regulator have a low level of predictability.

It seems that one of the consequences of non-transparency in this area might be inappropriate control over natural monopolies and their exploitation for goals that could be inconsistent with the interests of our society. Besides other things, it also means opportunity for state officials representing interests of political parties to intervene into economic and social matters. Decisions taken in concrete cases raise suspicion that major social interests are not always seen as a priority. Slovak Gas Industry (SPP) for instance, bought 6% stake in Nafta Gbely company for the price seven times higher than that paid down in privatization by Druhá obchodná for a majority stake in the same company. The same goes for SPP and a 10% stake that it had bought in Slovnaft refinery within the second emission.^{xxxvi} To sum up, what has been privatized is again bought by the state-owned companies; the State sells shares to, and buys from, itself through private companies as intermediaries - price differences amounting to hundreds of millions of Slovak crowns are lost at the expense of state and all taxpayers.

¹⁸ For reasons of simplification and besides general meaning, this term is also used in case of specific companies.

¹⁹ This definition is derived from : Ordover J., Pittman, R.: Competition Policies for Natural Monopolies in Developing Market Economy, 1992.

²⁰ "Decisions" - this term does not mean legal decisions dealt with in Slovak legislative framework, rather it means steps and activities of natural monopolies against which it is impossible to appeal (telephone bills, etc.)

It can relatively reliably be estimated that SPP holds billions of Slovak crowns used and decided on in a non-transparent manner. This money do not flow through the state budget. Opportunity to sell natural gas for half the normal price creates a space for pursuing political goals, if for example, a decision on a gas pipeline infrastructure is to be made by SPP for a particular municipality.

Sponsorships related to the natural monopolies are not problem-free, as well. General director at state-owned SPP and at the same time Chairman of the Slovan Bratislava football club board confirmed that SPP would become a general sponsor of the club. Had SPP been a private company, sponsoring would have been quite normal. However, with SPP being a state-owned company, a question arises whether other Slovak citizens-taxpayers and supporters of other football clubs are satisfied with the sponsorship decision.

Other very serious problem centers around telecommunication services and telephone lines that are being wire-tapped by the Slovak Intelligence Service (SIS).^{xxxvii} According to Robert Fico, member of the parliament, this is exactly what has been happening. In this case, too, it is fair to assume that the risk of wire-tapping would have been smaller if telecom operator had been in a private hands. Now that SIS and Slovak Telecoms are controlled by one body (Slovak government), public control and supervision is ruled out.

Public procurement system for goods, services and works is another major area of regulation. Unlike in the EU member-states, public procurement law in the Slovak Republic does not cover activities of natural monopolies, while governing only orders financed wholly or partially from budgetary funds. Relevant legal norms have not yet been harmonized with the EU legislation. What is more important is the fact that huge amounts of money (belonging to every citizen) are being manipulated with, while no control or review procedures are in place. Natural monopolies are not exposed to competitive environment and are controlled by the government representing only a part of the electorate. Therefore, a space for risky transactions (investments, advertising services, construction works, etc) is created. Moreover, assets of natural monopolies can be "tunneled" into private companies representing interests other than those of the society and state. The last problematic area mentioned here is contractual framework - agreements closed by natural monopolies with foreign partners. Wording of these contracts or agreements mostly remains unpublished, even with media exerting strong pressure to get it publicized.²¹ These contracts might also result in a damage caused to the interests of Slovakia.²²

²¹ For example, agreement between SPP and GAZPROM, Russian gas giant.

²² When describing ties between Polish enterprises and major Russian interest groups at the seminar organized by Center for Economic Development, professor Kaminski stated that "Gazprom, Russian oil and gas giant, is frequently mentioned as a main Russian tool used to re-penetrate countries in the Central and Eastern Europe." (Olszanski, 1996).

7. Capital Market

Capital market in Slovakia has not been lately meeting the most important criterion - optimum allocation of capital resources. According to Securities Association, companies, although being undercapitalized, make a minimum use of capital markets to acquire capital. Organizers of securities market - Bratislava Stock Exchange and RM System Slovakia - report relatively high volumes that are, however, mainly consisting of direct trades. Through direct trading, a wide variety of transactions is taking place (privatization, tax-driven intentional transfers, borrowing/lending of securities).

The reason for the above status is an ambiguous capital market legislation. After acquiring publicly tradable securities of one issuer, natural or legal entity should notify of this organizers of securities markets, the respective issuer and Securities Center. Securities Center should then make this transaction available to the public. Experience show us that firms often reject to disclose their position in shareholding companies. In fact, they can avoid mandatory publication by spreading the stake amongst several other (closely tied) companies. This is all possible up to 30% of share issued by one joint-stock company, while in many cases, 30% may mean majority. Thus, non-transparency of ownership relations reinforced through bearer shares has become a main feature of the Slovak capital market. Negative trends are even encouraged by the Securities Center which, as a monopoly element, gives raise to doubts and worries on the side of investors and issuers.

To provide an example of how this institution performs its duties, the Baňa-Záhorie case can be mentioned. In this particular transaction, Securities Center published two different results of the transaction within one day (March 4 1998). Differences in official announcements could easily be spotted through simple comparison.^{xxxviii} First version was published in *Národná obroda* daily and the second one in *Hospodárske noviny*. Differences were in both stakes sold in the transaction and sellers that realized the trade. *Národná obroda* got the information in the morning while *Hospodárske noviny* in the afternoon.^{xxxix}

Current state of liquidity on the Slovak capital market makes it possible for the securities traders with at least SKK 1,000,000 in the pocket to manipulate prices of 95% of all emissions by one hundred and more percent. Price manipulations in turn create a space for a pure speculators and their **unfair practices primarily aimed at minority shareholders.**^{xl}

Establishment of investment funds seven years ago in the former Czechoslovakia was driven by the efforts not to allow wide dispersion of ownership in companies privatized through coupons. Majority of funds intended to act as a strategic owner.

Shortly after their start-up, investment funds found themselves in a schizophrenic situation. Taking into account purpose of their existence, they were required to

perform tasks of a strategic investor, even in a situation of great ownership dispersion. On the other hand, legislative restrictions stipulating that funds may only hold maximum 40% (then reduced to 20%, and after the last amendment No.248/1992 Coll., to 10%) equity stake of one issuer put them unexpectedly into position of common portfolio investors.

Most investment funds were supposed to have created strong economic units able to compete on the international arena influenced by monopolization and globalization. The amendment reducing their maximum stake to 10% (in the world, only open-end funds are subject to such restrictions) along with inability to cope with other legislative ambiguities caused general decline of collective investment in the Slovak Republic.

Thus, the restriction originally meant to spread the risks had become an obstacle to activities of investment funds. The fact remains that some funds did have an interest in acting as strategic investors and therefore were truly interested in getting stakes that would enable them to actively influence the corporate strategy.

Comparing to 1993, investment funds now administer only 10% to 20% of their former assets. Capital market has been showing constantly dropping liquidity. The less liquid capital market is, the less it can really portray the true picture of the current situation. A very few financially strong companies may significantly distort prices of particular issues. That is why without liquidity, market can never be transparent. Non-transparency in turn discourages domestic and foreign financial investors. Billions of Slovak crowns that had flown as investments from investment funds to increase share capital were being gradually cut down and reduced to zero in 1996 and 1997.

Almost in all investment funds that had transformed themselves into regular joint stock companies, there is now less protection of shareholders from the side of state supervision. The reason for funds transformation is linked with the failure of the Parliament to amend laws on collective investment, inability of the state supervision to protect minority shareholders, and passive role of the state in cases of various speculative profit transfers. The above mentioned profit transfers were done at the expense of minority shareholders, while majority holders benefited from the transactions and acquired their status under advantageous financial conditions (having in addition to that some unpaid liabilities dated back to the early privatization).

Close ties between investment funds/companies and coupon method of privatization, politicized privatization favoring certain "capital generating" groups, insufficient knowledge of market economy institutions - these are just a few facts explaining current capital market developments, collective investment problems and troubled market operations of investment funds/companies. Investment funds barely operate on the capital market, they shifted their operations into money markets with yields visibly higher than those generated on the securities market. The way investment funds operate today is determined by a weak capital market and the dividend policy enforced by most joint stock companies. In Slovakia, primary market is almost dead and therefore there are only a few companies out on the market offering new share issues.^{xli}

Capital market is illiquid and non-transparent. Today, there are issues on the market consisting of the two incomparable parts. Some companies have released two issues - one of them being publicly tradable, the other one not. This brings about problems and non-transparent relations. "Order of the whole capital market depends upon order of each and every issue traded on it."^{xlii}

Trading with instruments of non-existing companies is yet another example of non-transparent rules. According to Michal Horváth, director of the Association of Securities Traders, developments on the Slovak capital market are not that dull as they seem when you take a quick look at the half-empty stock lists. One of the specialties drawing the attention of both domestic and foreign analysts is a very active trading with shares of non-existing companies.^{xliii}

On Bratislava Stock Exchange and RM System Slovakia, those interested in the case may choose from dozens of issues of the companies that ceased to exist one or even two years ago. Most of those companies were owned by investment funds established for the first wave of coupon privatization. Due to less-than-perfect legislative environment, these funds had managed to transform themselves into common joint stock companies, despite an open disagreement expressed by the state supervision over capital market. Most investment funds ceased to exist without liquidation, merging with another joint stock company.

Answering the question whether it is legally possible to trade shares of non-existent issuer, Peter Kubík (lawyer) says: "It is impossible but it happens." In his opinion, trading practice introduced an alternative not dealt with in the legislation, but it can not be directly stated that concerned parties violate the law. It is highly questionable to talk about "shares" in this case, because a share is usually linked with the rights of its holder to take part in management, profit distribution and liquidation balance of the issuer. However, in a situation of a non-existent issuer, we can not talk about shares as classical instruments since the aforementioned shareholders' rights are exclusively related to the issuer, not to its legal successor. Owners of the original shares have the right to request that their shares be replaced by a new ones, in a predetermined manner and relation.

Problems related to exercise of shareholders rights were solved in most cases by allowing them to participate in management and profit distribution of a legal successor to the extent resulting from a nominal value of the original shares.

According to Kubík, we can say that a company in such transitional period temporarily replaces its own shares by using the shares of already extinct company, which is from the legal point view a very problematic conduct. "Such a conduct have surprisingly been accepted by decisive market players and institutions which continued to trade shares after the announcement that a given issuer have ceased to exist.", adds Kubík.

According to Marián Barát, legal advisor to the Association of Securities Traders, it would be appropriate if the register court refused to erase the respective company from the register till it is shown that shares of the extinct company cease to be valid on the day such company ceases to exist. "Unfortunately, neither Commercial Code nor securities law stipulate explicitly what should be done in such situations."

Specific situation occurred after multiple transformation of once the biggest investment fund VÚB Kupon IF a.s. Bratislava. Legal successor of this fund was further divided into two companies - Istrofin a.s. and Intermark a.s.. Original VÚB Kupon share had become mutually irreplaceable. Only a few major investors have a right to acquire shares of the Intermark, while all others are left with only one choice - to get their shares changed for the new shares of Istrofin. However, shares of the VÚB Kupon are still being traded. Problems will arise if shares of the owners of Intermark company are transferred to another firms which means that the whole issue may be devalued. Chairman of Intermark's board says it is virtually impossible since the owners do not trade shares of VÚB Kupon and the respective accounts are blocked. But taking into account previous experience with unauthorized transfers of registered shares and overall securities safety level in Slovakia, it is fair to say that nothing can be ruled out in advance.

This case contributes significantly to the non-transparency or low credibility of the Slovak capital market, consequently causing disinterest on the side of portfolio investors. According to voices of those with close ties to the former investment funds, this situation will be resolved after parliamentary elections. On the other hand, companies possessing what used to be administered by investment funds will certainly not hurry to find a solution to this problem.

Disfunctioning secondary market is closely related to the overall non-transparency of the capital market. Non-transparency starts and ends with share prices. Truly realistic prices may only be generated on an anonymous market which, however, does not exist for the moment. Revitalization of such anonymous market can not be achieved by administrative measures, although some solutions for making the market more attractive are now being analyzed.

8. Reliability, Timeliness and Availability of Information Provided by Government

Slovak citizens have their right to be informed about decisions by central bodies secured in the Constitution. In keeping with the spirit of Slovak legislation, a citizen is not the one who should ask for information, it is the central state administrative bodies that should provide all information needed for civic decision making. Relations between the government as the highest executive body and media acting as a bridge between government and citizens show to what extent constitutional laws are enforced on a daily basis.

The relations between media and Office of the Government have been visibly worsening for the last four years. A proposal made in 1995 by one MP representing ruling HZDS party about increased VAT for all daily newspapers owned by foreign entities met with a strong media rejection resulting in a boycott of regular government press conferences held on Tuesdays. In the end, VAT increase had not been passed but the government decided that ministers would not show up on press conferences and their spokesmen would stand in for them.

Spokesmen, however, were mostly unable to react to the most sensitive issues and there were frequent misinformation and inconsistency of which "incompetent" journalists were accused. During 1996, some of the ministers started to appear on press conferences.

Early December of 1997 brought about new situation in information provision. After a stormy press conference following the government session where journalists had not received a satisfactory information from prime minister and his spokeswoman, prime minister himself terminated all press conferences held by the government. Office of the Government had decided to cancel brief conferences held in conjunction with the state visits, except for the visits planned beforehand in diplomatic protocol. At the same time, prime minister in his letter from December 3 1997 asked all members of the government, chiefs of central state government bodies and state secretaries to provide information to selected media (radio TWIST, TV Markíza, Nový Čas daily, SME daily and Práca daily) only by junior and low-level state servants. Prime minister argued that some journalists had a poor manners combined with a low quality of their articles and poor public reaction to them.

Slovak Journalists Syndicate (SSN) had immediately protested against such step. Its chairman Ján Fülle stressed in its open letter to prime minister that pursuant to the Act No. 81/1996 Coll. on Periodical Press and Other Means of Communication, "state bodies, state cultural, scientific and economic organizations are, within their authorization, obligated to provide to editors and reporters all information necessary for truthful, timely and comprehensive message delivered to the public or made an access to such information available for them." SSN chairman reminded to the government that all media should be treated equally in that respect, while "your government has been blatantly favoring Slovak Radio, Slovak Television, Press Agency of the Slovak Republic and Slovenská republika daily". Representatives of those media had a direct access to the premises and rooms where government sessions were taking place.

Reaction to this appeal by journalists came out no sooner than six months after the protest. At the beginning of this July, representatives of SSN, Association of Editors of Periodical Press and Association of Independent Radio / TV stations reached an agreement with Press and Information Department of Government Office (TIO SR), according to which regular press conferences after government sessions would be renewed.

This agreement was preceded by an unfortunate press briefing held on the sidewalk in front of the main government building, where spokesman had read out loudly standard communiqué with no opportunity for the journalists to ask questions related to issues dealt with at the government session. Pursuant to the agreement closed in July 1998, each of the media can have two permanent reporters accredited to enter press conferences held at the Office of Government. Having introduced such a restriction, government officials tried to prevent "rude and incompetent behavior of some journalists" from happening.

According to many political analysts, limits put on the number of accredited journalists will cause just the opposite. Daily newspapers can hardly pick up two

reporters - experts in the wide variety of issues discussed by the government. A reporter well oriented in financial matters will probably not be able to ask qualified questions about culture and his/her article on cultural issues might therefore be misleading. One way or the other, absence of rules of accreditation remains an unresolved problem.

Information user should have a trust in information provided by official bodies. **However, quality of information provided** officially by the government is questionable and published figures have little "telling" ability. Methodology changes introduced in case of payment balance or unemployment rate make it impossible to compare numbers over the time and cause loss of trust in provided information. According to preliminary statistical information, 1997 trade balance deficit was to have been **lower** by SKK 15bn than 1996 figures, totaling at SKK 49.5bn. However, chairman of the Statistical Office later on admitted that the new methodology of foreign trade indicators had failed and deficit would be **higher** by SKK 15bn. Central Bank estimates are now close to SKK 20bn increase. This, of course, will push down official data on GDP growth. The whole incident weakens credibility and independence of the Statistical Office.^{xliv} State budget is another example of a non-transparent indicator. Its approval triggered a wave of discussions as a result of vagueness of budgetary items and low transparency of the whole document. Since the methodology of state budget (and fiscal deficit) construction used by the Finance Ministry differs from the procedures followed by the National Bank of Slovakia (central bank) and IMF, possibility of international comparisons is doubtful and statistical periodical comparisons over longer time periods are also complicated.

The government is responsible not only for collection and classification of the high quality economic data, it must also make sure that these information are handed over to the media and ultimate users. Free and independent press is generally considered as the best tool for transparent information flow towards general public.

Independent status of the press has lately been seriously threatened. The main concern is connected to **non-transparency of ownership relations in Slovak press media**. The whole case of publicizing real press media owners is cloudy. This has gone so far that today, even expert public does not precisely know who owns majority stakes in major daily or weekly newspapers in the Slovak Republic. Unfortunately, no law imposes upon companies an obligation to release media ownership structure. This fact frequently serves to back up those claiming that low media ownership transparency results in "interventions into internal matters of the Slovak Republic." These opinions are, according to Ján Fülle,^{xlv} chairman of the Slovak Journalists Syndicate, making use of the current situation where only Práca daily announced that 100% of its shares were in hands of 43 trade union associations united in the Trade Confederation of the Slovak Republic.

Another example is related to Hospodárske noviny (economics daily), where as a part of the back page editorial information, readers could find out (up to

January 1 1995) that "Hospodárske noviny belongs to the worldwide group of editors of financial and economic press lead by the Wall Street Journal and Handelsblatt."

Although Národná obroda daily is in fact owned by VSŽ holding a.s. Košice, Nofra shareholding company is written down in the newspapers as an editor. Nofra is an abbreviation made up at times when shares were partly held by Národná obroda reporters and Hersant, France-based editorial house.^{xlvi}

Harvard investment company a.s. Bratislava is a majority owner of Pravda daily, but editorial info says it is Perex a.s. - a company established by Pravda reporters and sold to Harvard investment company.

SME daily states that VMV a.s. Bratislava is its owner. VMV abbreviation stands for the first letters of three well-known Slovak entrepreneurs (Vajda, Majský, Vochyan). The last one is no longer a co-editor, but his first letter nevertheless remained in the name of the company.

Journalists organizations and association of editors have put significant efforts into making transparency a common thing in media ownership sector. Besides the above short-term and temporary improvements in media transparency, nothing really stable has so far been achieved.

License granting to private commercial radios opposing the government is often a subject to heated discussions. License for the TWIST radio has become a classic example of a non-transparent media regulation policy.²³

Issues of medial legislation are shown below in the annex.

²³ License issues is analyzed in detail in the chapter focused on competitive license distribution.

Annex:

Media Legislation in the Slovak Republic

Press Act

Preparatory works on draft press legislation (officially named as the Act on Means of Public Communication) had started in 1990. Current version dates back to 1966, amended during the Czechoslovak federation in early 1990 (legalization of private ownership in press).

In January 1996, a meeting took place at the Ministry of Culture with representatives of the Slovak Journalists Syndicate (SSN - 2,400 members), Association of Slovak Journalists (ZSN - 1,100 members) and Association of Slovak Editors of Periodical Press (ZVPTS - collective membership of editors). All participating parties agreed to erase provisions of the draft concerning ethics in journalism and started negotiations on establishment of the Press Board of the Slovak Republic that would deal with ethical issues. They had also agreed to remove anticonstitutional provisions on refusal to register periodical press and those introducing fines.

The second meeting held in February had already dealt with the new draft version. SSN official opinion of it was that "this version has so far been the most satisfactory, specific, and precisely elaborated piece of press legislation."

However, not later than on March 1 1996 the Ministry of Culture (without notifying journalist organizations) had started distributing new draft law labeled as "the new version" which meant extra seven pages with ten article and a new preamble. This version had not been discussed with the journalists and editors which was a violation of valid media laws but had been published in the Slovenská republika daily.

SSN issued opinions through chairman's collegium (April 10) and board of directors (April 19), pointing openly at the fact that censorship definition is stricter than the one present in international documents recognized and signed by the Slovak Republic. Published draft law restricted provision of information beyond the framework constituted by both the Slovak Constitution and European Agreement on Basic Human Rights and Freedoms. Provisions on registration of periodical press did not harmonize with the constitutional principle by which press was not subject to mandatory permit-granting procedures. Fines and sanctions were not to be imposed by an independent court of justice, but by the Ministry of Culture which in turn might be viewed as a liquidation body. Draft law did not specifically enforce an obligation to provide information to journalists, there was only one article about 8 days period within which a person who refused to give information must explain the reasons and justify his/her conduct.

The above draft also contains redundant provisions incorporated into other legal norms (protection of state symbols, fight against propagation of fascism or racial hatred, protection of personality, etc.). What is probably most worrying is the fact

that the State does not present itself as a guarantor of constitutional rights, it rather restricts them.

Demands of SSN were backed by ZSN and organization of editors. SSN offered the draft to the foreign partners and international institutions dealing with the freedom of speech. Some of those institutions had sent their objections directly to the government. Despite all activities, the bill has been finalized and is now prepared for a government session. There are several opinions as to why the government has so far postponed approval proceedings. One of the possible explanations might be that Mečiar's government is fully aware of contradictory wording and therefore does not want to stir up any protests from journalists. At the moment, even ZSN does not support the government draft and it is the organization directly financed by the government. It is also possible that government would wait until the two journalists organizations and editors' association reach an agreement on Press Board of the Slovak Republic.

However, the Ministry of Culture has shown no efforts to negotiate with the three representative press organizations, neither has it declared a will to change the draft wording. That is why SSN's legal commission prepared its own media bill in September 1997. It respects comments made by international organizations and builds upon media legislation valid during the Czechoslovak republic. SSN has published the whole version, offering it for discussion to prime minister and partner organizations.

Creation of Press Board of the Slovak Republic

There was a general consensus in all three press organizations (Slovak Journalists Syndicate, Association of Slovak Journalists and Association of Slovak Editors of Periodical Press) as to the need of establishment of a body that would deal with ethical problems in mass media.

In September 1996, with financial assistance from PHARE and in cooperation with International Journalists Federation and Austrian Journalists Union (OGB), SSN organized a seminar "Ethics of Journalism and Press Boards." Based upon recommendations, participating parties came to the following conclusions:

- all three press organizations will establish association of legal entities - the Association for Protection of Journalistic Ethics;
- on the basis of a valid articles of association, they will apply for official registration with the Ministry of Interior of the Slovak Republic;
- based upon approved statute, the three bodies will consensually nominate nine recognized experts to become members of the Press Board;
- the Board will decide pursuant to the Ethical Code that stems from SSN Ethical Code and Ethical Code of International Journalists Federation;
- the Board will deal with petitions filed from outside and will never act in cases that are subject to court disputes;
- all three organizations will equally contribute to the Board's financing so that it can remain independent of the state budget;

- the Board's decisions will be mandatorily publicized by the editor whose employee has violated ethical principles; once in a year the Board will issue an almanac of decisions.

Despite the previous agreements, newly elected leaders of Association of Slovak Journalists (ZSN) did not follow what was agreed upon and refused to sign already prepared documents. All negotiations related to Press Board had reached a dead point.

In the summer of 1997 the Alliance for Journalistic Ethics started its operations. It is a private foundation established by Marián Ostatník, employee of the Ministry of Culture. Boris Zala is a chairman of board of directors. This private initiative has nothing to do with the above mentioned journalistic and editors' organizations. So far, no decision has been released by the Alliance in conjunction with ethics in journalism.

On July 2 1998, the Association for Protection of Journalistic Ethics has been founded. Press Board is planned to become an executive body, consisting of nine members appointed consensually for six years term. The Association shall support and protect the right to truthful, verified and precise information, while overseeing ethical principles, free access to information and freedom of speech.

Interventions into Freedom of Speech

On its session held on January 10 1997, the SSN's commission for protection of journalists analyzed current state of freedom of speech, media and journalists in 1996. Besides other things, it was stated that there had been free periodicals published in Slovakia. Basic conditions for dual system of broadcasting were also formed while no journalist was killed in or imprisoned.

The fact that no press conference was held by the National Property Fund (top privatization body) and some important privatization decisions remained unpublished lead Commission to declare that the two cases were, in fact, interventions into freedom of information. Press an Information Department of the Office of Government (TIO SR) "terminated" accreditation of four journalists. The reason being their alleged interview with President Michal Kováč in which he had allegedly expressed worries over health condition of prime minister Mečiar. None of the concerned journalists had ever confirmed the information that was meant to discredit Slovakia's president, but employees of TIO SR claimed they had heard them telling it to prime minister. As a sign of protest against unjustified accusations, journalists from SME and Nový Čas returned their accreditations and SSN called for boycott of all press conferences organized by TIO SR.

On November 22 1996, after negotiations between SSN, ZSN, Association and of European Journalists, TIO SR canceled its original decisions and gave the accreditations back to the journalists. However, the second item on the communiqué became subject to heated discussions since it stated that "until the Press Board is constituted, cases of violation of journalistic ethics will be dealt with

by TIO SR and the respective employers - owners of the media.” In reaction to that, one journalist from SME daily canceled its SSN membership.

Government-state power tried to exert pressure on press through numerous prosecution petitions. In this respect, director of SIS (Slovak Intelligence Service) ranks first. In his speech on the parliamentary ground on May 22 1996 he said that ”militant journalists take advantage of benevolence shown by prosecution bodies”. According to board of directors at SSN and its commission, this was a direct threat to the part of journalistic community. On October 28 1996, Emília Múčková, photo-reporter working for Nový Čas daily, was violently attacked by an unknown man who had run out of SIS building on Kutuzov street and had illegally taken the film out of her camera.

Attacks on free press continued to take place in 1997. Open threats reached the climax by setting Peter Toth’s car on fire. All boards controlling activities of public radio and TV have still no opposition members. Ministry of Culture wants to transfer all powers from existing Board for Radio and TV Broadcasting to itself.

III. PROPOSALS FOR IMPROVING TRANSPARENCY IN THE SLOVAK ECONOMY

Transparency in political, economic, social and cultural relations is one of the basic characteristics of all democratic and legal societies. To reach the overall transparency which is in itself a very demanding task, we have to start with creating a fully transparent public sector.

Transparent public sector makes public officials more reliable and responsible. Thus, introduction of transparency into public sector directly relates to gradual creation of reliable, responsible, credible and controllable public sector. Transparency should result in obstacles put to all forms of corruption, illegality, dishonesty and inappropriate preferential treatment. This global trend towards reliable and transparent public sector has become an inevitable precondition for social development. On the other hand, non-transparency means instability of the whole public sector that is then exposed to serious developmental distortions. Moreover, corrupted morale of the public sector negatively influences citizens and their views on public life and objectiveness of public decisions concerning physical and legal entities. It leads to serious distortions in human relations, competition principles and frequently results in illegal personal gains and benefits that go with misconduct and abuse of public position.²⁴

To reach transparency in all activities performed by the public sector, it is impossible to focus exclusively on a legal side of the problem. Although being very important, legal tools themselves can not secure permanent and stable transparency and can not remove all the negatives that go with a non-transparent public sector. **Existence of laws does not mean that mechanism of public administration will function in a transparent manner.** Laws, regardless of the number of them, will never become a real contribution to transparency, if they are not properly enforced and implemented.

According to Jeremy Pope, every country is as corrupt as all public institutions and processes allow it to be.^{xlvi} **To reach transparency in the public sector and society as a whole, we need a deep institutional reform to take place.** Transparent institutional framework conditions increasing transparency and ethics of public administration sector.

According to Douglass C. North,^{xlviii} **institutions** reflect and represent society's rules of the game. They consist of formal and informal rules or principles (behavioral norms, codes of conduct, conventions) as well as of their implementation. Institutions are here to reduce uncertainty through structuring human interactions, because rules are used and applied in dealing with others, in a mutual interaction. The extent to which there is a harmony between formal rules

²⁴ Consequences of non-transparent activities are analyzed in the introductory part of this material.

and decisions made by individuals in their everyday lives depends upon efficient implementation of the rules.

If institutions are rules of the game, then **organizations are players**. Organizations consist of groups of individuals interested in a target activity. Rules introduced through institutional framework define opportunities and type of the organization formed in the end. If we define target function of a given organization - profit maximization, election victory, regulation of business activities or education of students - then organizations like firms, political parties, regulation agencies or schools dedicate their efforts to obtaining experience and knowledge maximizing their chance of survival in the context of ever-present competition. Types of knowledge and skills worth gaining are seen as a function of **motivational** structure determined by institutional framework. **If, within the determined institutional framework, higher profits and quicker market successes can be achieved through non-transparent and corruption-driven steps, then organization will conduct and enforce non-transparent activities as those will enable them to achieve their goals.** However, if there are transparent rules out on the market enabling to achieve higher profits this way (through increase in labor productivity), firms and organizations will invest into skills and knowledge necessary for meeting a predetermined goal. Not only will those organizations invest into skills and knowledge, they will, through political processes, also get the knowledge securing their ability to survive.

In the process of introducing transparency standards, it is very important that we find those providing political support and understand what drives steps made by a public sector, i.e. whose interests are enforced through conduct of public officials. According to Kauffman,^{xlix} even in the countries where corruption is endemic, there are reform-oriented public officials supporting the reform so that fight against corruption and for transparency can become a wide interest of the whole population. Realization of the reforms described below may be successful especially in a good social and political climate. Change of regimes, political leaders or crisis of some kind establish a good opportunity. Even if there is no such opportunity, political will has to be expressed and constituted, although the whole reform process might take longer.

Realization of institutional changes aimed at increasing transparency in public sector therefore requires:

- 1. changes in formal rules guiding activities of the public sector**
- 2. changes in informal rules**

1. Changes in Formal Rules

In transparency advocacy and prevention of negative phenomena resulting from non-transparent arena, it is useful to efficiently use legal means and tools.

Legal aspects have many dimensions today. Transparency in public life can be secured through means of criminal law, since system of sanctions acts as a prevention of law violation. However, when enforcing transparency, we can well make use of constitutional, civic, administrative, commercial, financial and labor laws. The objective is to create legal order (formal institutional framework) that contains preventive and repressive mechanisms to secure transparency in public life.

From practical life point of view, we talk about passing new laws that can decisively influence efforts put into increasing transparency of public sector. It is also necessary that existing laws be amended in case current insufficient or ambiguous regulations may indirectly lead to non-transparent activities. Thus, better legal tools and mechanisms can be introduced while helping to fight non-transparency and other negative social phenomena related to it.

Changes made in formal rules therefore represent legislative changes, changes in laws, regulations (constitutional rules, regulatory rules, judicial rules) that constitute basic framework for activities conducted by all organizations.

Particular legislative changes should be designed in order to facilitate transparency of public administration in an integrated manner, through:

- 1.1. Reform of access to information**
- 1.2. Reform of public service**
- 1.3. Reform of processes conducted by public sector**
- 1.4. Reform of control**

Combination of the above measures should result in a synergistic effect. Reform implemented this way should be more efficient comparing to isolated group of measures without mutual connections.

1.1. Reform of access to information

The basic precondition for transparency of public administration activities is provision of wide public access to information about public administration. Free access to information should be secured by legislation and enforced through courts. Article 16 of the Slovak Constitution gives citizens a right to information. However, there is no legislative regulation precisely defining this right guaranteed by the Constitution.

In the United States, there are two important acts securing public access to information about public administration.

1.1.1. The Freedom of Information Act (FOIA)¹

FOIA reflects the principles of government openness and accountability through keeping an informed citizenry vital to the functioning of a democratic society, needed to check against corruption and to hold governors accountable to the governed. **In its general provisions, FOIA stipulates that any person has a right enforced in court to obtain copies of federal agency records**, except to the extent that such records are protected from disclosure by one of the exceptions and exclusions contained in that law.

Through FOIA, virtually **every record possessed by a federal agency must be made available to the public** in one form or another, unless it is specifically exempted from disclosure or specially excluded from the Act's coverage in the first place. The nine exemptions of the FOIA ordinarily provide the only bases for nondisclosures and generally are discretionary, not mandatory in nature (if one of the exemptions applies to a given case and the respective document should not be made publicly available, there is still a chance that it gets publicized on the basis of decision). FOIA contains nine exemptions.

- The first permits the President, by Executive Order, to keep certain documents secret in the interest of national defense or foreign policy.
- The second excepts documents related solely to the internal personnel rules and practices of an agency.
- The third permits the passage of a law requiring that certain documents be exempted from FOIA.
- The fourth excepts trade secrets and commercial or financial information obtained from a person and privileged or confidential.
- The fifth excepts the types of documents that are normally privileged in civil litigation (deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege).
- The sixth permits the government to withhold all information about individuals in "personnel and medical files and similar files" when the disclosure of such information would "constitute a clearly unwarranted invasion of personal privacy." This exception does not apply to a person who requests information pertaining only to himself.
- The seventh exemption protects from disclosure records compiled for law enforcement purposes, but only to the extent that the production of such records:

- (a) could reasonably be expected to interfere with enforcement proceedings;
- (b) would deprive a person of a right to a fair trial or an impartial adjudication;
- (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- (d) could reasonably be expected to disclose the identity of a confidential source;
- (e) would disclose law enforcement techniques;
- (f) could reasonably be expected to endanger the physical safety of any individual.

- The eighth exemption concerns documents that are related to the examination and operation of financial institutions when those documents are prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.
- The ninth and final exemption covers “geological and geophysical information and data, including maps concerning wells.”

Another provision of FOIA requires each federal agency to submit an annual report to the Congress regarding its FOIA operations. This has the effect of encouraging agencies to achieve full compliance with the Act.

Those in US who request records and are denied access are given a relatively speedy remedy in the United States district courts, where judges determine the validity of agency withholdings and agencies must demonstrate that their decisions not to disclose records were lawful. If the court rules in favor of the person seeking the documents, the court may also award that person his attorneys fees and other litigation costs. This is different from most judicial cases in the United States where each party is responsible for his own attorneys fees.

One portion of FOIA requires **agencies to publish information such as descriptions of agency organizations, functions, procedures, substantive rules, and statements of general policy.** It also requires the automatic disclosure of materials such as final opinions rendered in the adjudication of the cases, specific policy statements, and certain administrative staff manuals routinely be made available for public inspection and copying. Public access to such records serves to guard against the development of agency “secret law” known to agency personnel but not to members of the public who deal with agencies. Failure of any agency to supply these categories of information can result in invalidation of related agency actions.

1.1.2. Open Meetings Law - Sunshine Act^{li}

Sunshine Act enforces the general rule within the U.S. federal government, pursuant to which **whenever a quorum of the decisional group of members of an agency meets to conduct agency business, that meeting must be open to the public and the date, time and place of the meeting must be publicized.**

There are exceptions to the public meeting requirement. Basically, those exceptions are the same as the nine exemptions related to FOIA. Thus, when federal decision makers meet to discuss such things as national defense, secret commercial information, investigatory records compiled for law enforcement purposes, etc., those meetings need not be open to the public.

The public may be banned from meetings only if one of the special exemptions is met and a majority of the decision maker vote to keep out the public. The actual vote of each member on the issue of whether to hold a non-public meeting must be released to the public within one day of that vote. Also, the agency must make a public announcement that it is holding a non-public meeting and tell the public the specific exemptions that allow the agency to keep out the public. Only those portions of the meeting during which non-public matters will be discussed may be closed to the public. To help ensure that meetings are closed only when it is proper to do so, the chief legal officer of that agency must certify that, in his/her opinion, the meeting may be closed to the public and must state the relevant exemptions supporting that decision.

When a meeting is closed to the public, it must maintain a complete transcript of the meeting or, in some case, must maintain a set of minutes (or notes) of the meeting. Those notes must describe all matters discussed and provide a full and accurate summary of any actions taken and the reasons therefore, including a description of the views expressed by the members as well as their votes. The transcripts or minutes must be made available promptly to the public unless on the exemptions applies.

If this statute is violated, any person may sue the agency in federal court, seeking special relief such as an injunction against future violations of the statute and an order requiring the release of the transcript of minutes of the closed meeting. As with the FOIA, the court may require the agency to pay the attorneys fees of the person who has sued the agency.

Each agency is also required to file an annual report with the Congress regarding compliance with the Sunshine Act and providing certain information and statistics concerning public and non-public meetings.

By passing the aforementioned two laws in Slovakia, a precise definition would be formed as to what information should be mandatorily provided by public administration bodies. It is at the same time inevitable to secure information flow all the way to media. Free and independent media facilitate informational transfers

and are generally considered as the best tool for transparent information channels to public. **Cloudy situation around Slovak media and non-transparency of their ownership structures can both be solved through mandatory obligation that names and places of residence of all stakeholders with more than 20% interest should be published in the first issue of the respective year.** From antitrust point of view, publication of stakes held in other media might not be irrelevant. Regular reports on number of sold copies and overall economic reports can also be useful. Property transparency can be strengthened also through the law on "true names."²⁵

All regulations of media activities (permits, licenses, changes of ownership) should be implemented transparently and by independent-impartial regulatory institutions which is described in more detail on the following pages.

1.2. Reform of public service

Reform of public service consists in:

- 1.2.1. professionalism in public administration
- 1.2.2. definition of clear and transparent rules on conflict of interest in case of public sector officials
- 1.2.3. introduction of clear and comprehensive rules concerning financing of political parties

1.2.1. Professionalism in Public Administration

Professional, stable and efficient public administration is viewed as a necessary part of any modern, transparent, and democratic society. Within the reform of public service, it is therefore desirable to adopt legislation securing and requiring professionalism in public administration. It is all about guarantees for employees in public service on one hand, and clear and comprehensive instructions for their work on the other. Public officials can then rely upon legally defined guarantees and rules and at the same time, framework for internal and external audits can be established.

To achieve all of the above, the act governing public service should be adopted in the Slovak Republic so that appropriate conditions can be created for execution of independent and impartial public service. **Selection, appointment and promotion of public servants to higher positions should be based upon real capabilities and credits which means application of expert background principle.** Thus, friendships, political ties and favoritism that so frequently decide should be removed. And if a government changes, it does not have to mean that the whole senior staff is replaced, it may mean increased stability of the whole sector.

²⁵ See reform of public administration processes.

In the field of internal organization of public service, it is necessary to define concrete responsibilities and commitments through comprehensive provisions set out in organizational guidelines. In other words, **accountability relations should be clear to each employee, as should be sanctions for not adhering to the rules.**

For the time being, regulation of many processes is overlapping, i.e. is performed by several separate entities directly reporting to the government. Their subordination to the government frequently means that political instead of economic interests are enforced in major sections of the economy. Reality of the last 20 years has proved that impartial and apolitical control of economic processes by experts brings about successful results. For example, establishment of relatively independent central banks contributed significantly to shrinking inflation, while at the same time economic growth was not impeded. In Slovakia, too, highest public credibility is the feature of institutions relatively isolated from political pressure: armed forces, constitutional court, and National Bank of Slovakia. Direct subordination of regulators to the government does not create specific risks, but increases probability of new risks coming into play.^{liii} That is why a **trend towards independent regulatory agencies should further be strengthened in Slovakia.**

1.2.2. Definition of Clear and Transparent Rules on Conflict of Interest in Case of Public Sector Officials

Within the reform of public service, it is inevitable to define what a public servant may and must not do - clear tasks and duties have to be set out, along with the restrictions, prohibitions and mechanisms of public oversight. This in itself would be far too general - the basic legal norm that should have assured that a personal interest would not be preferred to a public one was the Act No.119/1995 Coll. on Prevention of Conflict of Interests in Case of Constitutional Officials and Higher State Officials.

This act should have comprehensively regulate issues of incompatibility of certain positions in performing top state functions. However, this legal norm have proved to be inefficient. MPs can not sit on boards of directors in various companies but this law does not prevent their children, spouses or lawyers from doing it for them. The amendment to the act should therefore restrict business activities of close relatives, especially in cases where performance of state duties might be abused in favor or relatives and their business conduct. Entities governed by this act would then be prevented from acquiring state property, municipal property or assets of public institutions. The law should also set out responsibilities and sanctions for breaching duties stipulated therein.

Mandatory property tax return is one of the tools regulating conflict of interest in case of state officials, appointees and elected members of self-government. Property tax returns must be submitted by constitutional official in Slovakia. This instrument, however, tells very little about various activities of

public officials. If today, say a half of the MPs received gifts from the companies for "the right voting", members of the Parliament can confess and write down a letter that would end up being locked up in the parliamentary safe. The law says such letters must not be publicized so neither journalists nor citizens would ever know of their existence. Thus, citizens do not have elementary tools of public control in their hands. That is why an amendment to the law should make such information about state officials available for public through mass media. Monitoring of assets and income of higher state servants should also become an important preventive tool for enforcement of the existing legislation. Amended law should then stipulate an obligation according to which state officials, appointees and elected members of self-government **would have to submit property tax returns, showing the source of acquired assets. A legally enforced obligation would be introduced to show that the respective increases in assets and property were achieved in a legitimate manner.**

A body entrusted with oversight would have a status of independent agency. Another body auditing property tax returns would have the right to take over illegally acquired assets even without criminal charged being pressed against a particular official. This kind of financial control is quite common abroad and is used by 20 advanced economies all around the world.^{liii}

After returns from foreign diplomatic visits, it is a routine to state that "both parties agreed to further deepen their cooperation." Information from such visits may be of interest to many people, not only those from family, political or business circles. Another part of regulation of conflict of interests would be focused upon **mandatory publication (e.g. on Internet) of those parts of officials' foreign trip reports that are not subject to confidentiality or state/business secret.** This would apply to MPs, members of the cabinet, and heads of major central state administrative bodies. Part of the information would describe costs related to particular trip.

Issues of morale and discipline, as well as those of behavior of state or public sector employees should be properly elaborated in ethical codes (e.g. ethical code of Central Bank's employees). Such code is also an explanation and advice what should be done in certain situations (flowers or bottle of whisky in your office), especially when such gifts represent a reaction to granting of demanded benefit. Ethical codes should clearly determine how far a state official can go and how should he/she react.

1.2.3. Introduction of Clear and Comprehensive Rules Concerning Financing of Political Parties

Here, the Act No.421/1991 Coll. on Associating in Political Parties and Movements should be amended. Especially provisions concerning financial transactions of political parties should be made clear in order to improve transparency of their financing.

According to the above mentioned law, gifts are one of the sources of financing for political parties. The whole system of financing should be made more transparent so that inappropriate influence over political parties does not take place (preferential treatment in privatization, state orders, unauthorized benefits, etc.). It is also necessary that laws prevent gifts from being given to political parties by various foundations or companies with liabilities/debts towards the state, tax authorities, social and labor insurance authorities, etc. In conjunction with the above, we should stress an independent audit and control of political parties that could be performed by a mixed-type entity similar to today's Central Election Commission. In addition, it is desirable to introduce mandatory annual financial reports submitted by political parties to the Parliament, imposing strict sanctions on those failing to do so. Decisions on sanctions can not be made by state executive bodies, such powers should rather be given to independent courts. The law has to set out conditions excluding all forms of gift granting, especially in case of legal entities that acquired assets or cash by money laundering, corruption, illegal conduct or other forms of law violations. Anonymous gifts should be prohibited and limits per one donor established.

1.3. Reform of Processes Conducted by Public Sector

Creation of efficient public administration can, in our conditions, be achieved through overall **economic liberalization**, i.e. by reducing a space used up by inefficient and non-transparent public administration. Rejection of complicated and irrational state regulation and its replacement by a free market rules represent actual elimination of conditions favorable to abuse of power and dominance - two features so frequently possessed by public administration mechanism.

In justified cases, that is, where state needs to secure competition and provision of key social services, it is absolutely crucial to introduce elaborated and transparent regulatory tools. Transparency and efficiency of public sector activities depend upon what method has been chosen for their realization. **In other words, rules and methods of realization/implementation determine degree of transparency and efficiency borne by the realized activity.**

In Slovakia, many public administration agencies have created a monopoly for information, decision making and enjoyed a rather privileged status. The whole administration process is often times based upon lack of unambiguous rules/regulations and in most cases, there is only a minimum chance that negative phenomena are in the end identified and sanctioned. Methods in use create a space for subjectivism and exclusively individual decision making, imputing elements of uncertainty, freelancing and subjectivism into very core of public administration. **Such a non-transparent course of administrative processes is maintained on purpose in order to keep control over them and distribute potential benefits between those "pre-selected."**

Every democratic state should put major efforts to securing efficient and transparent regulation that would serve public interests. **Transparent are those regulatory tools minimizing subjectivism of public official's decision making, that is, those applied through market mechanisms.**

To increase transparency and efficiency, methods should be used in order to reduce opportunities for illegal or inappropriate personal benefits . Following steps should be taken in order to **minimize subjective decision-making** in public administration bodies:

- reduce to minimum the number of provisions granting exemptions to existing norms and regulations;
- prepare precise application criteria for alleviations, exemptions, and reliefs related to existing norms and regulations;
- introduce comprehensive and transparent legal rules for subsidies, credits, loans, and state guarantees;
- prepare clear and exact criteria for imposition of fines, penalty payments, or other sanctions along with keeping an itemized data base of granted reliefs. Amount of fines imposed should be more differentiated, depending upon norms that have been violated. Comprehensive list of sanction/fine rates should be prepared;
- categorize administrative fees in conjunction with processing deadlines, especially in administrative proceedings that relates to decisions about civic rights. Here we talk about registration in commercial register where a company would pay, for instance, SKK 10,000 for a quick 48 hour registration. This sum would become a part of the costs of business conduct. The same would apply to land/real estate register, or automatic license;
- apply collective forms of evaluation of certain issues - especially in tender proceedings. It is necessary to form groups of experts in particular branches who would act as members of tender commissions in public procurement proceedings, major state project investments, privatization, etc. Commission members should be named after all bids have been submitted.
- **establish offices for public** - at ministries, central state administrative bodies - in order to simplify and rationalize contacts between citizens and public servants;
- prepare detailed principles of state property disposal in public field and secure efficient control of transactions conducted by public bodies.²⁶

²⁶ See reform of control mechanisms

Stemming from the above steps, all processes taking place in public administration bodies can be integrally governed so that transparency can be achieved in privatization, management of public expenditures, public procurement, etc. Further in the text we mention several proposals that would help to increase transparency of all activities performed by public administration bodies in the Slovak Republic.

1.3.1. Amendment to the Act 111/1990 Coll. on State Enterprises

This Act should be rephrased in order to introduce transparency into management of state assets administered by concrete state-owned companies. Control and audit in this field would be performed by Highest Audit Office, where some issues of sanctions and fines are still unresolved. Moreover, orders of consulting services, advertising and other services should be closely review with special respect to their efficiency.

1.3.2. Amendment to public procurement law²⁷

1.3.3. Adoption of act on competitive license granting²⁸

1.3.4. Legal regulation of sales of assets written-off by the state

Information about sales through auctions should be made available to every citizen at least through press or Internet.

1.3.5. Amendment to the Act No.92/1991 Coll. on Conditions of Transfer of State Property to Other Persons.

This amendment should remove ambiguities around decision making process in privatization and extend legal sanctions imposed on those failing to fulfil its obligations resulting from the process of privatization.

1.3.6. Adoption of law on transparency in privatization - the so-called act on civic names

This act would stipulate publication of real names of those who privatized assets for five consecutive years from the moment of property transfer.

To further increase transparency of public sector, it is necessary to

1.3.7. Amend Civil Proceedings Act

Amendment to the Civil Proceedings Act should be focused upon prevention of illegal courts' decisions through remedial tools (in case of decisions in administrative issues) and extraordinary appeal in all other cases.

²⁷ See separate part on public procurement.

²⁸ See separate part on license granting.

1.3.8. Amend Criminal Code

This amendment should reintroduce bribery as a crime, that means that bribe giving and taking would be again seen as a criminal deed.

1.3.9. Introduce institute of witness protection

It is often very hard to collect evidence on violation of existing rules since both parties to the transaction are interested in keeping it all secret. On the other hand, any information provided by third persons might be very dangerous for them. That is why protection of witness should be introduced to give guarantees to those willing to testify before the court.

1.4. Reform of control

It is not enough to enforce transparency and ethics **without control**. Once the activities of public administration are out of media (public or civic society) control, there is much less need and incentive to act in a transparent manner. That is why external and internal audit of public administration should be strengthened and seen as a tool for identification of all errors made by public sector.

Institutions of external control, like high audit offices or parliamentary control committees should have their neutrality secured both practically and institutionally. Their subordination to the government sometimes means giving in to political interests. Control could be partially handed over to opposition by which a truly democratic ruling party would only get extra points. Moreover, each and every new government would start "with a clean table" a all found deficiencies could be directly attributed to the previous cabinet. Control weapons held by opposition scare public officials much more than a concern over identification and accusations from their "home" ruling party which in turn discourages them from accepting bribes.^{liv}

In order to increase transparency in Slovakia, it would be appropriate to:

1.4.1. Amend the Act No.39/1993 Coll. on **Highest Audit Office (NKÚ SR)**

Within a new amendment, powers and authorities of NKÚ SR should be broadened to control public funds. NKÚ should be authorized to control management of assets administered by the National Property Fund in keeping with the Act NO.92/1991 Coll. on Privatization.

Article 16 about taciturnity related to control findings should be radically changed. Citizens have a full right to come to the Office, asking for review protocols or identifying deficiencies for themselves. It is so because they should get a complete picture of state asset administration and management.

1.4.2. Introduce institute of Ombudsman

Ombudsman is a person to whom citizens can turn with their complaints. He/she can review records kept at government institutions and ministries, examine correctness of their decisions and propose remedial measures. Ombudsman has a right to submit report on administrative failures to legislative bodies or president. Ombudsman can by no means replace administrative proceedings as such, but introduction of such institute into legal system is a good start. Ombudsman should have an independent status.

1.4.3. Increase a Role of Non-Government Organizations (NGOs) in Society

NGOs should act as an independent institutions, increasing credibility of society's public life. They dedicate their attention to practical implementation of transparent and clear rules of the game, credibility and democratic control.

2. Informal Rules

Changes in informal rules mainly concern changes of conventions and personal honesty standards. Whilst formal rules can be changed "overnight", it takes much more to change the informal ones. Informal rules affect people step by step and often times on the basis of alternative "role models" harmonizing with their evaluation of benefits and costs.

Neoclassical behavioral theories^{lv} assume that an individual pursuing maximization of his/her benefits and wealth usually puts maximum efforts in order to achieve these goals. Practically expressed, if cheating pays (in order for the individual to maximize benefits) then a given person cheats, or if it is possible for him/her just to kill time at work, he/she hangs around doing nothing and kills time. It is, however, hard to imagine complicated social interactions happening if the above assumptions are to be a complete picture of human behavior. That is why we should take into account ideological approaches and individual perceptions.

According to Douglass C. North, ideology represents "subjective models" used by individuals to explain and evaluate the world outside. Ideology does not play a key role only when it comes down to elections, it also constitutes a method of individual decision making. Thus, ideology affects overall economic performance of a given society. Individual perceptions, opinion of overall transparency, approaches towards fair rules of the game – all this visibly shapes the whole society and its performance. That is where education comes into play along with a huge social contribution made by politicians, employers, managers and all others trying to persuade people what is good and bad (what is fair or unfair) in particular economic/social activity. **Importance of ideology directly relates to the costs of transparency measures and their implementation.** The harder is it to implement law e.g. on conflict of interests the more important is the way of

thinking displayed by common people. **If a given measure** could be efficiently implemented at a low costs, it would mean that ideology prevailing in the society is consistent with then nature of implemented law. If the opposite was true, it would mean that we should influence the ideology, too, which would in turn increase total costs related to the introduction of transparency in a society.

To increase overall transparency through shaping of informal rules, it is **desirable to shape public opinion and exert a public pressure by using mass media**. Through mass media, a sense of higher ethical values should be created in state service, while further strengthening "professional honor" and ability to withstand corruption pressures. Active influence upon state servants, public servants, self-government officials, legal entities and more broadly, all citizens, should become one of the basic pillars in an effort to fight negative social phenomena. All forms of non-transparent conduct should be fully publicized in the interest of all citizens.

According to Goebels, a lie thousand times repeated shall become a truth. That is bad. What is even worse is that one should repeat the truth for thousand times in order for it to become truth.

Media should cover more intensely the issues of transparency, accountability and honesty in public life. Citizens should be kept informed about results of fight against corruption. All anti-corruption measures should be publicized, while pointing at strengths and weaknesses of a particular law and identifying areas badly affected by amoral conduct. In other words, we should get citizens and expert public involved in order to seek and find solutions that help us all strengthen transparency.

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- i North, Douglass, C.: Transaction Costs, Institutions, And Economic Performance, International Center for Economic Growth, San Francisco, 1992.
- ii Gray, Cheryl, W., Kaufman, D.: Corruption and Development, Finance and Deevlopment, March 1998.
- iii Mauro, P.: Corruption and Growth, The Quarterly Journal of Economic, August 1995, p.688.
- iv Sedláček, P.: Worse than Seven-Headed Dragon, Ekonom 29, 1998.
- v Ackerman, Susan, Rose : The Political Economy of Corruption - Causes and Consequences, Private Sector, Note No.74
- vi Moody-Stuart, George : The Costs of Grand Corruption, Economic Reform Today, CIPE, 4/1996.
- vii Gray, Cheryl, W., Kaufman, D.: Corruption and Development, Finance and Deevlopment, March 1998.
- viii Ginter, E., Demeš, M.: Health Care, in: "Slovakia 1996 - Overall Report on the State of Society and Trends for 1997", IVO 1997.
- ix Ivantyšin, M.: Criminality and Human Development, in: Slovakia 1998 Human Development Report, UNDP, Center for Economic Development, 1998.
- x Mikloš, Ivan : Transparency in the Slovak Economy, part II, CED 1997.
- xi Mikloš, Ivan : Transparency in the Slovak Economy, part II, CED 1997.
- xii Weiss, Peter : Hospodárske noviny, December 3 1997.
- xiii Trend - economic daily, February 11 1998, page 11A.
- xiv FINI67 - Internet daily focused on economics and capital market at home and abroad, August 11 1998.
- xv Národná obroda daily, June 17 1998.
- xvi SME daily, February 12 1998.
- xvii Hospodárske noviny, February 26 1998.
- xviii Trend, No.8/1997, page 7.
- xix Trend No.9/1998.
- xx Pravda daily, March 16 1998.
- xxi Národná obroda daily, February 10 1997.
- xxii Trend, March 5 1997.
- xxiii Procurement issues are subject to a separate chapter

-
- xxiv Pravda daily, May 6 1998.
- xxv Vagač, Luboš: Housing Support in Slovakia, Center for Economic Development, Bratislava, December 1997
- xxvi SME daily, July 20 1998.
- xxvii Trend, April 15 1998.
- xxviii Trend, July 8 15 1998.
- xxix Národná obroda daily, August 20 1997
- xxx SME daily, April 25 1997.
- xxxi Pravda daily, July 29 1998.
- xxxii Pravda daily, March 17 1998.
- xxxiii SME daily, February 17 1997.
- xxxiv Hospodárske noviny, December 3 1997.
- xxxv Natural Monopolies of a State Character, Institute for Public Affairs, in : Slovakia 1997, 1998.
- xxxvi Pravda daily, January 15 1998.
- xxxvii Slovak daily newspapers from April 9 1998, Radio Twist journal, April 8 1998.
- xxxviii Národná obroda, March 30 1998.
- xxxix Národná obroda, March 30 1998.
- xl Trend No.10, March 4 1998.
- xli Trend No.4, January 21 1998 - Dušan Koledzai - director of Securities Market Dept., Finance Ministry of the Slovak Republic.
- xlii Trend No.4, January 21 1998 - Dušan Koledzai - director of Securities Market Dept., Finance Ministry of the Slovak Republic.
- xliii Trend No.47, November 11 1997.
- xliv Trend , July 8 1998.
- xlv Trend No.43, October 22 1997.
- xlvi see Fulle, J.:expert polygraphic annex to Trend economics weekly, No.43, October 22 1997.
- xlvii Transparency in the Slovak Economy I, CED 1997.
- xlviii North, Douglass, C.: Transaction Costs, Institutions, And Economic Performance, International Center for Economic Growth, San Francisco, 1992.

xlix

Corruption and Development, March 1993

i

Frankel, David, P.: Public Access to Government Information, Transparency of Government Activities I, Center for Economic Development, Bratislava 1997

li

Frankel, David, P.: Public Access to Government Information, Transparency of Government Activities I, Center for Economic Development, Bratislava 1997

lii

Natural Monopolies of State Character, Slovakia 1997, Institute for Public Affairs, 1998.

liii

Národná obroda daily, may 15 1998.

liv

Pravda daily, July 30 1998.

lv

North, Douglass, C.: Transaction Costs, Institutions, And Economic Performance, International Center for Economic Growth, San Francisco, 1992.

