Windsor Club

CORRUPTION RISKS IN THE PRIVATISATION PROCESS

A Study of Privatisation Developments in the Slovak Republic Focusing on the Causes and Implications of Corruption Risks

Ivan Mikloš

Bratislava
May 1995

INTRODUCTION

This study aims to point out to the causes, implications and impacts of corruption in the course of privatisation and to tentatively outline measures that would impose constraints on corruption phenomena. The study is primarily based on the privatisation experiences in the Slovak Republic, however, most conclusions should be generally applicable to any post-communist country. It should be emphasised that by corruption we mean not only the most direct and "pure" sense of corruption as stipulated by criminal law, such as gaining property and other advantages over other bidders by using bribes, connections, extortion or other explicitly criminal actions. Here corruption is implied to encompass broader practices of preferential treatment of individuals and groups at the expense of other individuals and groups in the general public.

It should also be pointed out that we will not be merely focusing on privatisation-related corruption, i.e. corruption associated with the choice of a winning bidder and formulation of the terms and conditions of sale and purchase. We will also deal with the issues of spontaneous privatisation, i.e. illicit or at least improper gains by individuals and groups prior to privatisation or throughout the entire period that elapses between the fall of the communist regime and the privatisation of an enterprise or other assets. In other words, privatisation-related corruption will be viewed in a broad sense of the word. This includes corruption that is present and flourishing just because there is no privatisation at all or because its pace, scope and transparency are inadequate.

The study comprises seven sections, an introduction and conclusions.

The first section describes in some detail the privatisation process in the Slovak Republic and the role of privatisation in economic and social transition. We feel this to be essential because otherwise it would not be feasible to appreciate the complexity of privatisation-related corruption in context and with all its implications.

Section II analyses the general and, in particular, social and psychological causes behind elevated corruption risks in the specific conditions that prevail in countries that experienced decades of communist totalitarianism.

Section III deals, in general and using specific examples, with the most general corruption types and those that are more common for specific privatisation methods and concepts pursued by different Slovak governments. Particular attention is given to direct sales as well as privatisation based on employee ownership plans.

Section IV 4 focuses on pre-privatisation corruption (spontaneous privatisation) as well as post-privatisation corruption, especially on buyers choosing to default on the terms and conditions of privatisation contracts.

In Section V attention is drawn to the political background and other interests active behind the privatisation process. Section VI gives an analysis of the political manifesto of the present government of Mr V. Meèiar inasmuch as it concerns privatisation from a standpoint of possible corruption risks associated with the process.

Section VII proposes, based on the experiences accumulated to date and the facts presented in the study, some specific measures that might minimise the risks of corruption in the privatisation process.

The author would like to thank the reviewers of the study - Mária Kolaøíková, Mikuláš Dzurinda, Jozef Hajek, and Gabriel Palacka - whose comments have contributed to making the data presented in the text more precise and generally enriched the study. It is, however, the author who assumes all responsibility for accuracy.

I. ROLE OF PRIVATISATION IN GENERAL TRANSITION

The main features of a communist social and political system are characterised by:

- the leading totalitarian role of a communist party;
- substantial prevalence of state ownership;
- prevalence of bureaucratic co-ordination over the market one and prevalence of vertical co-ordination over horizontal;
- macroeconomic imbalances (deficiency-plagued economy);
- prevalence of soft budgetary constraints.

The specific nature of privatisation as a tool of eliminating a major systemic feature of the communist system consists in the fact that, unlike changes in all the other systemic features, change in ownership is, in terms of time and logistics, the most challenging and politically delicate process. The leading role of a communist party is generally eliminated during revolutionary days. In Czechoslovakia this happened within three weeks of the anti-communist revolution. Although dismantling a deficiency-stricken economy and eliminating macroeconomic imbalances as well as imposing tight budgetary restraints and supremacy of a horizontal market co-ordination over that of the bureaucratic vertical co-ordination is a lengthy process plagued by conflicts, it can be, nevertheless, coped with in a relatively short time. In Czechoslovakia this process was basically dealt with in one and a half year and virtually was completed around March and April 1991. However, the prevalence of state ownership persisted for quite some time after that and in the Slovak Republic, as will be shown below, was still present in mid-1995.

I.1. Place of Privatisation in Economic Transition

In Czechoslovakia decisions about the methods and procedures of economic transition were made in the first half of 1991 when the idea prevailed of pursuing a radical form of economic transformation. This concept was endorsed in the first free elections held in June 1990 and found its specific shape in the conceptual paper entitled "**Scenario of the Economic Reform**" that was approved by the federal parliament in September 1990. According to the scenario, the Czechoslovak economic transformation was based on the following priorities:

- price liberalisation
- monetary and budgetary austerity
- internal convertibility of the local currency and foreign trade liberalisation
- swift and extensive privatisation

It was obvious that from the very beginning the authors of the transformation concept fully realised the daunting nature of swift and extensive privatisation as well as the fact that it was absolutely essential to proceed with it. This led them to rely, in addition to the well-known standard methods, on a non-standard procedure - the voucher scheme.

To better understand the importance and, at the same time, the somewhat peculiar nature of privatisation as one of the above priorities of the transformation concept, it is necessary to outline the meaning of all the envisaged measures and describe the anticipated and actual course of the transition process.

First it is essential to point out that the centrally planned communist economy was not working for the sake of the underlying systemic features on which it was based. This conclusion is important as it exposes all attempts to improve the communist economic system through partial reform without essential underlying systemic changes.

The underlying systemic changes consisted in establishing economic conditions and an economic environment that would automatically maximise interests, primarily economic interests and incentives, and induce such behaviour by macroeconomic entities that would promote efficiency and competitiveness both of individual businesses and the economy as a whole. In other words, this meant replacing the salesman's market by the buyer's one.

A centrally planned economy is deficiency-stricken, with aggregate demand prevailing over aggregate supply. As a result, the problem is not of selling but that of buying. At the same time, there exists no competitive environment, with imports being administratively limited and domestic producers facing virtually no competition. Manufacturers and salesmen do not have to win buyers' trust because in a deficient economy they are able to sell everything anyway. Even if manufacturers and salesmen find themselves in trouble, they are not threatened with going out of business because the government will certainly bail them out in the form of soft budgetary restraints, i.e. grants, subsidies, soft loans or tax waivers. This situation needed to be changed as a matter of principle.

To achieve this, it was essential to impose a tight, criteria-driven economic environment and a macroeconomic equilibrium, tight budgetary constraints, a uniform system of taxation as well as minimise grants and subsidies and liberalise foreign trade. All these measures were launched on 1 January 1995 with the commencement of the economic reform. The reform was assumed to evolve in the following stages.

Stage 1, that of **abrupt price increases**, was assumed to unleash a rapid price rise as a result of price liberalisation. As at the same time the policy was pursued of monetary and budgetary austerity, the expectation was that rising prices would swiftly reach a demand-imposed cap, bringing about price stabilisation and a macroeconomic equilibrium. Equilibrium and establishment of a buyer's market versus the previous seller's market were assumed to be followed by an adjustment period, during which the unyielding and criteria-driven environment would force businesses to adjust to the new situation.

At a later stage, the adjustment of businesses was expected to bring about a slowdown of the economic decline and an overall turnaround in the economy as a whole. The first stage, that of **abrupt price increases**, was projected to last 3 to 4 months, with the second one, i.e. **adjustment**, taking a year to year and a half to be followed by stage three, **economic growth**.

The stage of abrupt price increases evolved almost entirely as predicted, lasting three to four months during which the rate of inflation went up by about 55 per cent. However, the price increase then stopped and the annual inflation rate was only 63 per cent. As of April to May 1991, a tough criteria-driven macroeconomic environment was imposed on the Czechoslovak economy.

There is now a uniform taxation rate; subsidies and grants have been dramatically reduced compared to the previous period; loans are only granted under commercial conditions, the seller's market has been replaced by a buyer's one, and there is a macroeconomic equilibrium between the aggregate demand and supply.

The **adjustment stage** has been ushered in. This, however, is not evolving as quickly as initially projected. In other words, many enterprises, the altered economic conditions notwithstanding, are persisting in the patterns of behaviour inherited from the centrally planned communist economy. The most typical examples include producing to warehouses without secured sales, relying on the government to sort out sales problems. Another example is the insufficient use of company assets, such as commercial utilisation of recreational facilities.

This is the very point that shows that the quick adjustment to market conditions of businesses and the economy as a whole is conditional to rapid changes in ownership. This applies both to individual cases and the economy as such. Inadequate or insufficiently rapid adjustment of microeconomic units to the changed conditions means depreciation of the nature of enterprise property, among other things. Such long-standing depreciation without an adequate response is only possible under state ownership when there is no concrete owner who will have to assume the economic implications of failing to response, i.e. the economic implications of assets depreciation. In this respect, it can be summarised that privatisation or, alternatively, achieving a high prevalence of the private sector in the economy, is essential (although not sufficient) for a rapid and successful adjustment and economic restructuring, thus being a prerequisite for the overall success of economic transition.

1.2 Privatisation in the Slovak Republic to Date

The privatisation concept was based on these principles:

- Restitution became part of the privatisation process. The time limit for restitution claims was set on 25 February 1948, the day of the communist coup, with only natural persons who were Czechoslovak nationals permanently resident in the country but not legal entities being entitled to such claims.
- The privatisation process was divided into a small-scale and large-scale scheme. In the small-scale scheme, the only privatisation method employed was auctions at which only assets were sold without entitlements and obligations. The businesses sold in the scheme were primarily retail outlets, restaurants, smaller operations and factories, small hotels etc. There was a restraint on foreign participation since only domestic natural persons and legal entities were eligible to bid in the first round. Foreign bidders were allowed to participate in a second round only when a business failed to be sold in the first one. Small-scale privatisation was supervised at regional and district level by District Privatisation Commissions accountable to the Privatisation Ministry.
- Since the pace and scope of privatisation were deemed to be important criteria and given a lack of available funding as well as the generally long time needed for privatisation, a

decision was taken to rely, in addition to standard methods, on a voucher scheme as a non-standard one.

- Large-scale privatisation was divided into two waves during which the intention was to privatise most of the assets that lend themselves to privatisation. The phasing out of large-scale privatisation made sense for speeding up a process which would otherwise be extremely time-consuming. A decision was also taken to make the voucher scheme a component of each of the two privatisation waves.
- Specialised institutions were set up, namely National Property Funds. These were distinct legal entities whose main role was to implement approved privatisation projects, conclude sale and purchase contracts in line with such projects, organise public tenders and auctions and temporarily administer government stakes (in formal terms, those were NPF stakes) in corporatised or partially privatised business companies. There were three National Property Funds, one at federal level and two in the constituent republics. A Presidium and Supervisory Board were the supreme bodies of these NPFs, their members being elected by respective parliaments by secret vote.
- It was decided that the Federal Ministry of Finance would be responsible for the demand side of the voucher scheme, while the supply side would be secured by the republic ministries of privatisation.

In 1990-1991 the Czechoslovak Federal Assembly, Slovak National Council and Czech National Council (federal and republic parliaments), governments and ministries enacted the crucial privatisation and restitution laws, cabinet decrees, ministerial guidelines that spelled out the legal framework of privatisation and restitution. In particular, these included:

Privatisation Laws and Regulations Bearing on Small-scale Privatisation

- *Act No 427/1990 on the Transfer of State Ownership of Certain Assets to Other Legal Entities and Natural Persons* nicknamed the Small Privatisation Act.
- *SNC Act No 474/1990 on the Authority of Government Agencies of the Slovak Republic Concerning the Transfer of State Ownership of Certain Assets to Other Legal Entities and Natural Persons.*
- *Slovak Ministry for the Administration and Privatisation of National Property Regulation No 568/1990 on Public Auctions with Regard to the Transfer of State Ownership of Certain Assets to Other Legal Entities and Natural Persons and Auction Entrance Fees.*

Privatisation Laws and Regulations Bearing on Large-scale Privatisation

- *Act No 92/1991 on the Conditions of Transferring State Ownership of Certain Assets to Other Entities* nicknamed the Large Privatisation Act.
- *SNC Act No 253/1991 on the Authority of Government Agencies of the Slovak Republic in Matters of Transferring State Ownership to Other Entities and on the National Property Fund.*
- *CSFR Government Decree No 383/1991 on the Issue and Utilisation of Investment Vouchers.*
- *Slovak Government Decree No 273/1991 on the Exemptions from § 45 of Act No 92/1991 on the Conditions of Ownership Transfer to Other Entities.*
- *Principles of Procedure and Preparation for Public Tenders in Large-scale Privatisation under Act 92/1991 on the Conditions of Transferring State Ownership of Certain Assets to Other Entities.*

- *Rules of Procedure of the Commission to Review Public Tender Bids.*
- *Principles of Procedure and Preparation for Public Auctions in Large-scale Privatisation under Act 92/1991 on the Conditions of Transferring State Ownership of Certain Assets to Other Entities.*
- *Slovak Ministry for the Administration and Privatisation of National Property Procedural Guidelines Dealing with the Assets Held by State-Owned Enterprises in Liquidation.*
- *Model Rules of Procedure for the Auction of Assets Held by State-Owned Enterprises in Liquidation.*

The above laws and regulations delineated the rules of the game that applied to large-scale privatisation. According to these regulations, all privatiseable state-owned enterprises were earmarked for one of the two large-scale privatisation waves. Allocation of enterprises to either wave was done as applicable by the federal or republic governments with a view to proposals made by sector ministries and in consultation with the enterprises proper.

Deadlines were set by which all enterprises were to draw up base privatisation projects whose most important components included:

- if earmarked for sale, the method of sale, price, payment etc. conditions;
- proof of acquisition by the state;
- identification of assets unsuitable for business purposes;
- valuation of the assets to be privatised;
- method of property transfer by the state, including proposals to deal with justified claims;
- if earmarked for corporatisation, the method of share distribution, assets to be privatised by the voucher scheme;
- privatisation project implementation timetable.

An important provision of the above legislation was that decisions concerning direct sales were to be made by the government, whereas approval of other types of transformation and sale (public tenders and public auctions) could be made by the privatisation ministry.

The principle was adopted according to which standard methods were to be given preference in the base projects in the sense that if the management of an enterprise identified a concrete investor, be it foreign or domestic, it was deemed possible and expedient to utilise this possibility in the base project. In all other instances, i.e. where by the time the privatisation plan was to be submitted there was no concrete proposal of using standard privatisation methods, the recommendation was to corporatise the enterprise and sell shares in exchange for investment vouchers. In addition to base privatisation projects, competing projects could be submitted by anyone, i.e. by domestic and foreign individuals and legal entities. State enterprises were obliged to provide to potential bidders all the documents essential for formulating a competing privatisation project.

In the Slovak Republic about 700 state-owned enterprises with a total book value of approximately Sk 175 billion were included in the first privatisation wave. Enterprises earmarked for the first wave were obliged to formulate and officially submit base privatisation projects by the end of October 1991. The deadline for competing privatisation plans was set for the end of November 1991. The total number of submitted privatisation projects was 1,500, making the average ratio of competing to base projects 1 to 1.

The first privatisation wave encompassed the first wave of the voucher scheme. The Czech NPF earmarked for the voucher scheme assets worth Kès 206,424,419,000 and the Slovak NPF set aside assets worth Kès 90,111,742,000. In the Czech Republic this was embodied in 943 joint-stock companies while in Slovakia the number was 484. There were 5,942,851 registered voucher holders in the Czech Republic and 2,579,327 in Slovakia. It follows from the above that per each voucher holder there were assets to be privatised with a book value of Kès 34,796.

In Slovakia small-scale privatisation was launched on 14 February 1991 and basically completed by the end of 1992. The total number of businesses sold was 9,676 with a book value of Kès 13,192,000,000. The actual receipts received in the auctions totalled Kès 14,541,000,000.

Laws to Uphold Restitution

- *Act No 403/1990 on Alleviating Some Injustices of Property Disposal*. This Act popularly referred to as the Minor Restitution Act primarily provided for the restitution to small owners and businesses of property that was confiscated in accordance with government decrees and sector ministry regulations in 1955-1959.
- *Act No 87/1991 on Out-of-court Rehabilitation*, popularly known as the Major Restitution Act, dealt with the unjust disposal of property and other similar injustices perpetrated under the legislation enacted in the period between 25 February 1948 and 1 January 1990 contrary to the principles of a democratic society that respect civil rights as expressed by the UN Charter, Universal Declaration of Human Rights and related international pacts on human rights, political, economic, social, and cultural rights.
- *Act No 229/1991 on the Regulation of Land Ownership and the Ownership of Other Agricultural Assets* which was adopted to ensure the restitution of collectivised land and other agricultural assets (cattle, buildings, machines, and equipment).

A principle was endorsed according to which restitution was to prevail over privatisation, which meant that in the first step assets were to be returned to those entitled, making sure that assets to which restitution claims could be made were to privatised. This, too, explained why a clause that clarified how the state had acquired assets to be privatised was essential in privatisation projects.

When it was impossible to physically return assets to entitled individuals, they received financial compensation. If restitution was done under Act No 403/1990, compensation was made in cash; if it was regulated by Act No 87/1991, claims of up to Sk 30,000 were settled in cash, the rest being paid out in the securities of a special fund that accumulated 3 per cent of shares of each joint-stock company that was privatised, either wholly or in part, using the voucher scheme.

In time terms, privatisation proceeded as follows:

- auctions under the small-scale scheme began on 14th February 1991 and the scheme was virtually over at the end of 1992;
- approvals began to be issued by the government and privatisation ministry for large-scale scheme projects in the first quarter of 1992;
- individuals started to register for the first wave of the voucher scheme on 1 February 1991, the scheme beginning on the 14 May 1992 and being completed by the end of 1992.

The pace and the overall approach to privatisation changed considerably in the Slovak Republic after the 1992 elections. Whereas in the Czech Republic the privatisation process was pursued along the same logical lines that had been laid down in Czechoslovakia during 1991-1992, in Slovakia the process was thoroughly revised and, following the dissolution of Czechoslovakia, was evolving quite differently. In September 1992 the Slovak Government approved a new privatisation concept which, to a large extent, was based on disallowing previous developments, with more emphasis being put on standard methods, the voucher scheme being viewed as marginal and more privatisation powers vested with sector ministries. This resulted in a notable slowdown of the entire process, the main reasons being

- a lack of domestic and foreign funding for mass and speedy privatisation using standard methods;
- the fact that a mass privatisation campaign using standard methods would be extremely time- and resources-intensive;
- greater powers of ministries and a lack of incentives for speedy privatisation;
- a lacking political will to pursue speedy, comprehensive and transparent privatisation.

The Large-scale Privatisation Act was amended several times during the autumn of 1992 and in 1993. The amendments were designed to boost the powers of the Privatisation Ministry and, in particular, those of the government vis-à-vis the National Property Fund.

In the spring of 1992 the Èarnogurský Government set the dates by which privatisation projects were to be submitted for the second wave. Base privatisation projects were to be submitted by the end of May 1992 and competing ones were expected by the end of June 1992. The projects were to be reviewed by the relevant sector ministries in July-August and, beginning in September 1992, approved by the Privatisation Ministry and Cabinet (direct sales). After the June 1992 elections, the Meèiar Government cancelled the deadlines and did not set any new dates.

The pace of privatisation only accelerated somewhat in February-March 1994 when the Meèiar Cabinet, apprehensive of the risks of a possible no-confidence vote, began to rapidly approve direct sales

After the Meèiar Government was voted out of office, the Moravèík Cabinet resumed privatisation, largely relying on mechanisms similar to those used before June 1992. The approval procedures for direct sales were simplified and made more transparent and preparation commenced for the second wave of the voucher scheme.

On 1 September 1994 registration began of the general public for the second wave of the voucher scheme. There were 3,428,418 individuals registered in Slovakia, 1.33 times up from the first wave. Out of the total number, there were about 140,000 double registrations.

The outgoing government of J. Moravèík announced that the zero round of bidding would begin on 15 December 1994, however, the new cabinet of V. Meèiar cancelled the date. The total volume of assets offered for the second wave of the voucher scheme was also revised. The government of V. Meèiar announced not only a reduction in the volume of property earmarked for the second wave but also several more systemic changes, proposing that the voucher scheme be used to privatise only minority stakes in companies.

Statements of the V. Meèiar Government officials concerning the property to be offered for the voucher scheme reduced volume from Sk 70 billion in December 1994 to Sk 50 billion

in February 1995 and Sk 40 billion in April 1995 when the Cabinet approved a formal decree spelling out this limit.

The previous government of J. Moravèík set aside for the voucher scheme the assets of 165 joint-stock companies with a value of Sk 51.5 billion. On top of that, the NPF also had assets available represented by Sk 11.7 billion worth of property in 139 companies, totalling Sk 63.2 billion. After taking office, the Meèiar Government removed many joint-stock companies from the package, in particular the shares of enterprises in the energy sector worth Sk 17.3 billion. Having been given a new leadership, the NPF is currently in the process of revising plans of its own initial contribution of shares to the voucher scheme.

A very important systemic change was made on the night of November 3rd to 4th 1994, when the newly elected parliament, spurred by a majority coalition comprising HZDS, SNS and ZRS (Movement for a Democratic Slovakia, Slovak National Party and Slovak Workers' Association) implemented the following changes in substance and systemic changes:

- recalled serving members of the NPF Presidium and Supervisory Board and replacing them with new ones loyal to the above parliamentary majority parties;
- changed the Large-scale Privatisation Act by withholding the decision-making powers from the Privatisation Ministry and vesting them with the National Property Fund;
- cancelled 54 decisions taken by the J. Moravèík Cabinet after 6 September 1994 in matters of direct sales and declared null and void the contracts concluded with a view to these government decisions to sell enterprises, parts thereof and government stakes in such enterprises.

These changes were prompted by the desire to take over the privatisation process without forming a government.

In summary, under the previous governments privatisation was evolving as follows:

J. Èarnogurský Government (April 1991 - June 1992)
Large-scale privatisation was only pursued in the first six months of 1992, when 676 privatisation projects were approved encompassing assets with a total book value of Sk 101.8 billion, out of which there were

- 487 voucher scheme projects
- 181 direct sales
- 8 public tenders

V. Meèiar Government (June 1992 - March 1994)
71 privatisation-related decisions impacting assets worth Sk 21.8 billion, out of which Sk 1.4 billion was earmarked for the voucher scheme.

J. Moravèík Government (March 1994 - December 1994)
250 privatisation decisions issued impacting assets worth Sk 130 billion, out of which Sk 63.2 billion earmarked for the voucher scheme (Sk 51.5 billion offered by the Privatisation Ministry and Sk 11.7 billion by the NPF).

Concerning the above numbers, it should be added that assets worth Sk 21.8 billion under the Meèiar Government versus Sk 130 billion under the Moravèík Government did not mean that the property of that value was indeed privatised. The discrepancies were accounted for by the following:

- the values also encompassed "temporary" and long-term stakes of the NPF;
- 54 privatisation decisions of the Moravèík Government were cancelled by the Meèiar Government;
- the Meèiar Government has been consistently decreasing the value of property to be offered for the second wave of the voucher scheme, bringing it down to some Sk 34-40 billion.

Following are estimates of the total property held in public hands. In 1991 Slovakia had privatiseable assets worth Kès 385 billion. Property worth some Sk 14 billion was privatised in the small-scale scheme. The first wave of the voucher scheme transformed assets worth Sk 90.1 billion and Sk 38 billion worth of property was sold using standard methods (Sk 12 billion by the Èarnogurský Government, Sk 11 billion by the Meèiar Government, Sk 15 billion by the Moravèík Government). It follows from the above that at 1 January 1995 property worth about Sk 142.1 billion had been privatised, i.e. approximately 36.9 per cent of total privatiseable assets. To what extent the pace of privatisation in Slovakia slowed down is best demonstrated by the fact that in the Czech Republic by the end of 1994 privatised assets accounted for about 80 per cent of all privatiseable property. This should be considered in light of the fact that in 1991-1992 the pace of privatisation in the Czech and Slovak Republics was roughly the same.

II. GENERAL CAUSES OF CORRUPTION IN THE PRIVATISATION PROCESS OF POST-COMMUNIST COUNTRIES

In order to understand what the risks of corruption in post-communist countries consist of and where they come from, one should first take a look at how communist economies and entire societies were functioning. Privatisation of communist economies and the overall transition of post-communist societies is challenging and unprecedented just because in the process it is necessary to deal with the substance and cultural heritage of a corrupt and perfidious communist society. Privatisation in post-communist countries is unprecedented not only because this is a process of changing ownership on a scale and at a rate unheard of before but also because the process is evolving in a social space that is substantially distorted, both economically and spiritually, morally and ethically. This is all the more so since privatisation is obviously a very delicate process, with personal and group-related economic, political and social interests being locked in such extensive and intensive conflicts as in no other area.

Although the present study is primarily focused on the economic aspect of corruption with the objective to propose such techniques and procedures that would minimise this undesirable phenomenon, in analysing corruption one should not fail to mention all the important factors that influence it.

1. Social and psychological preconditions for spreading corruption

This group of preconditions would certainly deserve a special analysis. However, in this study we will only point out some basic implications. The social and psychological preconditions for spreading corruption are meant to signify the broad predisposition for not abiding by the rules of the game and seeking gains at any cost, i.e. by violating not only the codified law and regulations but also the unwritten rules of elementary ethics and morality. This predisposition of a substantial segment of the public to breaching the rules of the game is accounted for by the many peculiar characteristics of having lived for decades in a hypocritical society in which proclaimed values and rules of the game were frequently at loggerheads with the real values and rules. In other words, decades of living in a society based on lies, egalitarianism, intimidation, fraud, and theft cannot but influence the spiritual health of the general public, its role models and behaviour patterns. Given a sufficiently lengthy period, the very operation of a deficiency-plagued economy and the fact that the real differentiation of living standards was more dependent on being prepared and willing to violate the written and unwritten rules of ethical and moral behaviour rather than on the genuine differentiation due to performance may be so damaging to human conscience that redressing the damage could take generations.

Let us give an example which clearly illustrates what we locally dab as a massive predisposition to breaching the rules of the game. A visiting professor from the United States who, after two decades of professorship at American universities, came to teach in Slovakia, reported that for him the most shocking experience in Slovakia was the massive incidence of student cheating. He said in effect that during his long-term career in the US he had experienced about 6 attempts at cheating during exams, whereas in Slovakia he had encountered dozens of such attempts in just a few months.

When referring to the rules of the game and their violation, we should perhaps add that what we have in mind is the rules of the game derived from the values of western civilisation and Christian morality. This should be seen with a view to the fact that in communist society special rules of the game are formulated and, within the framework of such rules, entities behave rationally and logically. The implied rules do not have to be official. The most typical rules included conformity to the official communist powers that be as well as receiving daily gains from minor theft pilfering common state-owned assets. It was for this reason that the expression *"islands of positive deviation"* was introduced to describe individuals and communities that managed, even in conditions of "real socialism" and its rules of the game, to behave in accordance with civilised western and Christian rules of the game.

All these considerations are primarily presented here because they may explain the main reasons for some of the undesirable phenomena associated with privatisation corruption. These reasons account not only for a high rate of corruption but also for the virtual non-existence of real pressures of public opinion against the real and dangerous corruption within the privatisation process and its vehicles. These reasons also explain the fact that it is relatively easy to channel discontent with privatisation corruption in a false direction, i.e. against privatisation per se, private ownership and private entrepreneurs, against the need for radical economic reform and its advocates, against anyone who is more capable and shows more initiative.

2. The scope of state ownership and its characteristics

Post-communist countries are in a situation where state-ownership prevails. In this respect, however, there are certain differences between them. Table 1 provides some specific data on the share of state ownership in post-communist countries in comparison with some developed economies.

Table 1

COUNTRY	**YEAR**	**SHARE OF STATE OWNERSHIP**
Bulgaria	1970	99.7
Cuba	1988	95.9
Czechoslovakia	1988	99.3
East Germany	1988	96.4
Hungary	1988	92.9
Poland	1988	81.2
Rumania	1980	95.5
Austria	1979	14.5
France	1982	16.5
UK	1978	11.1
USA	1983	1.3
West Germany	1982	10.7

Source: KORNAJ, J.: THE SOCIALIST SYSTEM, Clarendon Press, Oxford 1992

It follows from the table data that it was the economy of Czechoslovakia, and of Slovakia within it, that ranked top among those with the smallest share of private ownership. One can even say that there was no private ownership at all in the economic sense of the word, i.e.

private ownership of goods that would be used for business purposes. This led to the fact that the need to rapidly privatise the Czechoslovak economy was even more pressing than in other post-communist countries, this being not only due to the total prevalence of state ownership, but also because political and economic change occurred later than in Hungary and Poland. In conditions of new business activities and an emerging business sector after the collapse of communism, the enormous scope of state ownership alone presents a major corruption risk. The reason is that a huge volume of assets exists lacking concrete owners, business-oriented supervisors or managers controlled by real owners or their proxies. It was the absence of real and genuine owners and their proprietary interest that was one of the major causes of the economic decline of communism. After the collapse of communism this absence again became a major cause of corruption associated with privatisation.

This situation was aggravated by the prevailing attitudes to state ownership which in the communist economies was from the very beginning as "belonging to no one" or "belonging to everyone", therefore, partaking of it in whatever measure or form was not regarded by the public in general as something particularly reprehensible.

It is the measure and scope of state ownership and the need for its rapid privatisation that call for non-standard procedures and at the same time bring along, together with the other factors referred to in this paper, the high risks of corruption.

3. Absence of required legislation

Post-communist countries are launching economic transition and privatisation in a legislative framework inherited from a communist economy. One should not forget that the framework was tailor-made to suit an economy that imposed a total ban on private business and precluded private ownership of any manufacturing goods. At the same time, the idea that first the legal system should be thoroughly overhauled and only then be followed by economic transition and privatisation is entirely illusory. This was absolutely impossible for the very reason that one of the human rights and freedoms that it was necessary to uphold after the fall of communism was the right to do business and own property. After all, the experiences of countries like China and Vietnam suggest that economic liberalisation coupled to a continuing communist political system cannot prevent the spread of corruption either. This combination rather seems to offer even more opportunities for such corruption. What is possible and necessary is to launch the transition and privatisation process and adjust it to new legislation as it is formulated. The laws and regulations that were most wanting when reform and privatisation were launched included those on the procurement of investments, goods and services (making it obligatory for state-owned enterprises and institutions to make procurements using tender procedures), regulations to prevent the conflict of interests, taxation regulations, laws and measures to prevent money laundering. One of the most important legislative deficiencies was the fact that a system of filing tax returns, which allowed for monitoring the property and incomes of individuals, was only implemented some time after the transition and privatisation had been launched.

4. Property-related differentiation and business experiences

Immediately after the fall of communism, all post-communist countries typically have substantially equalised incomes and a property status with virtually no classes that have accu-

mulated enough capital to start their own businesses or privatise by tapping own funds only. General egalitarianism notwithstanding, there is some differentiation, the better-off classes having to a large extent emerged as a result of their activities within the black, or grey, economy. With a degree of excessive generalisation one may also say that the individuals who were active in those areas find it easier to respond quickly to privatisation opportunities for two main reasons: they have more funding required for business and privatisation and have more specific experiences of doing business under communism. The individuals referred to used to be primarily active in the following areas:

- public catering, tourism and trade, especially those trading activities that, given the specific nature of deficiency-plagued economics, allowed relatively high unofficial incomes;
- foreign trade and diplomatic service;
- political and economic nomenclatura;
- persons officially in business (holders of licences issued by municipalities), such as for commercial growing of flowers, vegetables and fruit;
- black market operators taking advantage of distorted economics, the most distinctive and numerous group being comprised of illegal currency traders.

The above list is certainly incomplete and not homogeneous. By no means should one generalise and apply the same yardstick to all those categories. Nevertheless, it follows from the above list individuals and groups who, immediately after the fall of communism, were in a better position, in terms of their property and experiences, to do business in a post-communist environment that the rate of violation of, or non-compliance with, the rules of the game will be higher among these groups than in the general post-communist public on average. This fact should also be taken into consideration.

5. Specifically Slovak frustration

After the fall of communism and start of economic transition, all post-communist economies experienced an economic decline associated with a social decline, a decrease in the purchasing power and living standards of most people. For a substantial segment of the public the process was also associated with rising unemployment and greater insecurity. This very fact resulted in substantial frustration, apparently also due to the fact that it was unfortunate and not far-sighted to promise, after the collapse of communism, immediate growth and improvement of the general situation. The problem is aggravated by the fact that a large segment of the population joined in the anti-communist revolutions of the late 1980s not because they rejected the ideological and moral foundations of communism but rather in anticipation of the economic prosperity of non-communist (capitalist) countries.

At the same time society is rapidly becoming differentiated in terms of ownership and economic status, this being frequently a result not only of differences in performance, creativity and invention but also varying degrees of willingness and preparedness to use illegitimate or at least unethical and immoral practices. One should also keep in mind the fact that the differentiation of property and economic status is occurring in a society accustomed to egalitarianism, in which a considerable segment of the public views property-related differentiation as a social injustice and a result of illegal, or at least unethical and immoral, practices. Such perception of the transition, privatisation and private business is aggravated by a number of factors, in particular by failure to prosecute the obvious and well-known corruption cases as well as by spreading mistrust of the private sector, private business and entrepre-

neurs by some opinion-forming entities, especially some mass media as well as left-wing and populist intellectuals and politicians.

Slovak reality prominently features the latter two causes of growing social frustration. Sociological surveys of the post-November 1989 developments in Czechoslovakia revealed cardinal differences between the Czech and Slovak public in their assessment of private ownership, private business and privatisation. Slovak respondents proved to be by far more critical of these phenomena than their Czech counterparts. We believe that this was primarily due to the dramatically more critical stances to these phenomena of the opinion-forming entities in Slovakia as well as by the overall historic, cultural, social, and economic differences between the Czech and Slovak populations and by the differences in reality.

Contributing to the growing frustration of a substantial segment of the public is the failure to prosecute evident and well-known privatisation irregularities. In Slovakia 1994 was really exemplary in this respect. Early in 1994, namely in February and March, the HZDS and SNS-lead government made a number of privatisation decisions ensuring unfairly preferential treatment of individuals politically affiliated with, and related in family terms to, top officials of the two parties. Shortly afterwards, the Cabinet was voted out of office, although not because of the above privatisation activities. A new government came to office, promising to investigate the notorious cases and bring them to justice. Broad publicity was given to several instances of "wild privatisation", stating specific names and facts. Despite this and except the termination of some (but not all) problematic privatisation decisions, nothing else happened. An not only that. The apparently incomprehensible result was that the political popularity of HZDS and its leaders was not declining but growing at a time when specific instances of wild privatisation were brought to light.

This behaviour by political leaders and parties as well as recurring violations by the governments (not only by those of V. Meèiar but especially by his cabinets) of laws and even the constitution is highly dangerous for society. The danger consists in the fact that it encourages the public not to abide by the laws and rules of the game and to behave according to the adage "if they can afford this, why can’t I also do the same?"

Social frustration may also be aggravated by the well justified unhappiness because notorious privatisation irregularities that are frequently described in detail by the press fail to result in punishment under criminal law or, at least, have no political repercussions. Here, however, one should carefully distinguish between genuine privatisation irregularities and whipping up "scandal-mongering hysteria" which is in fact the political game of those parties and affiliated quarters that unscrupulously fabricate scandals or least try to blow them out of all proportion. A discerning approach is naturally very challenging and calls for a serious and professional approach, especially by journalists. A detailed analysis from this standpoint of the privatisation process in Slovakia would show that, especially in the early stages, many mass media and journalists unduly doubted the purity of the privatisation process. This was not only because of ignorance of the real mechanisms that were used to select new owners, but also explained by the wide-spread predisposition of most media and journalists to HZDS that was then in opposition and to the HZDS chairman. The view already prevailing at the time, although not supported by any concrete evidence, was that privatisation was little else but a pile of filth and corruption.

It can be assumed that the social frustration that emerged and evolved based on the above facts creates a nutritious medium for a general spread of corruption in society and, within this, for the spread of corruption related to privatisation.

III. MOST COMMON TYPES OF CORRUPTION IN PRIVATISATION

In evaluating corruption related to the privatisation process, one should first describe what is understood by corruption.

For the purposes of this study, we shall define "corruption" in a broader sense, i.e. not only as providing directly preferential treatment to some bidders in privatisation for a financial or other consideration but also as any action, be it conscious or unconscious, that is

- contrary to the law;
- contrary to the standard ethic and moral criteria of western civilisation, Christian morality and ethics;
- contrary to the criteria of equal opportunities and equal bidding position.

As the privatisation process is associated with the transfer of huge property to private hands and since it evolves during a relatively and historically uniquely short period and is linked to that historic predisposition that was referred to in Section II, it is obvious that the higher-than-usual risks of corruption are there. Although it is apparent that these risks cannot be entirely eliminated, it is important, as a matter of principal, that society as a whole and, in particular, the executive, legislative and judicial branches of government should, together with the media, establish and promote a privatisation system that would at least relatively minimise the high risks of corruption.

In the following sections a description will be provided of the most common corruption risks as they relate to different privatisation forms and methods.

III.1 Small-scale Privatisation

As it was pointed out previously, small-scale privatisation was all about the sale of assets without liabilities using a single method, namely public auctions. The name of the method suggests that the only criterion that could be used and was used in it was the price, the choice of the winning bidder being used by means of one of the most transparent methods, i.e. public auction. Despite this, public auctions were accompanied by events that indicated the presence of corruption as consistent with the above definition of corruption. The most common instances included:

- covert or overt blackmail of potential bidders designed to prevent them from participating in an auction of from increasing their bids;
- extorting from serious investors a non-participation fee by speculators who promised to refrain from bidding and/or increasing prices in exchange for a consideration;
- organising "Dutch auctions" with serious potential investors intimidated by threats;
- purchasing businesses in an auction with the intention of defaulting on the obligation to pay the price by a certain date and of utilising the business before the outcome of the auction is declared null and void;
- forging documentation allegedly confirming that an auctioned operation was previously leased to one of the bidders with the aim of using the pre-emptive right to purchase;
- participation of foreign natural persons and legal entities in the first rounds of auctions through front-end domestic natural persons and legal entities.

Most such activities were clearly illegal and were (could have been) suppressed by security and law-enforcement forces. The government, parliament and ministries were taking meas-

ures designed to minimise the impact of such negative phenomena. The Small-scale Privatisation Act was amended to increase auction security deposits serving as collateral, arrangements were made to ensure the anonymity of potential bidders before auctions, procedural guidelines were updated for auctions etc.

Behaviour patterns that were contrary to ethics and morality and requirements for equal bidding opportunities also included the attempts by some enterprises to get rid of non-selling inventories by moving them to operations put up for auctions as well as the unwillingness of some winning bidders to make payments towards purchased inventories. Another common trick was the effort by the managers of some enterprises to make sure that operations that reported to them and were earmarked for small-scale privatisation were not included in the auctions. The idea was to keep the operations till large-scale privatisation was launched where, it was hoped, they would stand a better chance of acquiring the businesses for themselves.

In principle, it may be concluded that, despite some of the above problems and deficiencies, the system used in the former Czechoslovakia to carry out small-scale privatisation was reasonably successful in minimising subjectivism and corruption as far as possible.

III.2 Large-scale Privatisation

In the course of large-scale privatisation, hundreds of former state-owned enterprises worth dozens of millions crowns were transferred and sold. Opportunity for corruption primarily depends on privatisation methods as well as (non)availability of clear, transparent, verifiable and verified rules of the game.

With a view to these criteria, we may take a discerning look at privatisation pursued by means of non-standard and standard methods.

III.2.1 Voucher scheme

Being a non-standard method, the voucher scheme was primarily chosen because it is fast and not capital-intensive since post-communist countries are known to suffer from a lack of investment funds. The voucher scheme is based on distributing shares among the public for a symbolic price, the number of shares actually received depending on the relationship between the demand for and supply of shares.

It can be said that, although minimising privatisation risks was not the main purpose of using the voucher scheme, it transpired from its practical application that, compared to the other standard methods, the scheme significantly reduced the space and opportunity for privatisation corruption. This applies not only to direct sales where the risks are the most obvious but also to short-listed tenders, public tenders and even public auctions.

The point is that the voucher scheme offers most respect for the principle of equal conditions and opportunities and minimises room for subjectivism. Every bidder has the same one thousand points and is free to use them bidding for any of the joint-stock companies privatised using this scheme. As no one knows in advance what the demand will be for the shares of a company nor their future market value, there is no way of assuring oneself a privileged

or otherwise preferable position. The rules of the game are known from the very beginning, being the same for everyone and precluding within the voucher scheme any preferential treatment or manipulations.

This notwithstanding, the voucher scheme may also be associated with corruption and inappropriate behaviour. This, however, is not related to the voucher scheme proper but rather to the ensuing processes, primarily to assets management. We are not referring here to the problem of liabilities assumed by the founders and managers of investment privatisation funds vis-à-vis investment voucher holders. These relationships are invariably voluntary, with individuals entering into them without coercion. Such relationships are nearly always contractually based. If a party is in breach of contract or if a contract is contrary to applicable law, a set of corrective mechanisms and institutions may be evoked to bring back the rule of law. If this system proves to be inefficient or inflexible, this is a deficiency of the system and not of privatisation in general and the voucher scheme in particular.

The major risk pertaining to the voucher scheme consists in the special relationship between the manager of a privatisation fund, on the one hand, and the privatisation fund and its shareholders, on the other hand. The risk may be that particular management may reduce the value of the fund by ensuring gains for the management company at the expense of the privatisation fund and, thus, at the expense of its shareholders. This risk should be eliminated by high-quality legislation, enforcement by the Finance Ministry of its supervisory role and, primarily, by an early exercise by shareholders of their ownership rights immediately upon completion of the voucher scheme.

To illustrate the possibility of corruption associated with the voucher scheme, let us look at the example of what was after the first privatisation wave Slovakia's second largest investment privatisation fund. The fund in question, *Prvá slovenská investièná privatizaèná spoloènos Banská Bystrica (PSIPS)*, gained vouchers from 190 thousand DIKs (voucher holders), largely pensioners, by committing itself to purchase, within a year, the shares the DIKs would acquire and pay each of them Sk 20,000. The very commitment (which was the largest on offer by all investment funds) would have been unrealisable should all eligible DIKs request that PSIPS honour its pledge. This mere fact should have prompted the Finance Ministry to exercise greater caution supervising the activities of the fund and its manager. This, however, did not materialise and it was not until an enquiry was launched by the Finance Ministry on June 11-15, 1994 that the ministry suspended PSIPS from managing its assets and appointed an administrator. Audits revealed that in 1993 the fund's founder had unjustifiably issued an Sk 125 million bill for managing the fund in 1992 and charges were incorrectly made to cover 1992 management costs. Another irregularity was that the fund was forced to make payments towards its founder's liabilities vis-à-vis third parties.

With respect to this case and similar instances, one should realise that the risk of inappropriate financial transactions, be it with assets or finances, benefiting funds' founders and managers at the expense of the funds' property is the highest in the transition period between the accumulation of shares by a fund and the establishment by shareholders of the fund's corporate bodies. It is during this period that greater caution should be exercised by a supervisory authority monitoring activities of the funds and investment companies. The PSIPS Banská Bystrica case is not only an instance of irresponsible behaviour by the founders and managers of one of the biggest funds but also an exemplary illustration of inadequate supervision of a fund that, given its sheer size and the amount of DIKs attracted by obviously unrealistic commitments, should from the very beginning have been in the focus of attention at the Fi-

nance Ministry. It is amazing that, following the unjustified billing of Sk 120 million, the fund and its managers were allowed to operate in peace for another year and a half before the Finance Ministry really intervened. As a result, financial and property-related pilfering have lowered the fund's share value and thus the value of shares held by DIKs.

III.2.2 Standard privatisation methods

The standard privatisation methods used in Czechoslovakia and Slovakia include

- public auction
- public tender
- direct sale.

III.2.2.1 Public auction and public tender

The risks of corruption pertaining to public auctions were referred to in the section about small-scale privatisation. It is true that the method is one of the most transparent, but it is also true that it cannot be applied to sell large enterprises and, especially, majority stakes in them since criteria other than price need to be taken into consideration.

Another reason why the public auction method can be applied to large-scale privatisation only on a limited basis is the difficulty of calculating accurately the value liabilities (and thus the asking price) will have on the auction date as well as the possible complication of the buyer defaulting on the settlement of the price achieved in an auction. Should this happen, the transfer of ownership to the highest bidder would be declared, in line with the applicable law, null and void and ownership would be vested with the NPF, giving rise to management problems before privatisation. For these reasons, the public auction method proved to be successful for large-scale privatisation only when the major items to be sold were tangible assets, with other assets being complementary or when a portion of a business is sold while the state-owned parent enterprise is still in existence.

The risks of corruption pertaining to public tenders can only be eliminated when all the standard attributes of such tenders are in place, such as making public the sale offer, clear bidding criteria, sealed bids precluding any leakage of information about competing bids, an independent and non-partisan board to select the best bid. Experiences of public tenders suggest that these criteria are not always scrupulously adhered to, resulting not only in corruption risks and undue influences but also generating doubts about such tenders and leading to their revision and cancellation.

Direct sales offer the greatest space for possible corruption and subjective influences. Therefore, more attention needs to be given to this privatisation method.

III.2.2.2 Direct sales

A direct sale is a form of selling property or commercial stakes of a former state-owned enterprise that is not carried out in the form of a public auction or tender but rather on the basis of an approved privatisation project that envisages the sale to a predetermined investor. Act No 92/1991 on the Terms and Conditions of Transferring State Property to Third Parties (popularly nicknamed the Large Privatisation Act) stipulated that in such cases privatisation projects are to be endorsed by the cabinet, whereas approval of the Privatisation Ministry is

deemed sufficient with respect to the other methods. After the Large Privatisation Act was amended by Act No 60/1991, terminology was modified in the sense that privatisation was to proceed not on the basis of a privatisation project but rather of a privatisation decision.

Despite the fact that this privatisation method is called "direct sale to a predetermined owner", suggesting a lack of competitiveness and, hence, of transparency, this method, too, may be pursued in a variety of ways. Let us describe in some detail how different Slovak governments were using the method in 1991-1994.

III.2.2.2.1 Direct sales under the J. Èarnogurský Government (April 1991 - June 1992)

During its term in office, this government categorised all privatiseable enterprises into two groups, i.e. for the first and second wave. The deadline for submitting first-wave privatisation projects was the end of October 1991 and competing projects could be filed till the end of November 1991. A principle was adopted according to which it was recommended to draw up a voucher privatisation project if there was not realistic investor willing to privatise by standard methods. In the first wave about 700 state-owned enterprises were earmarked for privatisation (more accurate statistics are unavailable because some of the enterprises were moved from one wave to another, especially from the first wave to the second one). Verifying the number of privatised enterprises may sometimes be problematic because the number of privatised businesses at the output could be, and often was, greater than the number of input units. This was simply due to the fact that a former state-owned enterprise could be split up and privatised in parts.

In the first 6 months of 1991 the Government approved 181 privatisation projects envisaging direct sale. A mechanism was available that allowed for this method to be transformed into a simplified public tender.

The principle of free entry was guaranteed by providing any domestic or foreign entity with the opportunity to submit, by a publicly known date common to all bidders, a direct sale privatisation project. (Most commonly such projects were drawn up by prospective bidders themselves, occasionally they were filed by a third party acting on behalf of another legal entity or natural person.) A list was published in advance of all enterprises for which privatisation projects could be submitted.

The second important principle was that of uniform and transparent criteria. In early 1992 the Privatisation Ministry approved a set of methodological guidelines entitled "*The Rules of Procedure Regarding the Choice of Counterparts in Large-scale Privatisation*". The Guidelines were published in the Ministry’s Bulletin No 1/1992 and listed criteria to be used in evaluating competing privatisation projects. There were 11 such criteria, price being the most important and followed by obligations pertaining to employment, apprenticeship programs, environmental liabilities, feasibility and proof of financial capabilities and some others.

The third principle consisted in the adoption of privatisation protocols in which the involved officials confirmed by their signatures that the review and selection process had been performed in line with the above binding criteria. The supervisors of these officials (heads of departments, deputy ministers and the minister himself) were also required to sign the protocols, confirming that they had verified criteria and thus assuming responsibility for the

choices made by their subordinates. The system made it possible to review privatisation decisions *ex post,* making sure they were taken in line with the approved criteria.

Principle number four consisted in the obligation to determine and calculate a market value. In September 1991 the Justice Ministry approved "*Expert Standards for Valuating and Assessing Enterprises for the Purpose of Transferring State Property to Third Parties in Accordance with Act No 92/1991 on Large-scale Privatisation*". A list was made public of companies approved to act as appraisers of enterprises to be privatised. Each potential bidder was required to submit, along with the proposed bidding price, an approved assessment of the market price. Admittedly, those were merely quasi-market prices, however, this requirement prevented the sale of enterprises or assets at prices far below their market value. Assessed market values and proposed bids were only seldom lower than their book values. The principle of mandatory market valuation may be disputable, especially given the fact that valuation was commissioned and paid for by potential investors. One can assume that on many occasions there may have been an *ex ante* arrangement between the investor and valuator concerning the "desirable" market value. However, this was a requirement primarily designed to prevent systematic underbidding. In the Czech Republic there was no requirement for a mandatory "market valuation" and the best bid was deemed to reflect the market price. Even if there was only one bidder, the offered price was deemed to be a market one since the assumption was that the offer was open to the public in general (anyone could have submitted a bid), therefore, the only price proposed should be regarded as determined by the market. In the Slovak Republic, too, the best bid made according to the above criteria was thought to reflect the market price, however, the bid had to be compared or juxtaposed with an assessed "market price".

Problems emerged during the first wave when some managers of companies to be privatised refused to honour the obligation arising from the Privatisation Act to disclose data required by potential investors who intended to draw up competing privatisation projects. This put potential external investors at a disadvantage and gave an unfair advantage to inside management. It came as no surprise that in most instances such behaviour was characteristic for those management teams who themselves were keen on privatising and were proposing the direct sale method in their privatisation projects, either base or competing ones. Out of approximately 700 enterprises earmarked for the first wave, in December 1991 the Privatisation Ministry had 64 enterprises for which only a base project had been submitted envisaging direct sale of enterprises to their respective management. In view of these problems, a decision was taken to renew a public call for the privatisation of the 64 enterprises and offer potential investors another 2 months to submit competing privatisation projects. Arrangements were also made to thwart attempts to withhold information required to draft competing privatisation projects. This limited the efforts by some management groups to inappropriately gain an advantageous position in privatisation.

In the spring of 1992 the Government endorsed dates for submitting base and competing projects targeting enterprises that were allocated to the second wave of privatisation. It was decided that base projects would have to be submitted by 31 May 1992 and the deadline for submitting competing projects was set on 30 June 1992. In June and July 1992 the projects were to be reviewed by founding ministries and in September 1992 the approval process was to start encompassing enterprises earmarked for the second privatisation wave.

After June 1992 the Privatisation Ministry still had 181 privatisation projects outstanding after the first wave, out of which number 131 were to be implemented by standard methods

(mostly direct sales). These were largely one that could not be approved because of deficiencies and incompleteness of privatisation projects, mostly due to deficiencies clarifying the mode by which the state had initially acquired assets to be privatised.

III.2.2.2.2 Direct sales under the V. Meèiar Government (June 1992 - March 1994)

After the June 1992 parliamentary elections, there was a change in government in the Slovak Republic and, as a result, a change in the privatisation concept. A new concept was adopted in September 1992 and, unlike the previous one, it emphasised different priorities:

- the voucher scheme was viewed as marginal, with privatisation relying largely on standard methods;
- more powers were vested with sector/founding ministries, the form and procedures of privatisation were to be largely derived from the concepts offered by sector ministries;
- within standard methods, stated policy was to primarily rely on competitive forms, such as auctions and tenders, thus increasing transparency;
- the Government stated its preparedness to privatise preferentially for the benefit of successful management teams;
- the Government stated its intention to restructure enterprises prior to privatisation;
- it was emphasised that, unlike the previous administration, the Government was less concerned about the pace of privatisation.

It was also made known that the weight of proposed price in privatisation projects would be reduced and more weight would be added to investment and employment commitments. Softer instalment conditions were also offered. The first payment was reduced from 30 per cent of the contract price to 10-15 per cent, with subsequent payments spread over 10 years instead of the initial 5. It was also announced that dubious assets could be dealt with using equity. Binding uniform deadlines for submitting base and competing privatisation projects were also lifted.

Critical observers pointed out that the new concept would inevitably and certainly result in a dramatic slowdown of privatisation, which was exactly what actually happened. The period spanning June 1992 and March 1994 was typical for stagnant privatisation, except for the expeditious phase of "wild privatisation" in February and March 1994.

After June 1992 direct sales were primarily affected by the termination of existing procedures and virtual failure to apply the rules of the game that had been used before (*Rules of Procedure for the Choice of* ...) as well as by the introduction of the institute of privatisation "impulses". This institute meant that anyone with an interest in privatising an as yet non-privatised enterprise was free to submit to the Privatisation Ministry, prior to the final approval by the Ministry of privatisation projects, what was called privatisation impulses. The pace of privatisation became markedly slower, the Ministry being overwhelmed by base privatisation projects, competing projects and impulses. The institute of working groups was set up, pooling officials from Privatisation Ministry sections, founding ministries, the Anti-monopoly Office, and other agencies as required. The job of working groups was to compare and select privatisation projects and make proposals to the Government regarding direct sales. The problem of the period was that in the second half of 1993 and the first few weeks of 1994 (before 15 March 1994) there were ever more instances of direct sale projects being approved without a previous review by a working group. This was done according to instructions issued directly by the then State Secretary (First Deputy Minister) of Privatisa-

tion I. Lexa (he was running the Ministry at the time, although technically the post of minister was filled by Premier V. Meèiar). Proposals for direct sale were submitted to the Government and approved by the Cabinet for those investors who were personally picked by the State Secretary. This privatisation method nicknamed "wild privatisation" reached a peak in February and March 1994. During that period most proposals for the direct sale of lucrative enterprises were not subjected to any selection procedures nor reviewed by working groups. In a vast majority of cases these enterprises were privatised by their management teams under conditions that were very favourable for the new owners.

A fitting example of a direct sale not preceded by an appropriate selection procedure and executed in a fashion abundant in all the trappings of corruption was the enterprise called *SVIKON* in the town of Svidník. At the end of 1993 the enterprise was sold to a company that, out of four bidders, offered the lowest price. Journalists found out that one of the partners in the firm that had bought the enterprise was the father of State Secretary Ivan Lexa. These facts were publicised, an official enquiry was demanded of the speaker of parliament but all this was to no avail as far as substance of the matter was concerned.

Early in 1994 the HZDS-SNS government lost their majority in parliament and their was a real threat that the coalition would be voted out of office. Therefore it came as no surprise that before the February and March sessions of parliament the Cabinet was meeting till late at night to approve unheard of numbers of direct sales many of which had not been selected by the Privatisation Ministry's working groups. In the period of 15 February to 14 March 1995 the Government endorsed a total of 44 privatisation projects. On 11 March 1994 the Meèiar Government received a no-confidence vote, however, on 14 March 1994 the Cabinet was still approving privatisation projects.

After the new government of J. Moravèík took office, the 44 privatisation projects endorsed in the period of 15 February to 14 March 1995 were reviewed by a commission of lawyers from the Privatisation Ministry. The commission concluded that in 12 instances law had been violated and on one occasion an investor withdrew his offer to buy an enterprise. As a result, on 29 March 1994 the Moravèík Government cancelled 13 privatisation decisions of the Meèiar Government.

In the meantime, i.e. between 2 March and 25 April 1994, the disputable decisions were scrutinised by members of the parliamentary committee for privatisation. The committee found numerous violations of laws, guidelines and concepts formulated by the Privatisation Ministry and Government and a variety of instances where preferential treatment had been accorded to some investors in the privatisation process. For the sake of brevity, let us only quote from the first section of the resolution passed by the parliamentary committee concerning the matter at issue:

With a view to the above facts, the Parliamentary Committee for privatisation

A. states that

a) in taking decisions concerning direct sales, the Government failed to abide by the procedures spelled out in Act No 92/1991 and Act No 253/1991, as amended by subsequent regulations, in the following instances: ŽOS Trnava, ŽOS Vrútky, SAD Považská Bystrica, Vydavate¾stvo Tatran, ZPA Prešov, Tesla Stropkov, Mäsový priemysel Humenné, Poligrafické závody Trnava, Víno Košice, Slovenské lieèebné kúpele Pieš any, Keramické závody Košice, Hubert Sereï;

b) in requesting that changes be made in privatisation projects, the National Property Fund failed to abide by the procedures spelled out in Act No 92/1991 and Act No 253/1991, as amended by subsequent regulations, in the following instances: Mlyn Pohronský Ruskov, Dumas Dunaská Streda, LD Crystal Lednické Rovne;

c) in their decisions, the Government unjustifiably accorded preferential treatment to some buyers (Hubert Sereï, Mlyn Pohronský Ruskov, Dumas Dunajská Streda, ZPA Prešov, SLK Pieš any);

d) in approving the purchase price and conditions of selling state property or property stakes, the Government accorded unreasonable preferential treatment to some buyers (Matador Púchov, VSŽ Košice, ZPA Prešov, Keramické závody Košice, Slovakofarma Hlohovec);

e) the outcome of the audit confirms that the Government's Decree No 283 dated 29 March 1994 was well justified in cancelling some decrees of the previou governments in matters of privatisation projects.

As an illustration, let us look at the conditions under which the direct sale was approved to factory management of 67 per cent of shares in *Skloobal Nemšová, a.s.*. The reason we refer to this example is that it was not mentioned among the above enterprises where the parliamentary committee had found proof of law being violated.

Despite the fact that the enterprise was profit-making, its shares were sold to management for one quarter of the book value-based price. Instalments were to be made over a period of 10 years and, although investment obligations were identified, these obligations were not reflected in the purchase price, i.e. there was no clause that would require an equivalent increase in the purchase price should the buyers default on their investment commitments. The first payment was set at Sk 27 million, although the book value of the enterprise was Sk 726 million, the real estate it owned was worth over Sk 300 million and its financial assets totalled Sk 67 million.

In three instances (*Kovohuty Krompachy, Slovakofarma Hlohovec, and Skloobal Nemšová*) M. Janièina, privatisation minister in the J. Moravèík Government, filed a formal protest with the General Prosecutor's Office quoting a suspected criminal offence concerning unjustified preferential treatment accorded to privatising companies, failure to consider the interest of alternative investors and deciding in favour of a bid that was obviously less attractive. In an interview with the *SME* newspaper published on 4 February 1995, J. Ivor, Director of the Investigations Office, said with regard to the filed complaints: "*Given the fact that enquiry into the privatisation projects is not yet over, one cannot say whether anyone specific will be prosecuted. At present one can only say that the enquiry has demonstrated certain deficiencies. However, the nature of these is still being scrutinised.*"

For illustration, let us look at some specific facts concerning the case of an enterprise for which Milan Janièina, privatisation minister in the Moravèík Government, filed a formal protest with the General Prosecutor's Office and Investigations Office of the Slovak Police Force. The case in question concerned the privatisation of *Kovohuty Krompachy, a.s.* Among other things, the case is interesting in that information about by far more lucrative bids of foreign investors (US and German) was suppressed to secure the purchase of shares by domestic investors evidently linked to a top official of the National Property Fund.

In its decree dated 11 March 1994, the Meèiar Government approved a project according to which the property of the state-owned enterprise *Kovohuty Krompachy š.p.* was to be invested into the joint-stock company *Kovohuty Krompachy a.s.* with the subsequent sale of 51 per cent of the shares in *Kovohuty Krompachy a.s.* to *COPPER Krompachy* for Sk 153 million.

The decision was preceded by the following events. In the base privatisation project dated May 1992, the plan was to sell the state-owned enterprise to a predetermined foreign investor, namely to HUSSEY COPPER Ltd., Pittsburgh. This was followed by a period during which the overall privatisation process ground to a standstill (for details, see above). In a letter dated 23 February 1994, the US company informed State Secretary I. Lexa of the Privatisation Ministry that it was still interested in privatising the enterprise and offered to pay US$ 300 million within 5 years in annual installments of US$ 50 million and pledging to invest Sk 817 million in six years. The letter was received by the State Secretary on 7 March 1994.

In the meantime, the firm *CONSULTA, s.r.o.*, contracted by the NPF to attract foreign investors had found another potential buyer, namely the firm ETF from Germany, which allegedly offered to pay even more than HUSSEY COPPER Ltd. The fact is documented in a file kept by *CONSULTA, s.r.o.*

The background report that accompanied the proposal to sell the shares of *Kovohuty Krompachy a.s.* and was submitted to the Cabinet before the scheduled endorsement of the sale on 11 March 1994 argued that the offer by HUSSEY COPPER Ltd. should be rejected as the firm refused to implement an investment program of at least US$ 18 million. The claim was based on an obsolete offer that in the meantime had been substantially revised. The report did not as much as mention the offer by HUSSEY COPPER Ltd. dated 23 February 1994, which we have just outlined, nor the other offer by ETF, Germany.

Thus the person behind the proposal to sell the shares of *Kovohuty Krompachy, a.s.* directly failed to take into consideration a bid submitted in writing. Moreover, contrary to real facts, he stated in the proposal that the bid by *COPPER Krompachy, a.s.* was the most lucrative. (It is important to distinguish between the US-based HUSSEY COPPER, Ltd. and the domestic firm *COPPER Krompachy, a.s*. in whose favour the Government finally ruled). The only document pertaining to *COPPER Krompachy, a.s.* that the privatisation project featured was an extract from a Commercial Register entry kept by the Borough Court Košice I, according to which the firm was incorporated on 15 December 1993 and had Sk 3 million in equity.

There are several interesting facts that deserve attention with respect to suppressing a more lucrative bid of the US company by the person who submitted the proposal to the Government (privatisation papers are submitted to the Government by the minister, whose position was at the time filled by Prime minister Meèiar, however, in actual fact the ministry was run by State Secretary Ivan Lexa).

A very important role in the case was played by Ján Kato, the then Chairman of the NPF Executive Committee, nominated by HZDS. The process that evolves between a government decision to sell and project implementation is generally rather complicated, taking under normal circumstance several weeks or months. The exercise includes government endorsement of a direct sale after which the project is referred to the NPF for implementation; the respective state-owned enterprise is terminated, a new joint-stock company is registered and shares are issued. Interestingly, the Cabinet's decision to invest the property of the state-owned enterprise into the joint-stock company and subsequently sell 51 per cent of shares was taken on 11 March 1994, the day on which Prime Minister Meèiar was given a vote of no confidence. That particular day happened to be a Friday, however,

on 14 March 1994, i.e. the next working day, the project was referred to the NPF for implementation despite the fact that it lacked some documents concerning possible claim of ownership issues. This notwithstanding, on 14 March 1994 Messrs. Kato and Danys signed a proposal to register the change in ownership rights and make a corresponding cadaster entry. On the next day, 15 March 1994, the Ministry of Economy decided to terminate the state-owned enterprise and a new company was registered on the same day with the Borough Court Košice I. The day after, 16 March 1994, the company was issuing shares.

The entire process, which normally take weeks and months to complete, in actual fact lasted three days, although the project lacked some essentials concerning property claims. The speed was apparently due not only to the resignation of the Meèiar Government (the entire Cabinet steps down if the Premier receives a no-confidence vote) but had also to do with Mr Kato's personal interest in the entire transaction. This can be deduced from the personal links between the people represented on the Board of the company favoured by the privatisation decision, i.e. *COPPER Krompachy, a.s.* (Mr Imrich Smaržík, Mr Dušan Torok, Mr Štefan Kovalèík) and those on the Board of BASECO, the company incorporated on 16 March 1994, where, in addition to Messrs. Smaržík, Torok and Kovalèík, also serving was Dr Ján Kato, the then Chairman of the NPF Executive Committee in March 1994, currently a member of the said Committee and NPF Director for Strategy.

On 20 May 1994 Milan Janièina, privatisation minister in the Moravèík Government, referred all these facts as well as other details and, primarily, documents that proved the above statements to the General Prosecutor's Office and the Investigations Office of the Slovak Police Force.

After the third Government of Mr Meèiar took office, the new privatisation minister Peter Bisák appointed a commission of lawyers to hold an enquire into whether the cancellation by the Moravèík Government of 13 privatisation decisions had been well grounded. On 9 February 1995 minister Bisák announced that the enquiry into the 13 projects the Moravèík Government had cancelled in April 1994 failed to find any irregularities in those projects. In the meantime, some of the projects were repeatedly endorsed by the Government under the same terms and conditions as the initial decisions taken in February and March 1994, while the others, minister Bisák said, would be approved shortly.

In an interview with the *SME* newspaper, Dr M. Nováková, formerly a member of the original commission that had reviewed the problematic projects and a Privatisation Ministry staff member, said that the new commission that had failed to identify any deficiencies in the projects did not include a single member of the old commission. She also confirmed that 12 out of the 13 cancelled projects contravened the law and 1 project was cancelled at the buyer's request.

On 2 February 1995 the NPF Presidium approved a direct sale of 67 per cent of shares in *Skloobal Nemšová, a.s.* to company management under the same terms and conditions as in the original project cancelled by the Moravèík Government (see above).

III.2.2.2:3 Direct sales under the Moravèík Government (March 1994 - Nov. 1994)

Under the Moravèík Government, privatisation was primarily influenced by the following factors:

- attempts to speed up privatisation and make it more transparent;

- decision to prepare the second wave of the voucher scheme;
- heterogeneous nature of the Government spanning the political spectrum from left to right with all the positive implications of mutual control but also slowing and watering down the privatisation process.

The privatisation process was significantly influenced by Amendment No 60/1994 of the Large Privatisation Act dated 18 March 1994, i.e. the time when the Moravèík Government was in office. The amendment introduced some important changes in privatisation mechanisms. The most important were the introduction of the "impulses" institute and, in particular, the fact that the decision-making bodies (the Cabinet for direct sales and Privatisation Ministry in other instances) were allowed to modify original projects.

It was also important that the Privatisation Ministry was now able to set a deadline by which founding ministries and enterprises were to submit privatisation projects and update data contained in such projects. With respect to direct sales, the significant change was that, before making a decision on privatisation, the agency in charge was obliged to announce in nation-wide dailies that a privatisation project had been submitted and no decision could be taken within 30 days of publishing the announcement. An important feature of the new amendment inasmuch as it concerned direct sales was that a decision to sell directly should also spell out the method of choosing the buyer, determining the sell price and payment terms, including security.

Under the Moravèík Government, direct sales were pursued as follows. A Privatisation Ministry working group would recommend a method (voucher scheme, public tender, public auction, direct sale, a combination of the above). Selection commissions were appointed to choose a buyer for direct sales. The commissions would call on everyone who had tendered privatisation projects or impulses to submit, in a sealed envelope, bids containing, in particular, a new price broken down into a cash portion and investments (investment pledge), payment terms and proof of solvency (generally a loan commitment issued by a bank).A scoring system was introduced to evaluate bids, leading to a proposal for the Government to endorse direct sale. Protocols and records existed capturing the selection procedure and could be used to check on the appropriateness of the choices made and the criteria used. Available data suggest that, with a few exceptions, the Government would approve direct sales to prospective buyers recommended by the commission.

As pointed out previously, the first session of parliament formed after the autumn 1994 elections and spurred by the HZDS, SNS and ZRS-dominated majority cancelled, by passing an Act of Parliament, 54 privatisation decisions taken by the Moravèík Government after 6 September 1994 and declared the contracts based on the those decisions null and void. The excuse was that Premier Moravèík had written to the speaker of parliament, Mr Gašparoviè, pledging not to privatise after the above date because the old parliament was no longer functional and thus unable to supervise privatisation. Contracts had already been signed in accordance with 5 out of the 54 cancelled privatisation decisions. It transpired later that, in accordance with Act No 370/1994, 29 out of the 54 incriminated decisions could not be cancelled.

A commission was set up to review the cancelled projects and propose new ones. At the end of February 1995 Vice-Chairman of the NPF Executive Committee J. Porvazník reported that in about one half of the cases the original buyers were reinstated by the commission. Here, one may also assume a higher than average corruption rate. There is evidence that in some instances governing party officials or persons close to these parties were offering to

original investors (those approved by the Moravèík Government) to arrange for the reinstitution of the initial decision in exchange for gaining a stake in transferred property.

III.2.3 Employee ownership plans in privatisation

From the very beginning left-wing and non-standard parties have been exerting considerable pressure to bear in an attempt to promote a greater role in privatisation of employee-owned joint-stock companies. Looming behind the attempts to promote privatisation based on employee ownership was a strong and growing ever stronger lobby comprising managers of state-owned enterprises whose interests and sources of funding are analysed elsewhere in the study. This was coupled with the interests of the middle management and employees of state-owned enterprises. It is evident that employee ownership plans in privatisation were advocated by the parties associated with the management of state-owned enterprises, unions and those segments of the population that worked in the privatised sectors (workers and university graduates employed in the respective industries). The considerable interest on the part of SOE management in employee ownership plans is accounted for by the fact that almost all such plans implemented so far have resulted in a situation where top management and, occasionally, top union bosses gained over half of all shares, sometimes as much as two thirds of shares, while the rest was spread thinly among other employees.

It should be pointed out that such privatisation schemes have no legal foundation. The Privatisation Act does not contain the notion of employee shares or of privatisation based on employee ownership plans. In their conceptual documents and policy statements HZDS, SD¼ and ZRS have nevertheless been promoting this privatisation scheme as well. This is, however, nothing else but concealing preferential privatisation treatment by the façade of employee ownership plans. It comes as no surprise that many of the direct sales to protégés approved in February and March 1994 were wearing the innocent badge of employee ownership plans.

Early in 1994 SD¼ came up with a bill to amend the Privatisation Act that would make such preferential treatment totally legal, even in the form of a free transfer of assets to employee-owned companies. According to the bill, a company would be deemed employee-owned if its employees held at least 30 per cent stake and at least 30 per cent of stake-holders were employed in the company. It was proposed that the property of privatised enterprises be transferred, i.e. not sold, to such companies. The Privatisation Act uses the word "transfer" to describe a transfer of assets free of charge to municipalities, public health services, social security and pension schemes. The bill, although never approved, was eloquent evidence of where the preferences of SD¼ lie.

As it will be pointed out in the section devoted to the Government Manifesto of Mr Meèiar's present (third) administration, the Cabinet intends to promote the participation of employees in the privatisation of companies where they work. There is no doubt that this method will become an effective corruption tool by favouring employees and, especially, top management at the expense of other citizens. This goes so far that Ján Porvazník, director of the section at the NPF in charge of reviewing privatisation proposals, told to the weekly *Trend* that priority was given to the "social aspects of privatisation", employees were the preferred buyers and no consideration was given to other bids. Such statement and, particularly, such actions clearly contradict § 10, Sect. 7 of Act No 92/1991 on the Conditions of Transferring State Ownership to Other Entities, popularly known as the Large Privatisation Act, which stipulates that decisions about privatisation should be made "... *taking into consideration all*

privatisation projects that have been submitted with a view to given property or property stake ... and to other received impulses ...".

The sale by the NPF of *VSŽ, a.s.* shares is a fitting example of how an employee ownership plan can be used to allow a closely-knit group to gain property using the most favoured treatment. It should be emphasised that *VSŽ, a.s.* is Slovakia's largest company and one with the best export performance. 65 per cent of this company's shares were privatised in the first wave of the voucher scheme.

In March 1994 the sale was approved of 9.5 per cent of *VSŽ* shares to the joint-stock company *Manager* incorporated by 5 top managers of *VSŽ.* The agreed price was less than one third of the then going market price (Sk 200/share versus Sk 720/share). The excuse was that the purchased shares would then be further distributed among all management levels beginning with foremen to top managers. More than a year has elapsed since then, however, all the shares except a negligible 1 per cent of the original package are still being held by the small groups comprised of the then top management without any sales ensuing.

A year after, in March 1995, the sale was endorsed of 10 per cent of *VSŽ a.s.* shares (sold again under favourable conditions, i.e. at roughly half of the then going capital market price) to *Hutník, a.s.,* a company incorporated this time by *VSŽ* union leaders who argued that the shares would then be sold on to union members. What is being actually sold to union members are *Hutník* shares and not those of *VSŽ, a.s.* In reply to a journalist's question as to whether the buyer of the 10 per cent of *VSŽ* shares had been picked in a selection procedure, a high-ranking NPF official answered: "*Why? It was unnecessary. If employees show an interest, there is no need to.*" Answering a different question about the same transaction, an NPF official said curtly: "*That was the political will.*" (*Práca,* 16 March 1995, Špáni Ivan. *Z odborárov aj podnikatelia?*).

IV. PRE-PRIVATISATION AND POST-PRIVATISATION CORRUPTION

IV. Pre-privatisation Corruption, Spontaneous Privatisation

Spontaneous privatisation is a term to describe the pilfering of assets in the period between the start of economic transition or economic liberalisation and completion of the privatisation of a given enterprise. Primarily, this refers to the spontaneous privatisation pursued by the management of state-owned enterprises and people close to them.

The scope and intensity of spontaneous privatisation is directly proportional to the length of the time that elapses between the start of economic transition (liberalisation) and completion of the privatisation of a given enterprise. It is therefore evident that the scope of spontaneous privatisation relates to the pace of privatisation and the slower overall privatisation is, the more extensive spontaneous privatisation tends to be.

It should be emphasised that, to a certain degree, spontaneous privatisation is observed in all economies in transition. This is due to the fact that, even with the fasted and best thought out schemes, the privatisation process takes by far more time to complete than the other crucial measures that launch economic transformation. To be more specific, price liberalisation, monetary and budgetary austerity and internal convertibility could be introduced, after taking certain preliminary steps, relatively fast, almost overnight. Privatisation, on the other hand, is by far more challenging. What are the main reasons? This is primarily due to the above mentioned total prevalence of state ownership. There is also great confusion and lack of transparency in cadaster records. To ensure that emerging private property is not compromised, it is essential that only state-owned assets be privatised. At the same time, the privatisation process should be used to increase the measure of ownership transparency. Therefore, a clause with a full and clear description of how the state has acquired the property should be a feature of each base privatisation project as well as proof of the fact that the state has been entrusted with the property for management purposes. Such evidence should be clear and available for every land allotment and other real estate.

Restitution was another reason for privatisation being time-consuming. Since it is essential to rectify past injustices and return nationalised or otherwise expropriated assets to their original owners or their heirs, as stipulated by the restitution laws, a certain period should be set aside for filing and proving restitution claims.

A lack of political consensus concerning the methods and concepts of privatisation is another frequent reason for procrastination. This lack of consensus is often aggravated by the strong pressures of interest groups, political, professional and other forces.

In post-November Czechoslovakia, the pro-reform political forces realised the need for rapid privatisation, namely because they viewed privatisation as an essential prerequisite of successful transition. However, the intention to avoid spontaneous privatisation was no small consideration either.

§ 45 of the Large-scale Privatisation Act (No 92/1991) was an expression of concern regarding spontaneous privatisation. This paragraph was designed to prevent the management of state-owned enterprises, in the period leading up to enterprise privatisation, from engaging in transactions beyond the scope of routine management that would depreciate enterprise value and result in material gains for management. At the same time it was essential to en-

sure that such constraints on assets management should be as brief as possible because otherwise the risk was that they would have their hands tied up unable to pursue those changes in assets structure that were important and necessary for the enterprise.

It was pointed out already that after June 1992 the pace of privatisation in Slovakia slowed down. While before June 1992 the progress of privatisation in the Czech and Slovak Republics was about the same and by the end of 1992 approximately 30 per cent of overall property in each republic was privatised, by the end of 1994 the Czech Republic had about 80 per cent of its property already privatised and Slovakia had a mere 37 per cent. In Slovakia the period after June 1992 was offering enormous opportunities for blossoming spontaneous privatisation.

This assumption is confirmed by the 1994 data according to which prosecutors carried out enquiries into 271 state-owned enterprises checking on the legality of state assets transfers made under exemptions from § 45 of the Large-scale Privatisation Act and found that 242 transfers had been made contrary to existing regulations.

In essence, spontaneous privatisation equals unfair material gains (largely) for private natural persons and legal entities at the expense of state-owned property (state-owned enterprises or joint-stock companies). Such activities are mostly organised, promoted or facilitated by the management that runs state property and the material gains are either directly or indirectly for the benefit of the same persons.

Corruption-related issues that pertain to assets transfers to municipalities and to the liquidation of state-owned enterprises deserve particular attention. The term "spontaneous privatisation" also applies when an enterprise, its sap being drained away, is never privatised and remains a long-term state holding. The transactions implied here result in illegal and unfair transfers of state-owned assets (mostly financial assets of an enterprise) to private hands.

Spontaneous privatisation is multifaceted, with methods determined by human ingenuity stimulated by prospective selfish gains. The common feature of spontaneous privatisation is the existence of two entities - a state-owned enterprise or state joint-stock company, on the one hand, and a private individual or legal entity with whom the management of the former is somehow linked, on the other hand. The form of connection may differ, ranging from explicit involvement to quiet partnership, participation of relatives, friends or acting for a consideration. Most frequently, management teams incorporate limited liability companies in which they act as quiet partners. In this respect, it would be worthwhile to mention the activities of a firm called "Managerial Consultancy Institute". In 1993 the firm was organising workshops and training courses for the management of state-owned enterprises giving, also in their promotional materials, explicit advice on how assets could be transferred from state-owned enterprises to private firms. The most savoury thing about the firm is that one of its founders was A. M. Húska, the then and present vice-chairman of HZDS and vice-speaker of parliament. The firm seemed to take particular pride in the fact and mentioned it in some of its promotional materials in which advice was offered on the best practical ways of pursuing spontaneous privatisation.

Deliberate deterioration of the economic position of an enterprise, depreciating its value with a subsequent purchase at a low price is another form of spontaneous privatisation. However, such instances are not as common as those that rely on unbalanced transactions between state-owned and private entities, in other words in transactions that are not as gain-

ful for a state enterprise as they are profitable for a private company. Here, the words "not gainful" may sometimes be used in a relative meaning, implying a profit but smaller than one that could have been achieved in arms-length transactions between two private entities. Such transactions may include contracts for the lease of non-residential premises, foreign-trade services, advertising and promotion, procurements and distribution, maintenance, transport etc. services.

The activities of the former general manager of one of Slovakia's largest financial institutions were exemplary in this respect. The press published extensive materials about these activities, citing evidence. In particular, they included

- Discretionary granting of unsecured loans, with many of these loans being delinquent, resulting in financial losses for the state-owned institution.
- Buying real estate from his son's company at a price Sk 20 million higher than the one for which his son had purchased the same property so little time before selling it that the due date for his last payment expired later than that of the financial institution.
- Selling a stake of the financial institution in another prosperous company to himself and other management colleagues in the financial institution and company for a nominal price.
- Buying property, especially in Bratislava, at excessive prices. An example included an Sk 15 million loan granted to a private entrepreneur for the purchase of a building in the centre of a town. The building was shortly afterwards resold to the financial institution for Sk 46 million.
- The financial institution made its name, a nation-wide branch network and financing available to investment privatisation funds for a project jointly organised with another partner for the first voucher privatisation wave. The funds proved successful and became some of the biggest. Despite this, the financial institution did not have an equity stake in the investment company that was managing the funds and later even sold its commercial stake in investment funds to another partner for a nominal price. This resulted in an enormous loss for the financial institution compared to a logical situation where an equity stake would be ensured in the investment company that runs the funds.

It is more than evident that almost all forms of spontaneous privatisation are facilitated by the clash between two types of entities with two types of incentives and, in particular, two types of controls. These are private entities with the clear incentive of maximising performance and profit and state-owned entities without genuine owners, their representatives or at least managers supervised by genuine owners. It is understandable that state-owned enterprises are the losers in this uneven battle, with state property being dissipated and depreciated. Another typical feature relating to spontaneous privatisation is the absence of competitive forms to select partners and conclude contracts since the Public Procurements Act (No 263/1993) only came into effect on 1 January 1994. However, this form of blossoming spontaneous privatisation is of secondary importance, the primary factor being the absence of private ownership, private supervision and private incentives. The point is that for a private form a competitive form of identifying suppliers is the most natural.

IV.2 Post-privatisation Corruption

Corruptive behaviour may be encountered in cases of defaulting on contracts concluded by buyers and the NPF. Most commonly, this concerns failure to pay the purchase price of privatised property. The highest incidence of such behaviour is observed in instalment schemes.

This phenomenon has become rather common since 1993. However, defaulting contractual parties should be divided into two groups. The first would include those who do not pay for "objective reasons", the other one comprises those who do not pay largely for speculative reasons.

After 1992 a variety of influences resulted in deterioration of economic conditions for business activity. This was primarily caused by the dissolution of Czechoslovakia and a slowdown of the transition process in Slovakia. In particular, this was reflected in

- shrinking markets, difficulties in selling to the Czech Republic;
- decreasing domestic demand, primarily resulting from economic decline, i.e. decline in the consumption of households, government and lower fixed capital formation;
- greater challenges after the implementation of new schemes of pension, sickness and social insurance;
- initially total absence of lending funds followed by a growing supply of such funds, albeit at high rates of interest, and aggravated by the persistent shortage of medium- and long-term loans;
- deteriorating insolvency.

In other words, conditions had changed compared to the assumptions of prospective buyers at the time when they were formulating privatisation projects and proposing payment terms. The conditions have unexpectedly deteriorated, some new owners of privatised assets being unable to make payments according to the schedules they had committed themselves in the contracts.

The other group includes such owners of newly privatised assets who, although economically in a position to do this, do not pay, relying on loopholes in the contracts, the large backlog of work at commercial courts or political lobbying to let them get away scot-free or help modify the contracts to reduce prices or waive payments. Attempts to distinguish between these two groups and get the NPF to apply a differentiated approach in terms of collecting due payments or terminating purchase contracts would establish a vast area for subjective decisions and, thus, corruption. Therefore, one should either clearly define objective discerning criteria (which is extremely difficult) or treat all delinquent buyers uniformly, insisting on compliance or contract termination by a court. The problem is that since the prevailing approach has been too soft so far, the new owners have been disposing of their assets for quite some time and, if threatened with contract termination, would be able to enter into such equity and financial transactions that would reduce the value of eventually recovered assets to a point below their pre-privatisation value.

The National property Fund reported that at the end of February 1995 it had overdue accounts receivable totalling Sk 1.2 billion with 141 delinquent buyers. It should be added that the numbers would have been much higher but in 1994 the NPF had rescheduled many contracts, postponing payments. The most conspicuous example is that of Mr Konárik, a member of parliament for HZDS and entrepreneur, who, according to NDS (National Democratic Party) chairman Èernák, was on a summer 1994 list of defaulting buyers, owning about Sk 90 million. However, a list of defaulting buyers published in February 1995 did not feature Mr Konárik. Referring to this, MP and entrepreneur Konárik said that he had not had and did not have at present any liabilities vis-à-vis the NPF.

Instalment plans are always associated with the risks of post-privatisation corruption. The problem is that the new owners acquire property and the right to dispose of it before paying

the full price. Real estate may be used as collateral pending the last payment, however, it is not possible to prevent, in the case of defaults or contract termination, some assets being pilfered away from the enterprise to the buyer and to the detriment of the enterprise, i.e. the state or NPF.

Since the Government Manifesto of Mr Meèiar's present Cabinet states that instalment plans would be the prevailing privatisation scheme, the risks are that this form of post-privatisation corruption will continue to blossom. The possibility exists, however, that another risk may also prove to be real.

There are two alternatives of selling an enterprise in instalments. The first one has been used so far, i.e. in 1990-1994. Under this scheme, ownership is transferred to the buyer on the day the contract is signed or the first payment made. Under the second scheme, *de jure* ownership will be transferred to the buyer only after the last payment. Essentially, this would be a leasing scheme and it appears that recently this has been the prevailing approach of the NPF to instalment plans. The argumentation is that the advantage is in greater ability to hinder assets pilfering in defaulting plans.

This, however, is spurious argumentation. If we were to confine ourselves to a narrow understanding of ownership transfer coinciding with the last payment, arrangements would have to be made, pending the last payment, to prevent the buyer from disposing of the property in excess of routine management. However, this is out of the question because privatised enterprises are in need of restructuring, which cannot be delayed another 10-15 years pending the last payment. Thus leasing-like sale schemes amount to privatisation that is instantaneous *de facto but* postponed *de jure*, which by no means and in no way reduces the risk of post-privatisation corruption.

In addition, this scheme has another negative feature. It transforms the buyers of property into long-term (10-15 years) hostages of the powers-that-be because this is exactly the period for which the *de jure* transfer of ownership rights is delayed. In terms of corruption, the problem is that, in such an insecure situation and deprived of independence, the new "owners" will be indirectly motivated to divest their enterprises of as many assets as possible to secure their gains should the privatisation decision be revised. Thus, it can be stated that, instead of the announced reduction in corruption risks, this alternative of instalment plans would result in much greater corruption since it would serve as an indirect incentive for just that corruption.

V. POLITICAL AND INTEREST GROUPS BACKGROUND OF PRIVATISATION

Privatisation is an area where group and personal interest come to a head. As it is the executive and legislative branches of government that decide on the ways, pace and scope of privatisation, it is only natural that privatisation-related interests are largely mediated by political parties.

With a view to the subject matter examined in this study, i.e. corruption issues in privatisation in the broad sense of the word, political parties can be ranked using two important criteria:

1. their stated and, primarily, practical policies emphasising equal opportunities in privatisation;
2. their stated and actual acceptance of the need for private ownership and by how they promote the quantitative changes in the ratio between public and private property.

Interestingly, although not surprisingly, the two criteria are rather homogeneous in that the political parties that advocate and apply equal opportunities in privatisation at the same time attempt to achieve a higher share of private ownership and minimise public ownership. These are parties of the conservative and classical liberal type.

On the other hand, parties of the socialist type are willing to yield to the pressures of certain interest groups and accord to them a privileged position in privatisation. These parties also advocate a larger scope of public ownership which should remain in government hands either permanently or on a long-term basis, thus creating room for spontaneous privatisation.

A third group is comprised by non-standard political parties, which not only do not believe that equal opportunities are important but, without any scruples, themselves arrange for preferential schemes favouring individuals and affiliated groups in order to strengthen their economic and political power.

By far the most influential interest group regarding privatisation is represented by the managers of those state-owned enterprises that have been earmarked for privatisation. In this respect, it does not matter whether the persons involved are the old communist cadre filling their managerial positions since before November 1989 or taking office subsequently (in Slovakia the former group still prevails). What is important is their enormous interest in having a favoured status privatising their enterprises as well as their real and ever growing influence.

What is the nature of the influence wielded by the management of state-owned enterprises? First, thanks to the pre-November nomenclature system, many of these people have very good connections in those political parties that have emerged either as transformed ex-communists or relying on a substantial segment of their former grassroots. Second, these people have quite good connections in the executive branch and, particularly, within sector ministries. A more important aspect of the influence these people have is that, as privatisation is slowed down and delayed, their power grows. It primarily grows as a result of ongoing spontaneous privatisation, providing to some management teams enormous financial resources. The political clout of these people also grows as post-communist and populist parties gain ground and pro-transition, while liberal and conservative parties lose the same ground.

Looming large behind the watered down voucher scheme is the management of state-owned enterprises that has been successfully gaining in importance since 1992. The lobby is essentially using two parties as their vehicles - the Movement for a Democratic Slovakia (HZDS) and Democratic Left Party (SD¼). The situation was aptly captured by the former privatisation minister in the Moravèík Government, M. Janièina, who said in an interview with the *SME* newspaper: "*What is unmistakable, however, - in terms of privatisation - is the impression I got that HZDS and SD¼ are the alpha and omega of the same team. I mean it literally, because of so extensive connections they have with what I called Bolshevik management, captains of the socialist industry comprising the Association of Employers Union.*" The Union of Industry is the most important organisation representing the interests of this lobby. The Union was and remains the strongest component of the Association of Employers Unions. It comes as no coincidence that since 1992 the position of the economy minister has been invariably filled by a top Union of Industry official, i.e. a top official of this influential lobby.

According to the mass media covering the number of persons under criminal investigation or serving prison sentences resulting from corruption charges, the situation is as follows. In the period from 1 January 1990 to 7 November 1994, prosecutors' offices kept on their files 115 criminal procedures pertaining to privatisation irregularities. A total of 193 persons were prosecuted, out of which numbers 88 persons were charged in connection to 48 cases relating to auctions within the small-scale privatisation scheme. Out of the total number of 105 prosecuted persons, 81 were formally charged and 12 convicted, 14 were acquitted and in three instances charges were dropped. No decision was taken in 43 criminal cases and in 9 cases an alternative decision was made, mostly referring the cases for additional investigation.

VI. ANALYSIS OF THE PRIVATISATION ASPECTS OF THE MEÈIAR GOVERNMENT MANIFESTO OF JANUARY 1995

In its Manifesto the Government states that its priorities include continuing privatisation and speeding up the process. On the other hand, the Manifesto provides no specifics on how these priorities will be achieved, either in the form of timetable outlines and the volume of assets the Government intends to privatise according to that timetable. The usual term in office for a government is 4 years, which means that the Manifesto was formulated with a view to the period ending in late 1998. For comparison, the Czech Republic intends to essentially complete privatisation this year and does not envisage a role for the Privatisation Ministry after 1996. The Slovak Government Manifesto contains no such commitments.

In its Manifesto the Government explicitly pledges to "*establish in the course of privatisation ownership structures in which domestic entrepreneurs and employees of privatised enterprises will constitute an important part.*" There is a relationship between this commitment and the Government's unwillingness to finance government debt service from anticipated privatisation proceeds. The point is that the NPF cannot be expected to receive any substantial proceeds if assets are to be preferentially sold to domestic investors and, therefore, it is not to be expected that the debt service could be paid from NPF funds. At present, total NPF liabilities are estimated at about Sk 45 billion.

As prospective domestic bidders for privatised enterprises have limited funding, the Government intends "*in the interest of supporting domestic business classes ... to enable instalment schemes with the option of deducting investments from the purchase price.*"" At the same time, the Government states that it will be using competitive selling methods "*choosing the buyer with a view to a clearly formulated and justified business plan that will take into consideration the characteristic features of the enterprises and needs for its future development.*" This formulation suggests that the declared competitiveness will be purely formal. Business plans as the main criterion provide many opportunities for subjectivism since the criterion defies objective measurements. Moreover, most pledges contained in a business plan are not binding in legal terms and therefore unenforceable. It can be said that privatisation using the above criteria will largely favour the management of state-owned enterprises. This conclusion is backed by another stated intention of the Government Manifesto, namely to support the participation of employees in the privatisation of enterprises where they work.
The above factor will signify a limited inflow of foreign capital, which is confirmed by the another quotation from the Manifesto according to which "*the Government will support **expedient** inflow of foreign capital to the Slovak economy*" (bold type - the author). Obviously, it will be government bureaucracy that will decide whether a particular instance of foreign capital involvement is or is not expedient.

The Manifesto announces that the Government will specify "*state interests in the privatisation of strategic enterprises, especially in the energy sector, gas industry, telecommunications, water management, armaments production and the banking sector and the degree of limiting the public sector.*" It is clear from the above that the Government views the banking sector as part of the public sector. Although banks are no longer state-owned, the state still holds an important position within most of them through the National Property Fund.

According to the Manifesto, the Government intends to launch the second wave of the voucher scheme "*without undue delay*", even though the delay began in December 1994 when the zero round announced by the previous cabinet was cancelled. The Manifesto does not set any specific date by which the second wave of the voucher scheme will be started nor the value of assets to be invested in the exercise.

The Manifesto pledges to "*more consistently collect due payments, ensure a better payment discipline on the part of NPF borrowers and more consistent supervision of the companies in which the NPF holds an equity stake.*" Only future will show whether the Government will indeed want and be able to stand by this pledge. There are, however, grave doubts because the privatisation mode the Government is promoting is contrary to these intentions.

The Government goes on to state that it will "*issue a ruling that will make privatisation more transparent and provide for the comprehensive regulation of the process and relationship with the National Property Fund.*" It can be assumed that, by issuing this regulation, the Government would want to renew the bonds between the Privatisation Ministry (cabinet) and the NPF, which were cut off when the privatisation law was amended in the night of November 3 to 4, 1994.

The most important part of the Manifesto concerns the Government's intention to offer to the voucher scheme only minority stakes of joint-stock companies. This decision is likely to have several negative implications. As a result, there will be hundreds of medium and large companies in Slovakia that will for relatively long period have majority government or NPF stakes. As far as these companies are concerned, this will mean less adjustment and restructuring, higher risks of spontaneous privatisation, of intervention by government officials and political parties in management selection and everyday operations of these enterprises.

As for the public, this will mean a by far smaller value of property per voucher book as minority stakes in companies would almost certainly diminish the total value of assets offered to the voucher scheme. The Government has after all announced this reduction, however, there were differences concerning exact amounts.

From a macroeconomic standpoint, this intention signifies that in the Slovak economy state ownership will, for some time (unknown for just how long), prevail over private ownership. Negative implications will be reflected in lower than theoretically possible economic adjustment and restructuring, smaller revenues for the state budget, higher risks of spontaneous corruption etc.

The part of the Manifesto dealing with privatisation was evidently influenced by two lobbies - the Association of Employers Unions (where management teams of state-owned enterprises have the real clout) and trade unions, especially unions active in the manufacturing industries.

With a view to the subject matter of the study, it can be clearly stated that the privatisation plans contained in the V. Meèiar Government Manifesto dated January 1995 are not only likely to significantly increase corruption risks but, to a certain degree, engender these risks, especially by failing to abide by the equal opportunities principle.

In this respect, it should be noted that HZDS and the Government have on many occasions stated their commitment to adopt a program dubbed CLEAN HANDS that would feature legislative and other substantive proposals to combat corruption, especially in the civil ser-

vice and, hence, in privatisation. The first version of the program drafted by the Interior Ministry was published in the daily *Národná obroda* on 17 and 18 February 1995.

This is a relatively extensive document with broad and essentially correctly set objectives as well as measures proposed to achieve those objectives. The suggested measures actually divide the paper into several sections - legislative, institutional and logistics, staffing, education, and the mass media. In the legislative area, for instance, the draft document proposes changes in, or adoption of, more than 40 laws.

Following are the comments concerning the above program.
Nearly all the objectives, as they are presented in the program, are indeed beneficial and needed. However, with respect to the policies of the Government that intends to subscribe to the program, many goals and objectives sound almost cynical or at least insincere. As an example, the intention to "*act against protégéism and groundless favouritism or preferential treatment.*" The previous analyses of all the Meèiar Governments as well as the analysis of the Manifesto drawn up by the present administration inasmuch as it relates to privatisation suggest that the Government's arrangements for privatisation are in sharp contrast to the stated principles.

Another example of the profound conflict between stated and actual principles is the pledge in the CLEAN HANDS program to "*act against personnel instability, social and legal uncertainty among civil servants and against discrimination on the job because of political affiliation.*" Since the coalition Government of HZDS, SNS and ZRS took office, unheard-of political purges have been under way, the basic placement criterion being not only political affiliation but also willingness to do extra work to prove political loyalty to the parties of the government coalition. In each district, government coalition parties have set up task forces made up of five members each who assign to themselves civil service offices, sack present staff and appoint new nominees. On 16 May 1994 the daily *SME* published a list of 224 high-ranking public administration officials who lost their local level jobs, the list being incomplete and not definitive. On 20 May 1995, for example, the mass media reported that the education minister had sacked directors of school authorities in Bratislava. Igor Lenský, chairman of the Public Administration Union, even estimated the number of dismissed civil servants to be 600 (*SME,* 24 May 1995).

The measures envisaged in the CLEAN HANDS program can be divided into three categories: expedient, neutral and those that are not designed to reduce corruption but serve as the pretext for achieving entirely different goals. Since a detailed assessment of the document would exceed the scope of this study, we will conclude with this summary. Although many measures the draft program features are desirable and needed, the basic principle applies according to which by far more benefit would be achieved and in most instances it would suffice if the Government itself complied with the applicable law and uncompromisingly enforced existing regulations. Even greater effect would be achieved if the Government itself abided by the principles and sought to ensure the goals spelled out in the program.

The CLEAN HANDS program deals with corruption in privatisation in two concise sections. It states that the large privatisation law should be abided in the case of direct sales and also recommends that appropriate measures be taken to select buyers of privatised property.

VII. CONCLUSIONS AND RECOMMENDATIONS

The following conclusions can be drawn from the above:

1. Corruption cannot be avoided in the privatisation process. However, the degree of corruption is primarily determined by privatisation forms and methods that are employed, pace of privatisation and respect for the equal opportunities principle.
2. For a variety of reasons - substantive, economic and socio-psychological - post-communist countries are more than others prone to booming corruption.
3. The pace of privatisation is crucial in reducing opportunities for corruption; the longer the transition period with a prevalence of the public sector lasts, the more booming spontaneous privatisation becomes.
4. The voucher scheme offers the least room for corruption, makes it possible to shorten the transition period with a prevailing public sector and thus limit spontaneous privatisation.
5. Competitive methods, such as auctions and public tenders, diminish corruption risks. The problem remains that they are not sufficiently versatile. In particular, public tenders are challenging in terms of time, know-how, the need to harmonise the privatisation efforts of the Government, ministries, the NPF and consultancies.
6. Direct sales are the riskiest in terms of corruption opportunities. The key question is whether a system exists that would transform direct sales into simplified tenders, with clear criteria verifiable *ex post*.
7. A slowdown in privatisation logically brings about corruption, not only due to blossoming spontaneous privatisation, but also because of the growing political and economic influence of the groups that try to ensure their preferential treatment in privatisation.
8. As the political influence grows of post-communist and non-standard parties, the room expands for privatisation corruption.
9. A homogeneous government or a government in which a single party has a dominant position runs a higher corruption risk.
10. Clear, unambiguous, equal and publicly known rules of the game and publication of privatisation-related information constitute the best security against privatisation corruption.
11. Lacking rules, unclear rules, objectively unverifiable criteria, withholding information constitute the nutrient medium for privatisation corruption.
12. Mistrust of privatisation is also increased by the fact that so far only just a few cases of corruption and extortion relating to small-scale privatisation auctions have been brought to courts.
13. The most important factor that not only makes privatisation corruption tolerated but literally organised by the government (see the V. Meèiar Government Manifesto for the stated intention to give preferential treatment to management teams) is the almost total absence of pressure by public opinion. This is apparently related to the degree to which the public is prone to behave contrary to laws, morality and ethics but is also associated with the immature and underdeveloped nature of civic society in Slovakia.

Recommendations to minimise corruption in privatisation

- Start privatisation as soon as possible after the collapse of communism and proceed as fast as possible, relying extensively on non-standard methods.

- With regard to standard methods, large and important enterprises, if not privatised in the voucher scheme, should be sold by public tender whose organisation should from the very beginning be referred to eminent international firms.

- In large-scale privatisation, more emphasis should be put on auctions, especially for small and medium enterprises and in instances where the prise is the only criterion.

- Direct sales should be organised as simplified tenders (sealed bids) with clear criteria and rules and the possibility of *ex post* compliance verification; rules and criteria should be binding and publicly known; compliance verification should be enabled to all the interested parties, primarily to competing bidders, mass media, political parties interest and etc. groups.

- A constitutional law should be passed ensuring privatisation control and, primarily, control over the National Property Fund by all parliamentary parties; all political parties present in parliament should be able to delegate their nominees to the NPF Presidium and Supervisory Board.

- The NPF should be prevented from growing into a new super-ministry and from being misused in attempts to unjustifiably preserve government influence in enterprises and advance the interests of political parties.

- Ensure speedy privatisation of shares held by the NPF.

- The Finance Ministry should be more exacting in playing its supervisory role over investment funds and investment companies, especially in the period between issued shares being transferred to such funds and the establishment by shareholders of their corporate bodies. Particular attention should be paid to the funds and their founders where higher risks could be assumed of their improper behaviour given the commitments assumed during voucher registration or the zero round of the voucher scheme.

CONCLUDING REMARKS

The principal conclusions and recommendations resulting from the study of the privatisation corruption phenomenon have been summarised above. There remain only several concluding remarks.

It is interesting to observe corruption, its forms and their prominence in the course of privatisation in Slovakia. In the first phase, 1990-1992, privatisation corruption was dominated by criminal forms such as extortion, intimidation, bribery. In the second phase, starting in 1993, indirect forms began to prevail such as spontaneous privatisation, favouritism for the sake of individuals and interest groups participating in privatisation. However, one would be mistaken to assume that the scope of explicitly criminal corruption then shrank compared to the previous period, quite on the contrary. The main reason for the overall rise in privatisation corruption since 1992 and, within it, the increase in indirect corruption is the slowdown of privatisation and the greater prominence of political parties that, on the one hand, have become the tool of the managerial lobby from state-owned enterprises, and on the other hand, are using privatisation to ensure the economic backing of their attempts to strengthen their political power.

Investigation of privatisation corruption suggests that no post-communist country can escape the phenomenon. This issue is often associated with transition to a new political and economic system and tends to be identified with such transition. The following views are not so infrequent: "*... things like these could not have happened under the previous regime* .." or "*... at least the former regime was by far more equitable in this respect or at least less corrupted.*" In this respect it should be emphasised and constantly reiterated that the higher rate of corruption during the transition to an open democratic society based on a market economy is not the price for market and democracy, nor is it a typical feature of the system. On the contrary, the increased corruption rate during the transition is the price we pay for the decades of having no market and being denied the moral and ethical values that are generally accepted standards in democracies and market economies.

As it was pointed out elsewhere in the study, one of the most important causes of booming corruption during the transition is the fact that it is tolerated by public opinion or, to put it differently, that there is no pressure of public opinion. This means that, in addition to the above proposals on diminishing privatisation corruption risks, all other factors are crucial that encourage public opinion to respect ethical and moral rules and show greater interest in matters of public concern. Education, along with programs to increase awareness and give more training, will be playing a key role. An educated and well informed person will easily expose lies and realise, for instance, that privatisation based on employee ownership plans is merely an excuse for the transfer, under favoured terms, of assets to top management or, alternatively, that declaring the quality of a business plan to be the main selection criterion for the winning privatisation bid is nothing else but legitimising unbridled subjectivism.

The most effective measures to limit corruption are the ones that promote higher educational standards and attainment, greater interest in matters of public concern, greater and broader respect for moral and ethical values and that enforce such respect. The more progress society achieves in this area, the smaller will be the room for those political forces that tolerate corruption or even organise it to achieve their political ends.

Increased corruption risks in post-communist countries cannot be avoided, nevertheless, or rather because of this, it is essential to combat this phenomenon uncompromisingly. Ignoring the problem and hoping that they will be resolved it on their own by time and mature society would be certainly incorrect. It would be incorrect for the very simple reason that tolerating corruption, favouring one party and disfavouring another one means wasting time and lagging behind in the progress along the path to developed society based on the ideals of western civilisation.

Tolerance of booming privatisation corruption threatens to engender a protégéism-based, corporate society without chances for competition and equal opportunities which, among other things, means a loss of competitiveness and lagging behind those economies that are based on fair competition. Nor should one underestimate the political and social risks resulting from corruption being tolerated. It is very topical in this respect that moral relativism was the main reason why it has proved impossible to immediately eradicate the major evils of the 20th century, communism and fascism, the relativism that was in the background of tolerance shown vis-à-vis the incipient stages of these malignant ideologies.

PS When this study went to the printers, the news broke which is very important and closely related to the subject matter of this study. As it was indicated above, after the autumn 1994 elections the parliamentary majority comprising HZDS, SNS and ZRS passed a law that cancelled 54 privatisation decisions taken by the Moravèík Government since September 1994. In this matter, a group of 40 MPs turned to the Constitutional Court with an official complaint. In their complaint they urged that the Court should rule that the said law (Act No 370/1994) was inconsistent with the Slovak Constitution. On 24 May 1995 a plenary session of the Constitutional Court ruled that the law was indeed not consistent with the Constitution because if enforced, it would, among other things, limit, revoke and deny the exercise of one of the basic right guaranteed by the Constitution, i.e. the right to own property. After the Constitutional Court's ruling is published in the Official Gazette, Act No 370/1994 would no longer be effective. The legislature (National Council of the Slovak Republic) would have six months to make provisions of the law consistent with the Constitution, otherwise the law will lose validity after the term expires.

ABOUT THE AUTHOR

Ivan Mikloš is a Slovak conomist who is a cofounder and economic analyst at M.E.S.A. 10, a macroeconomic public policy research instiutue and think tank oriented on support for free market and radical economic and social transformation in the Slovak Republic.

He was a teacher at the Economics university in Bratislava from 1983 - 1990. After the Velvet Revolution in Czechoslovakia and Slovakia. During 1990 - 1991 he served as Advisor to the Vice-Chairman of the Slovak Government responsible for economic transformation and was Director of the Economic and Social Policy Department of the Slovak Government. In 1991 he was named minister of Privatization of the Slovak Republic and held this post until 1992.

Since 1992 he has been working at M.E.S.A. 10 and lecturing on economic subjects at Trnava University.

His economic research is focused on the problems of economic transformation of post-communist economies, particularly problems of privatization and liberalization of the economy during economic transformation.