

**Fighting Corruption with Pyramids:**  
A Law and Economics approach to combating corruption in  
post-socialist countries

**Bestrijding van corruptie door middel van piramides:**  
Een rechtseconomische benadering van de strijd tegen corruptie  
in post-socialistische landen

Proefschrift ter verkrijging van de graad van doctor aan de  
Erasmus Universiteit Rotterdam op gezag van  
de rector magnificus  
Prof.dr. H.A.P. Pols  
en volgens besluit van het College voor Promoties

De openbare verdediging zal plaatsvinden op  
donderdag 19 maart 2015 om 11.00 uur  
door

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This thesis was written as part of the European  
Doctorate in Law and Economics programme



A collaboration between



ALMA MATER STUDIORUM  
UNIVERSITÀ DI BOLOGNA



Universität Hamburg





## Acknowledgements

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This thesis represents not only my work at the keyboard but the joint contributions of various people and events which significantly improved me and my life. This Ph.D. adventure was possible because of the one decade existence of the *European Doctorate in Law and Economics programme*, a famous *EDLE*. My experience in this programme was nothing short of amazing. Throughout the three years I have been given unique opportunities: I learned a lot, I travelled a lot and I made friends for a lifetime. I think it would not be possible to ask for more.

Among the other important things the first that I would like to mention is that I have learned to be a researcher, to shape my creativity and argument my ideas. This thesis presents the lessons learned, but it is also a result of many experiences I have encountered in the *EDLE* from dozens of remarkable individuals who I also wish to acknowledge.

First and foremost I wish to thank to my supervisors, Professors Thomas Eger and Klaus Heine. Professor *Thomas Eger*, my first supervisor, provided me with support and valuable comments which helped me to improve my work. To my second supervisor/promoter, Professor *Klaus Heine*, I owe a profound gratitude for his unselfish devotion, constructive guidance and valuable advices during this programme which made my experience of thesis writing an amazing journey.

I would like to thank to the all *RILE members* who devoted their time to read my writings and provided me with valuable suggestions for the improvements. My special thanks goes to Ann-Sophie and Sharon. In the crucial moment full of doubts *Ann-Sophie* was a light in the tunnel which led me to *Sharon* whose help and advices enabled me to find the way and to continue my job with enthusiasm.

As a student representative of my fellows I had a very fruitful cooperation with the *EDLE* directors, professors *Michael Faure*, *Luigi Franzoni*, *Patrik Leyens* and *Stefan Voigt*, whose understanding of students' problems and suggestions made them to act always in the best interest for all. I also have to stress the importance of the administrative work done by *Marianne*, *Lisa* and *Frauke*. We sometimes do not see their background work but that work "oils the machine" and I see it as very important. Therefore I have to thank them for all the things they have done for us.

One of the things that makes life so fulfilling, is the people we encounter and build relationships with along the way. Another important aspect of my *EDLE* life are my friends *Lena*, *Jarek*, *Arun*, *Jess*, *Shuo*, *Hong*, and dear colleagues *Alex*, *Martin*, *Katie*, *Rahul*, *Huojun*, *Elena*, *Damian*, *Penio* and *Marco*. Without them this experience would not be the same and I feel grateful for the opportunity to meet and spend these three years with them. Furthermore, I would also like to thank to *my family and close long-time friends* who have been with me through all my happy and sad moments during my life. Due to the page constraints it is not possible to list all their names here but they will recognize themselves in my words. These people represent to me a safe harbour to which I can always go back to recover and recharge my energy for the next important steps which future always brings to me.

Last but not the least I would like to mention my deceased law Professor *Obrad Stanojević*. His sudden demise during my first *EDLE* year left a wound which time cannot heal so easily. I have started my master and doctoral journeys thanks to his support and encouragement. I hope that if he could see me now that I would make him proud of my achievements. I dedicate this thesis to him.

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## List of abbreviations

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**ACA** – Anti-corruption agency  
**ACC** – Anti-corruption council  
**BG** - Bulgaria  
**B&H** – Bosnia and Herzegovina  
**CEE** – Central and Eastern Europe  
**CPI** – Corruption Perception Index  
**HR** - Croatia  
**EC** – European Commission  
**EU** – European Union  
**FYROM** – Former Yugoslav Republic of Macedonia  
**CoE** – Council of Europe  
**GCB** – Global Corruption Barometer  
**GRECO** – Group of States against corruption  
**IMF** – International Monetary Fund  
**MNE** – Montenegro  
**NIS** – National Integrity System  
**NPM** – New Public Management  
**NWS** – Neo Weberian State  
**OECD** – Organization for Economic Co-operation and Development  
**RO** - Romania  
**RS** – Republic of Serbia  
**TC** – Transitional Countries  
**TI** – Transparency International  
**TICPI** – Transparency International Corruption Perception Index  
**U4** – U4 Anti-corruption Resource Centre  
**UN** – United Nation  
**UNCC** – United Nation Convention against Corruption  
**UNDP** – United Nation Development Program  
**UNODC**- United Nation Office on Drugs and Crime  
**V4** – Visegrad countries  
**WB** – World Bank  
**WA** – Weberian Administration  
**YU** – Socialist Federal Republic of Yugoslavia

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## *Introduction*

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*"I can resist everything except temptation"*  
*Oscar Wilde*

In general, any study of corruption starts with the observation of situations which provide temptation for people to disregard the norms and rules, to which they should comply, and misuse entrusted public power for private gain. The power abuse is as old as humanity itself and has many faces and shapes. Corruption is one variety. The common definition of corruption in the literature so far was not reached because of its complexity which, according to Kim<sup>1</sup>, includes numerous political, administrative and socially deviant behaviours. They all result from violation of legal and social norms and expectations. The fight against corruption is one of the highest priorities on the international agenda. The United Nations (UN), the Organisation for Economic Co-operation and Development (OECD), Council of Europe with Group of States against corruption (GRECO), Transparency International, are some of the many that fight corruption as their main or supplementary goal. Based on their active work, numerous documents and rules, that contain results of various practices and approaches around the world, were enforced. Their main goal is to assist countries in improving the fight against corruption and countries signatories are expected to implement them as part of the domestic legal and institutional system. However, the results of these moves are questioned in the literature. The main argument is that countries around the world vary and the "one size fit all" approach cannot provide the desired outcome because it does not take into account specificities of a certain country or countries. In general, countries are divided into developed, developing and transitional and each of them, as well as the formal, also has different informal institutions. The required international anti-corruption unification applies to formal rules but that is usually only one side of the story. The other is the implementation which in general depends on informal institutions whose change requires time. The analysis in this research focuses on post-socialist, transitional countries<sup>2</sup> and their fight against corruption. One remark which is important to make here is that this research only uses the term post-socialist country(ies) although in the literature this term is used interchangeably with post-communist country(ies). The explanation for this use is that none of the countries observed in this study reached the level of communism, which according to Marx should come after the socialism as its better version. Fortunately they stayed socialist for the whole period of existence.

### *The Aim of this research*

Transitional or post-socialist countries are those who are emerging from a centrally planned market to an open one. The process of transition started with the collapse of the socialist regime and raised many questions regarding the changes in economic and legal

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<sup>1</sup>Kim, J. Y. (1998): "Corruption in Socialist and Capitalist Countries" in Sampford, C. and Preston, N: *Public Sector Ethics: Finding and Implementing Values*, The Federation Press/ Routledge, pp.91-101

<sup>2</sup>The two terms transitional and post-socialist countries are used here interchangeably.

institutions. The International community provided assistance and advice on many aspects which mainly pointed to the solutions applied in developed, capitalist societies. However, the results achieved are subject to the debate in the literature but the general claim is that they are not as they were expected to be. As previously stated, the main task of transitional countries is building market institutions in order to lower transactions costs and to develop trustful relations and transactions. This should increase the division of labour, the number of mutually beneficial transactions and the social welfare. The approaches towards the achievement of this goal encountered many obstacles of which the widespread corruption was one. The focus on eliminating it appears a logical step because corruption undermines trust and increases transaction costs, and as such decreases social welfare. Again, the search for the solution ended with the signing and implementing into domestic laws international anti-corruption regulations. By means of this move, transitional countries expressed willingness to address corruption which is particularly important having in mind their socialist history in which corruption was either denied or covered up. However, recent research on the results achieved in this field appear unimpressive. Moreover, they claim non-existence of the correlation between the conventions ratified and corruption lowering, pointing to the enforcement problems as one of the main reasons for the failure.

One of the main arguments for the undesirable results is that conventions are designed according to the recommendations and best practice in fighting corruption gained mainly from the developed countries which have a different informal institutional setting and which appears crucial for successfully combating corruption. One interesting anecdote, regarding that which took place on the border of two transitional countries, Serbia and Bulgaria, might illustrate the point better. Shortly after Bulgaria became a member of the European Union, one Serbian bus driver had to transfer a group of tourists from Serbia to Sofia. At the border between the two countries, a Bulgarian customs official refused to let the bus to continue its trip, insisting that he should be adequately stimulated, in euros preferably, in order to allow tourists to enter the country. After the prudent explanation of the bus driver that Bulgaria is now a member of the EU where bribery and corruption does not exist, he received a very clever answer from the customs official: “Bratko<sup>3</sup>, this is not a bribe or corruption, this is tradition.” This funny anecdote highlights the corruption as a very complex social phenomenon with substantial influence on society. Its understanding and perception largely influences the enforcement of formal norms. One of the prominent scholars in the domain of corruption, Rose-Ackerman<sup>4</sup> explains that corruption is a very complex problem and cannot be attacked in isolation and it is not sufficient to apply criminal law to it. A policy maker, therefore, should, besides enacting anti-corruption laws, “attract notice and public support”.

Therefore, the problem of combating corruption in countries in transition is the main topic of this thesis. The main claim here is that these countries have idiosyncrasies which should be taken into account in designing successful anti-corruption policies. For instance,

<sup>3</sup>Bratko in Slavic languages means buddy, pal.

<sup>4</sup>Rose-Ackerman, S. (1999): *Corruption and Government: Causes, Consequences and Reform*, Cambridge University Press, p. 226

OECD<sup>5</sup> depicts the situation of some ex-soviet countries which recently adopted modern codes of ethics for civil servants. These codes include the values promoted by the international community. However, civil servants see them as “old fashioned propaganda” and as such they are not an effective tool for corruption prevention. Therefore, the research will look closely at the dominant anti-corruption model *repression-prevention-transparency*, in order to observe to what extent and in which way it might be applied in the case of transitional countries in order to improve corruption combat. Since corruption is a very broad concept it is not feasible to discuss all its aspects in one research stream. The focus here is on public administration and civil servants employed within it.

### ***Scope of the research***

Public administration is one of the most important institutions in a country since its work affects the everyday life of its citizens. Therefore its proper functioning is essential for the state’s performance. However, corruption in administration sends the signal that the state is not able to adequately address peoples’ needs. In transitional countries, during their socialist past, public administration had a very important role. This role came from the fact that since the private market did not exist the state was the only employer and service provider. This division, besides civil administration, included the state owned companies as well. They were all obliged to follow the dictate of the Socialist/Communist Party. This was particularly true for public administration which in essence behaved as a service to the Party. In this environment there was not much space for high standards of professionalism and impartiality. On the other hand the failure of the state to provide economic abundance, which was promised at the beginning of the regime’s establishment, increased repression towards its citizens even more which was the dominant modus operandi since its establishment. With this formal institutional setting, people developed a special mentality necessary to survive. Part of that mentality is also the attitude towards corruption, which was not perceived as something bad and was tolerated within the system.

The collapse of socialism introduced the new institutions and new values which substantially differ from the old ones. People were expected to comply with the new rules and to change their behaviour. This process of transition had different paths in transitional countries. Some of them in general perform better than others. This also applies to fighting against corruption and the situation in that sense is described by the Transparency International Corruption Perception Index. TICPI provides the rank of the countries regarding corruption. However, since it refers to the general perception of corruption in the whole country, an additional indicator, Global Corruption Barometer<sup>6</sup>, also developed by Transparency International, focuses on the corruption in public administration. The institutions covered are: political parties, parliament/legislature, military, NGOs, media, religious bodies, business/private sector, education system, judiciary, medical health, police and public officials/civil servants. The data set created for this measurement constitutes the answers to

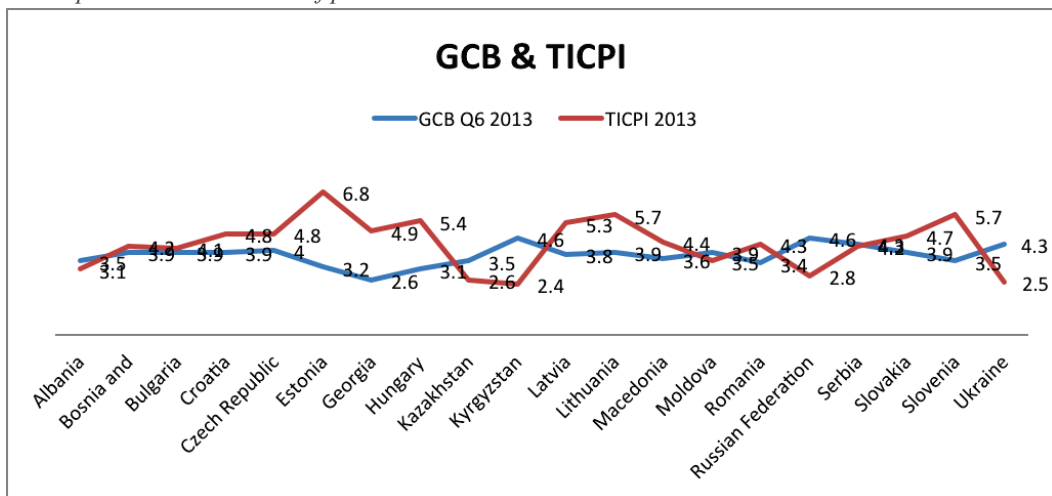
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<sup>5</sup>Organisation for Economic Co-operation and Development (2008): *Fighting Corruption in Eastern Europe and Central Asia*, OECD, 2008, pp.41-59

<sup>6</sup>Data available at: [http://www.transparency.org/gcb2013/in\\_detail/](http://www.transparency.org/gcb2013/in_detail/)

various questions posed, and their aggregate values are calculated. Here the responses to question number six in the questionnaire are observed since they address the perception of the corruption in the civil service for 2013 (marked as GCB Q6 2013). These results are compared to the results of TICPI for 2013. The two rankings go in different directions. In the TICPI scale 1 stands for highly corrupt country while 10 is the grade of the “cleanest” one. In the GCB scale 1 represents “not corrupt at all”, while 5 stands for “extremely corrupt”. What could be seen from the *Graph 1* below, is that even though transitional countries have different level of corruption perception on a general level (TICPI), the perception of corruption in the civil service is very similar (GCB). This means that among all presented countries, in the majority of them civil service is perceived as corrupt.

Graph 1: TICPI and GCB of post-socialist countries



Therefore, this research will look at the current status of public administration in post socialist countries, the problems which they are facing and finally, it will try to provide solutions and suggestions for the improvement of corruption combat. The focus here will be on civil servants, and not appointed individuals, and on an administrative type of corruption. In this research the term civil servant is in some cases used interchangeably with public employees, although in general the latter category is broader than the former. This is done because they both in essence are obliged to serve public interest and have similar legal obligations. Therefore, some claims made apply to both categories.

### Research Questions

As mentioned above, this thesis aims to look at the current status of the applied dominant international model *repression-prevention-transparency* and its effects on combating corruption in post-socialist countries. It also aims to recommend the possible ways to improve

the elimination of corruption. In essence this is a positive analysis with normative implications. Therefore, the main research question in this thesis is:

***What is the optimal enforcement design of anti-corruption policies for combating corruption in the public administration of post-socialist countries?***

In order to answer this question the thesis is structured according to the Bain/Mason<sup>7</sup> paradigm. This paradigm *structure-conduct-performance* (S-C-P), is widely used in economic analysis of industrial organizations. The elements have the following meaning. *Structure* represents the relatively stable economic and technical dimensions of an industry that provide the context in which competition occurs. *Conduct* is the actor's choice of key decision variables and refers to behaviour, policies and strategies. Finally, *performance* is broadly defined as social performance which results from the structure and conduct. This approach has been used so far in political science<sup>8</sup>, and it is considered appropriate to be used here. Its concrete application in this thesis is as follows. The structure here refers to the structure of public administration in post socialist countries, its institutional setting and values promoted. The idea which will be explored here is that the structure of the administration influences the presence of corruption. In that respect, the hope is to detect the type of administration for post-socialist countries which will curb corruption. Conduct in this context includes individuals, more precisely civil servants, who work for the administration. Their behaviour will be the centre of attention because of its direct connection to the level of corruption. The aim here is to define which types of conduct are negatively correlated to corruption. Finally, if the appropriate structure is in place and people's behaviour is coordinated to a certain equilibrium, the performance of a country regarding combating corruption will improve accordingly.

The paradigm structure-conduct performance is divided among the chapters of which each of them has its sub-research question which should be answered. Regarding the *structure* the sub-research question is: ***What is the optimal structure of public administration in post-socialist countries for improving corruption combat?*** For the analysis of *conduct* the two sub-research questions are asked. First: ***How the preferences of civil servants should be targeted/coordinated in order to achieve the optimal level of combating corruption in public administration of post-socialist countries?*** And second: ***How constrains should be imposed in order to achieve the optimal level of corruption combat in the public administration of post-socialist countries?***

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<sup>7</sup>See: Bain, J. S. (1968): *Industrial organization*, New York: Wiley 1968 and Mason, E. S. (1939): "Prices and production policies of large-scale enterprises, *American Economic review*, March 1939, 29, pp.61-74

<sup>8</sup>See: Myerson, R. B. (1995): "Analysis of Democratic Institutions: Structure, Conduct and Performance", *The Journal of Economic Perspectives*, Vol.9, No.1, Winter, 1995, pp.77-89

## *Methodology*

In order to answer the research questions, this thesis adopts a multifaceted analytical approach. The dominant methodology applied is the *Law and Economics*<sup>9</sup> or more precisely economic analysis of law. The Law and Economics approach uses the *Rational Choice Theory* as its basis and sees an individual as a rational self-maximiser who makes the choice among the available opportunities to acquire the desired values in the best way. This economic approach is further applied in the analysis of various non-market social institutions. One of them includes public and political institutions. The analyses in this domain are run under the veil of *Public Choice Theory*<sup>10</sup> which observes citizens and politicians/bureaucrats within the scope of the principal-agent model. This model states that the principal entrusts certain power into the hands of an agent according to the mutual agreement. However since the agent is better informed than the principal about the subject matter, the information asymmetry is usually created which provides an agent with the factual power over the principal. This, as a consequence has the possibility for abuse. Concrete application of the model to the public and political institutions means that citizens are the principals who entrusted the power to the politicians and bureaucrats. These agents usually abuse this power for private gain. More precisely, Public Choice theory sees the agents in this relationship as rational self-maximisers who should be controlled by the principal by various means.

One of the types of abuse of entrusted public power for a private gain is corruption. It is no surprise that the dominant approach in the economic analysis of corruption lies in the application of the principal-agent model in the main international anti-corruption strategies. These strategies call for increased criminalisation of acts of corruption as a mean of disciplining the falling agents. This in practice made the *Deterrence theory* the main point of the analysis in cases of corruption. This theory is seen in the law and economics literature as the fundamental economic theorem of crime and punishment<sup>11</sup>. However, deterrence mechanisms, besides so far showing very modest achievements in the domain of combating corruption, might be very expensive for society and many of the countries around the world, such as transitional, usually have scarce resources. As such they are in need of the anti-corruption framework which would cost society less and provide more benefits. Therefore, another important economic concept in this thesis is the notion of efficiency. Efficiency means that a certain mechanism is effective in reducing social harm but at the same time it achieves that at the lowest possible costs.

It was mentioned earlier that a dominant pure economic approach towards combating the corruption did not provide the expected results. This in a way raises a question mark regarding the neo-classical economic model and the individual as rational-self maximiser in it. Corruption is predominantly but not exclusively an economic issue. It includes many aspects

<sup>9</sup>Kerkmeester, H. (2000): "Methodology: General", in Bouckaert, B. and de Geest, G. (eds.): *Encyclopaedia of Law and Economics: The History and Methodology of Law and Economics*, Vol. 1. Edward Elgar, 2000, p. 348

<sup>10</sup>Rowley, C. K. and Schneider, F. G. (eds.) (2008): *Readings in Public Choice and Constitutional Political Economy*, Springer 2008

<sup>11</sup>See for instance: Becker, G. S. (1968): "Crime and Punishment: An Economic Approach", *Journal of Political Economy* Vol. 76, No. 2 (Mar. - Apr., 1968), pp. 169-217; Stigler, G. J. (1974): "The Optimum Enforcement of Laws" in Becker, G. S. and Landes, W. M. (eds.): *Essays in the Economics of Crime and Punishment*, pp. 526-536



which are context dependent and as such deserve attention. Some economists include the broader social context in the economic analysis of a society. For instance, Arrow<sup>12</sup> claims that “the interpersonal relationships are needed as part of our collective organization, for our mutual improvement”. This organisation should regulate the efficient allocation of scarce resources through the competition and the application of a price system. However, some things, such as trust, loyalty and similar values cannot be priced and they call for “something more than the market”. This is the area in which government steps in with nonmarket methods of controlling and directing the economy and society. Furthermore, Arrow argues that besides the government “another set of invisible institutions “the principles of ethics and morality” play an important role. During the evolution process, societies developed some kind of implicit agreements, which are either essential to the society’s survival or at least contribute to its efficient functioning. The strongest argument for this claim lies in the fact that societies with low levels of economic development actually have lack of trust among their citizens. Therefore, according to Arrow, individuals are always faced with the conflict between their individual desires and society’s demands. He says that “one’s social and one’s political attitudes must always reflect a certain degree of compromise with one’s individual point of view”. Social action is only possible with cooperation and agreement because each individual in decision making sees different values as important. Therefore, Arrow claims that “social demands may be expressed through formal rules and authorities or they may be expressed through internalized demands of conscience”. The only problem with the social agreement is that they are harder to change compared to individual decisions.

Following these arguments the analysis of corruption in transitional countries demands the observation of broader social context than the one covered by the narrow neoclassical economic model. During the socialist past the economy and society of transitional countries were based on a non-market resource allocation and these governing rules created various models of human behaviour, different from the usual one in capitalist societies. This specific evolution of post-socialist societies required a closer look at the *Cross Cultural Communication* field of study and *Public administration theory* in this study. When all aspects, which are considered relevant to this thesis, were taken into consideration, the Law and economics *Deterrence* approach for law enforcement was accompanied by the *Cooperative enforcement* approach. Therefore, the *combination of both* is seen as a means that could possibly improve the combat of corruption in post socialist countries.

Finally, the *Case study methodology* is used in combination with the *Grounded Theory*. The goal of conducting a case study here is to provide the image of the “black box” of public administration in one of the post-socialist countries. Since some of the aspects discussed in this thesis are not easy to observe due to its intangibility and the process of change, the chance of providing a closer look at the matter was seen in the methodology of the case study analysis. However, since some of the claims made are new and should in the future be explored further, the Grounded theory method is the only one applicable keeping in mind the whole context in which the research was conducted, and which is elaborated on in detail in the Chapter 5.

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<sup>12</sup>Arrow, K. (1974): *The Limits of Organization*, Norton & Company, 1974, pp. 15-29

### ***Scientific and societal relevance***

From a societal point of view this study aims to provide the optimal anti-corruption enforcement mechanism which will in the case of post-socialist countries in particular achieve a reduction in corruption and help in fostering economic growth. Keeping in mind that current policies, even though synchronised with the international ones, do not provide the desired outcome, an alternative should be found. Societies with widespread corruption see the use of criminal sanction as the main method which will reduce corruption. However, they are mainly ignorant about the costs which this method, especially imprisonment, incurs for society. It is therefore important to first introduce this fact to people and secondly to create the mechanism which will incentivise them to comply with the law voluntarily and not only because of the threat of the punishment imposed. The changing of the “mental model” is crucial in this case and with the anti-corruption policy design suggested in this thesis, this might be achievable.

From a scientific point of view it is interesting to observe how certain aspects, which in cases of corruption are analysed separately, interrelate. Corruption is a very complex social phenomenon and includes a variety of aspects which at the same time might be the causes but also the consequences. This in a way creates a vicious circle from which is not always easy to find an escape. Combining the various elements and approaches, the policy implications from this study are perhaps able to offer one for post-socialist countries.

### ***Content structure***

This study is structured within six chapters. *Chapter 1* provides the identity cards of two important issues and basic terms which are the subject of the analysis in this research. The first one is corruption. The elements of the analysis provided are definitions, typology and types of corruption. Then the existing anti-corruption framework is described. It is first discussed from its theoretical basis and then its concrete application in terms of international instruments and anti-corruption strategies defined accordingly in countries around the world. The second issue discussed is transitional countries. First, the meaning of the process and its characteristics are provided and then the problem of corruption. This chapter discusses the failures of dominant anti-corruption policies in transitional countries and in particular the specificities of these countries which are considered important for a design of effective anti-corruption policy.

Following the *structure-conduct-performance* paradigm *Chapter 2* starts with the positive analysis of the anti-corruption strategies which target the public administration structure in order to reduce corruption. Since they provide mixed and, in many cases unsatisfying results, a closer examination is made of the types of public administration organisation in capitalist, socialist and transitional societies. Simply speaking, the aim of this description was the provision of the path through which transitional countries are moving from the socialist to the capitalist state organisation. Beside the structure of the formal, “hardware” institutions, human capital is seen as an important “software” structural aspect. Therefore the literature on Public Service Motivation is presented accordingly.

Chapters 3 and 4 belong to the second element of the paradigm, conduct. *Chapter 3* discusses ways of regulating human behaviour and introduces the *anti-corruption pyramid*. It further discusses its first two elements: propensity for corruption-culture and transparency and accountability. The aim of this chapter is to target people's preferences and provide the mechanisms for their coordination towards the desired equilibrium. Regarding culture, three different types are considered relevant in the context of corruption combat improvement in post-socialist countries. These types are: universalism/particularism, individualism/collectivism and power distance. Regarding transparency and accountability first, its general relevance and characteristics are described and second, their context in socialist and post-socialist societies.

*Chapter 4* discusses the last two layers of the anti-corruption pyramid, more precisely the constraints that should be imposed upon the behaviour of civil servants in order to improve corruption combat. The chapter first presents the specificities of the corrupt act regarding its detection and the motives which lie behind its commitment. Based on these characteristics the two additional pyramids are introduced. *Disciplinary* and *criminal anti-corruption pyramids* which need to be applied based on the different characteristics of the types of bribery defined. Both pyramids apply the law and economics arguments regarding the optimal design of enforcement policies.

*Chapter 5* presents the case study of the Republic of Serbia. It first provides the arguments for pursuing this study, and then it gives the basic facts about history, anti-corruption framework and results hitherto achieved in corruption combat. The second part of the chapter starts with a discussion on the research area and methods applied. It continues with the case study method in general and its application in a concrete case. Finally, it provides the results and their interpretation.

*Chapter 6* summarizes the findings, provides concluding remarks and identifies venues for further research.

## *Chapter 1: Corruption and transition identity cards*

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*“Corruption is authority plus monopoly minus transparency”  
Unknown*

### **1.1. Introduction**

Although a very old phenomenon, corruption became the centre of attention in last two decades for various reasons. One of them is the collapse of centrally planned, socialist countries. As already mentioned in the introduction, the research topic of this thesis is corruption in transitional countries and therefore this chapter describes the main terms, definitions, and problems which will be analysed and discussed throughout the whole research trajectory. Determinants, definition, typology and types of corruption, its effects and the reaction of the international community to achieve effective combat will be presented in the first part. The second part will describe transitional countries, their idiosyncrasies, and results achieved hitherto in the fight against corruption.

### **1.2. Corruption**

#### *1.2.1. Corruption overview*

##### 1.2.1.1. Determinants, definition, typology and types of corruption

The term corruption comes from the Latin word *rumpere* which means to break. This phenomenon is well known throughout history and has been the subject of debates since the creation of the first states. However, the increased interest in it in modern times was expressed in the last few decades in the voluminous work of social science research. There is a dispute among scientists about the reasons for this increase but it seems that a common conclusion is not reachable. Tanzi<sup>13</sup> lists several arguments that might serve as an explanation. He claims that the end of the Cold War stopped the political hypocrisies and reviled political corruption. In the past, centrally planned economies did not focus on the corruption as an important issue due to the lack of information or reluctance to initiate any discussion on that topic. Nevertheless, the situation changed after the collapse. The increased number of democratic governments with free and active media made corruption no longer taboo and an available subject for discussion. Furthermore, globalization created the platform for comparison between the countries and increased international interest in it. This resulted in the active involvement of nongovernmental organizations, such as Transparency International, in an attempt to create anticorruption movements all around the world. International financial institutions, such as the IMF and the World Bank, also substantially contributed to the movement together with empirical studies which pointed out the costs of the corruption to society. Besides this, Tanzi further argues that the corruption phenomenon increased in recent decades and culminated in

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<sup>13</sup>Tanzi, V. (1998): “Corruption Around the World: Causes, Consequences, Scope and Cures”, *IMF Staff Papers*, Vol. 45, No. 4 (December 1998), pp.559-594

the 1990s due to three main reasons: 1) the growing role of the governments which provided bureaucracies with broader deciding powers, 2) the growth of international trade and business which increased the bribe opportunities and 3) economic changes in many countries, especially in transitional ones, caused the misuse of some mechanisms, such as privatization, which lead to the increase in corruption.

All these aspects presented brought into a play a deeper analysis of causes, factors and effects of corruption which will be to a certain extent presented in the next section. Here some basic features of the phenomenon are explained. Besides all the analysis and research done until now, the discussion about the definition of corruption is still very vivid. Many authors have discussed corruption by focusing on different aspects of it, and yet the agreement on a precise definition of corruption has not been reached.<sup>14</sup> This is explained by the fact that many different forms of corruption exist and it is very difficult to formulate one definition which will fit them all. Mishra<sup>15</sup> claims that the multi-dimensional and context specific nature of corruption makes the attempt at creating an inclusive definition difficult. However, useful working definitions adopted by many authors define corruption as “*misuse of public office for private gains*”. The definition is used by the international and nongovernmental institutions, such as the World Bank and Transparency International, in their voluminous and influential work on corruption. It is important to point out that it will be used in this thesis as well. Since corruption includes a variety of human acts, whose common characteristic is illegality and therefore latency, the broad scope of different acts sometimes complicates their classification. However, the literature agrees over some typologies, classifications and types of corruption.<sup>16</sup>

There are three important typologies of corruption. The first one includes public and private corruption, defined on the basis of a misuse of power in different sectors. Public corruption is a misuse of public office for personal gain and includes a variety of human behaviours. Private corruption, on the other hand, occurs between individuals in the private sector. The second typology refers to administrative and political corruption. While administrative corruption is the corruption that influences the implementation of policies and rules, the political corruption on the other hand, influences the formulation of laws, regulations, and policies. The research subject of this thesis is in the domain of administrative corruption, more precisely corruption of civil servants. Finally the third typology includes grand and petty corruption. Grand corruption involves substantial amounts of money and usually high-level officials, while petty corruption involves smaller sums and typically more junior officials. Grand corruption involving public officials is referred to as *kleptocracy*.

Literature also makes some classifications regarding the essence of the relationship among the parties involved in corruption transactions. One classification is based on the consent of the parties to indulge in corruption. According to this criterion there is *corruption with consent*, which is in essence agreement among the parties and *corruption without consent*.

<sup>14</sup>Jain, A. K. (2001): “Corruption: A Review”, *Journal of Economic Surveys*, Vol. 15, pp. 71-121

<sup>15</sup>Mishra, A. (ed.) (2005): *The Economics of Corruption*, London: Oxford University Press, p.4

<sup>16</sup>See: Rose-Ackerman, S. (1999): *Corruption and Government: Causes, Consequences, and Reform*, New York: Cambridge University Press, 1999; Gray, C. W. and Kaufman, D. (1998): "Corruption and development", *Finance & Development*, World Bank, Washington, DC; and United Nations Guide for Anticorruption Policies, available at: [http://www.unodc.org/pdf/crime/corruption/UN\\_Guide.pdf](http://www.unodc.org/pdf/crime/corruption/UN_Guide.pdf)

*extortion*, in which a person uses his position or office to obtain money through coercion or threats. Extortion is the unlawful use of one's position or office to obtain money through coercion or threats. Another classification, here called “*legal*” and “*illegal*”, is based on the level of violation of the law made, or nature of the basic motives for the corrupt deal. Some deals are made in order to “speed up the process”, while others are made to obtain a certain right by violating legal norms. This type of corruption is described in detail in the fourth chapter of this thesis.

The most common types of power abuse include bribery, nepotism, embezzlement, fraud, clientelism and conflict of interest.<sup>17</sup> *Bribery* is an offer of money or favours to influence an official. It may come in the form of a fixed sum, a certain percentage of a contract, or any other favour or money in kind. Usually it is paid to a state official or business person who can make contracts on behalf of the state or business or otherwise distribute benefits to companies or individuals, businessmen and clients. Occasionally, the concept of bribery could be hidden under the mask of terms such as kickbacks, gratuities, sweeteners, commercial arrangements, hush money, pay-offs, and milking. *Nepotism* is another common form of power abuse which occurs when officials favour relatives or close friends (*cronyism*) for positions in a decision-making authority. This type of favouritism is a result of the natural human tendency to give preferential treatment to friends and families, and occurs in both public and private sectors. *Clientelism* is characterized by "patron-client" relationships in which relatively powerful and rich "patrons", political candidates, promise to provide relatively powerless and poor "clients" with benefits, such as jobs, protection or infrastructure, in exchange for votes. *Embezzlement* is the fraudulent appropriation of money or property by a person entrusted to safeguard the assets in another's interests while *fraud* involves the use of deception, trickery and breach of confidence to gain some unfair or dishonest advantage. Finally, a *conflict of interest* occurs when someone, such as a public official, has competing professional obligations or personal or financial interests that would influence the objective exercise of his duties.

The description of various types and classifications of corruption provided above, clarifies the difficulties related to defining corruption. In resolving the corruption riddle researchers try to follow the patterns of creativity of humankind when exercising corrupt transactions with the main goal of finding possible solutions for corruption eradication improvement. The starting point for many of them is the attempt to measure the level of corruption in a specific country. However, this raised many questions of which the most important one concerns to what extent the measurement of something secret and hardly observed could be achieved and with what level of exactness. The next section endeavours to provide some answers, information and insights on this issue.

#### 1.2.1.2. Measurement of corruption

Measurement of corruption appears to be one of the challenging topics in scientific research. As previously mentioned, corruption is secret and latent and parties engaged in these acts have no incentives to reveal them. Thus answering the question on how to measure

<sup>17</sup>Available at: <http://www.business-anti-corruption.com/about-corruption/vocabulary/>

something that is not easily detectable appears to be difficult. The theory on corruption employs different indicators for its measurement but each of them raised a debate in the literature. For instance some authors, such as Philp and Brown<sup>18</sup>, claim that certain indicators show no correlation to a specific definition on corruption which implies that the value of a certain indicator depends on the definition of corruption. Furthermore, this means that prior to any use of an indicator its scope should be clarified. More precisely, it should be clearly defined what an indicator measures: is it concentrated on a particular type of corruption or does it represent the general one. Begović<sup>19</sup> stresses also the importance of the purpose of the concrete index use. According to him, two cases could be distinguished, one in which the indicator is used for analytical purposes in empirical research and the other one is operative, used for enacting some operative decision. Both of these indicators need to have certain characteristics. The former one should be reliable and robust while the latter should be precise, unambiguous and indisputable from the interpretation point of view and focused on the goals set.

In general, the indicators that are used to describe a particular phenomenon could be divided into two categories, objective and subjective. UNDP<sup>20</sup> report defines *objective indicators* as those which leave no room for subjective judgement because they are based on the undisputed facts. On the other hand *subjective indicators* are based on the perception of its examinees about corruption in a given country. Keeping in mind the secret nature of corrupt business as well as its illegality, it is difficult to formulate the objective indicator for measuring corruption. That is the main reason for using the subjective indicators in the analysis of corruption, such as perception and experience. People are usually reluctant to talk about their experiences in corruption due to the possibility of being penalized for engaging in such an activity and therefore, the most common way of analysing corruption is through perception. However, Arndt and Oman<sup>21</sup> and Rose and Mishler<sup>22</sup> point out that this method has a couple of drawbacks. These indicators may not be reliable in the assessment of long-term trends and changes because some of their aspects are difficult to capture. Most of the indicators do not always align with the view of ordinary people because of their skewness towards the business community. Finally, they tend to measure perception of corruption rather than its causes. All these drawbacks imply that the use of subjective indicators might be problematic in the case of comparison of corruption level between the countries.

<sup>18</sup>Philp, M. (2006): "Corruption Definition and Measurement", in Sampford, C. J. G., Shacklock, A., Connors, C. and Galtung, F. (eds.): *Measuring Corruption*, Aldershot and Burlington: Ashgate Publishing Company, 2006; Brown, A. J. (2006): "What Are We Trying to Measure? Reviewing the Basics of Corruption Definitions", in Sampford, C. J. G., Shacklock, A., Connors, C. and Galtung, F. (eds.): *Measuring Corruption*, Aldershot and Burlington: Ashgate Publishing Company, 2006;

<sup>19</sup>Begović, B. (2007): *Ekonomska analiza korupcije* (Economic Analysis of corruption), Centar za liberalno-demokratske studije, 2007 (Beograd : Akademija), pp. 262-263

<sup>20</sup>United Nation Development Programme (UNDP) ( 2008): *A User's Guide to Measuring Corruption*, p.23 available at: <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/a-users-guide-to-measuring-corruption/>

<sup>21</sup>Arndt, C. and Oman, C. (2006): "Uses and Abuses of Governance Indicators", *OECD Development Centre*, pp.90-91; Paris, France

<sup>22</sup>Rose, R. and Mishler, W. (2007): "Explaining the Gap Between the Experience and Perception of Corruption", *Studies in Public Policy*, No. 432, Centre for the Study of Public Policy, University of Aberdeen, pp. 1-28

Perception for measuring corruption is used in the two main methods applied: surveys and expert's review. In the case of surveys, there are three possible samples that could be used for the analysis: business people, households and civil servants. Begović<sup>23</sup> claims that each of these samples has its own advantages and disadvantages but the most exploited one is the sample of businessmen. The less used one is the sample of households and finally the sample of civil servants shows very little usage. In addition to surveys, perception of corruption could be expressed by the experts and that perception automatically assumes the competence of the indicator. However, he points out that this method is also accessible to criticism.

Besides the above-mentioned categorization of indicators, the theory uses an additional one, the categorization of indicators in terms of original and composite. Knack<sup>24</sup> explains that *original indicators* are based on individual research regardless of its method, survey or expert's evaluation. *Table 1.1* shows the individual indicators developed by international institutions. For example, the World Bank Investment Climate Assessment indicator is based on business people surveys while the Global Corruption Barometer, developed by Transparency International, uses surveys of households as a source for the index.

*Table 1.1: List of individual indicators of corruption*

<b>Indicator</b>	<b>Source</b>	<b>Number of states included</b>
<i>World Bank Investment Climate Assessment</i>	Business people Survey	79 world countries
<i>World Economic Forum - Competitiveness Report</i>	Business people Survey	80 world countries
<i>IMD (Institute for Management Development)</i>	Business people Survey	49 world countries
<i>EBRD and World Bank BEEPS</i>	Business people survey	24 transitional countries
<i>Gallup International in the name of Transparency international</i>	Business people survey	21 transitional countries
<i>PricewaterhouseCooper Opacity Index</i>	Business people survey and experts	34 world countries
<i>International Crime Victim Survey</i>	Households survey	
<i>World Values Surveys</i>	Household Survey	
<i>Global Corruption Barometer (Transparency International)</i>	Household Survey	62 world countries
<i>Economist Intelligence Unit (EIU)</i>	Experts opinion	115 world countries
<i>Freedom House Nations in Transit</i>	Experts opinion	27 transitional countries
<i>International Country Risk Guide (ICRG)</i>	Experts opinion	140 world countries
<i>World Market Research Centre (WMRC)</i>	Experts opinion	122 world countries

<sup>23</sup>Begović, B. (2007): *Ekonomska analiza korupcije* (Economic Analysis of corruption), Centar za liberalno-demokratske studije, 2007 (Beograd : Akademija), pp. 265-274

<sup>24</sup>Knack, S. F. (2006): "Measuring Corruption in Eastern Europe and Central Asia: A Critique of the Cross-country Indicators", *World Bank Policy Research Working Paper* 3968, Washington: The World Bank



<i>World Bank Country Performance and Institutional Assessment (CPIA)</i>	Experts opinion	83 countries members of IDA
<i>Columbia University State Capacity Survey</i>	Experts opinion	121 world countries

Source: Begović, "Ekonomska analiza korupcije" (*Economic Analysis of corruption*), pp. 277

On the other hand, *composite indicators* are usually created by a combination of different individual and Knack points out three motives for this combination. The first one is that the individual indicators could be defined for certain purposes and is therefore too narrow. The second motive lies in the attempt to reduce measurement errors. Finally, the third motive is the desire to cover a larger number of countries. The two most famous composite indicators are the *Transparency International Corruption Perception Index (TICPI)*, originated by Lambsdorff<sup>25</sup>, and the *Control of Corruption Index (CCI)*<sup>26</sup> developed by the World Bank Institute, more precisely by Kaufmann, Kraay and Mastruzzi<sup>27</sup>. The detailed remarks regarding the calculations of these indicators are provided by Knack<sup>28</sup> and for TICPI particularly by Galtung<sup>29</sup>. It is important to stress here that the Transparency International Corruption Perception Index (TICPI) is mainly used in this research due to its widespread application in numerous empirical research trajectories. On the basis of the perception of business people and experts who live in the examined country, it ranks countries on the scale from 0 (highly corrupt) to 10 (very clean) and includes 177 countries.<sup>30</sup> According to Lambsdorff<sup>31</sup>, the goal of CPI is to provide data on perceptions of corruption because there is no polling method which combines "perfect sampling frame, a satisfactory country coverage, and a fully convincing methodology to produce comparative assessment". The actual levels of corruption cannot be determined directly and therefore the perception is the only option left but it is not without its shortcomings. It might be biased due to various reasons such as cultural background of respondents. In addition to TICPI, the *Global Corruption Barometer* is used for the issues related to civil service. This indicator is developed by Transparency International, and as said earlier, it measures perception of households of corruption in public administration.

<sup>25</sup>Lambsdorff, J. G. (2007): *The Institutional Economics of Corruption and Reform: Theory, Evidence and Policy*, Cambridge University Press, pp. 20-26

<sup>26</sup>*Control of Corruption Index* is part of World Bank Worldwide Governance Indicators (WGI) project. WGI measures six aspects of governance: Voice and Accountability, Political Stability/Absence of Violence, Government Effectiveness, Regulatory Quality, Rule of Law and Control of Corruption. The indicators combine the views of citizens, enterprises and experts in 212 countries. Control Corruption Index measures the extent to which the public power is abused for private gain.

<sup>27</sup>Kaufmann, D., Kraay, A. and Mastruzzi, M. (2006): "Measuring Corruption: Myths and Realities", *Mimeo*, Washington: The World Bank; Kaufmann, D., Kraay, A. and Mastruzzi, M. (2006): "Governance Matters V: Aggregate and Individual Governance Indicators for 1996-2005", *World Bank Policy Research Working Paper 4012*, Washington: The World Bank; Kaufmann, D., Kraay, A. and Mastruzzi, M. (2006): "The Worldwide Governance Indicators Project: Answering the Critics", *Mimeo*, Washington: The World Bank

<sup>28</sup>Knack, S. F. (2006): "Measuring Corruption in Eastern Europe and Central Asia: A Critique of the Cross-country Indicators", *World Bank Policy Research Working Paper 3968*, Washington: The World Bank

<sup>29</sup>Galtung, F. (2006): "Measuring the Immeasurable: Boundaries and Functions of (Marco) Corruption Indicators", in Sampford, C. J. G., Shacklock, A., Connors, C. and Galtung, F. (eds.): *Measuring Corruption*, Aldershot and Burlington: Ashgate Publishing Company. For the (mis)uses of the Index see: Arndt, C. and Oman, C. (2006): "Uses and Abuses of Governance Indicators", *OECD Development Centre*, pp.90-91; Paris, France

<sup>30</sup>For more details see Transparency International web site: <http://cpi.transparency.org/cpi2013/results/>

<sup>31</sup>Lambsdorff, J. G. (2007): *The Institutional Economics of Corruption and Reform: Theory, Evidence and Policy*, Cambridge University Press, p. 21

As previously mentioned, the variety of corrupt acts makes construction of one indicator, which will capture the multidimensional character of corruptions, very difficult and therefore all existing indicators are biased towards a specific type of corruption. For instance, CCI measures corruption in the public and private sector while TICPI includes only the former. Although not perfect, these indicators could be very useful as the starting point of the corruption analysis in a particular country or countries. They, to a certain extent, reflect upon the real field situation and should be taken as important signals for stakeholders engaged in combating corruption.

### 1.2.2. *Anti-corruption framework*

#### 1.2.2.1. Theoretical debate

Corruption is mainly described negatively in the literature although some authors share the opinion that it might create positive effects.<sup>32</sup> Leaving these discussions aside, this section provides insights into the prevailing opinion in the literature that corruption is harmful to society. The negative effects of corruption are shown in numerous studies and analyses. Discussing causes of corruption Tanzi<sup>33</sup> lists the ones which are considered the most dominant such as: regulations, taxation, provision of goods and services below market price, quality of bureaucracy, public sector wages, penalty systems and transparency. Rose-Ackerman<sup>34</sup> classifies them into the three categories: those who equate supply and demand, incentive payments for bureaucracies, and finally, cost reducing bribes. However, Lamsdorff<sup>35</sup> points to the difficulty of distinguishing between causes and consequences of corruption because the causal arrow very often goes both ways. On the other hand, Abed and Gupta<sup>36</sup> connect corruption with economic growth, poverty, public finances/expenditures, provision of social services, income inequality, (foreign) investments, and anti-corruption strategies.<sup>37</sup>

<sup>32</sup> For more insights see: Leff, N. (1964): "Economic development through bureaucratic corruption", *American Behavioural Scientist*, pp.8-14; Huntington, S. P. (1968): *Political Order in Changing Societies*, New Haven: Yale University Press; Lui, F. T. (1985): "An Equilibrium Queuing Model of Bribery", *Journal of Political Economy*, pp. 760-781; Bardhan, P. (1997): "Corruption and Development: A Review of Issues," *Journal of Economic Literature*, Vol. 35 (September), pp. 1320-4; Leff, N. H. (1964): "Economic Development Through Bureaucratic Corruption", *American Behavioural Scientist*, Vol. 8, pp. 8-14; Huntington, S. P. (1968): *Political Order in Changing Societies*, New Haves: Yale University Press; The essence of these claims is that corruption "oils the mechanism", in countries where government rigidity is high and improves the allocation of resources.

<sup>33</sup> Tanzi, V. (1998): "Corruption Around the World: Causes, Consequences, Scope and Cures", *IMF Staff Papers*, Vol. 45, No. 4 (December 1998), pp.559-594

<sup>34</sup> Rose-Ackerman, S. (1999): *Corruption and Government: Causes, Consequences and Reform*, Cambridge University Press

<sup>35</sup> Lamsdorff, J. G. (2006): "Causes and consequences of corruption: What do we know from a cross-section of countries?", in Rose-Ackerman, S. (ed.) (2006): *International Handbook on the Economics of Corruption*, Edward Elgar Publishing Limited, pp. 3-51;

<sup>36</sup> Abed, G. T. and Gupta, S. (eds.) (2002): *Governance, Corruption and Economic performance*, Washington D.C. International Monetary Fund, pp. 1-2,

<sup>37</sup> For some of the aspects the related literature is provided here. *For investments see:* Bardhan, P. (1997): "Corruption and Development: A Review of the Issues", *Journal of Economic Literature*, Vol. 35, pp.1320-1346; Campos, E. J., Lien, D. and Pradhan, S. (1999): "The Impact of Corruption on Investment: Predictability matters", *World Development*, Vol. 27, pp. 1059-1069; Wei, S. J. (2000): "Local Corruption and Global Capital Flows",

Describing corruption, Tanzi<sup>38</sup> explains that "...corruption reduces public revenue and increases public spending... contributes to larger fiscal deficits, making it more difficult for the government to run a sound fiscal policy.... increase income inequality because it allows well-positioned individuals to take advantage of government activities at the cost of the rest of the population..." He further claims that corruption distorts markets and the allocation of resources which reduce economic efficiency and growth. There are a couple of reasons for this outcome: 1) with corruption the ability of the government to impose the necessary regulatory controls and inspections for correcting market failures is reduced; 2) the incentives are distorted; 3) corruption is in essence arbitrary tax with high welfare costs; 4) the fundamental role of government in the areas of contract enforcement and protection of property rights is distorted by corruption; 5) finally, because it reduces the earning potential of the poor, corruption is likely to increase poverty. Cooter and Schaefer<sup>39</sup> describe corruption as termites in a house that undermines the foundation of economic growth, which further results in low expenditure to combat corruption and together with poverty this forms a vicious circle.

Numerous authors<sup>40</sup> have shown the statistically significant correlation between corruption and *economic growth*. However, the direction of this correlation remains an open question. More precisely, it is not clear if the low level of corruption induces growth or is it the other way around. Although considered very important the discussions in this area in which economic growth is seen as the main cure are criticized by some authors. Rose-Ackerman<sup>41</sup>

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*Brookings Papers on Economic Activity*, Vol. 2, pp. 303-346; Wei, S. J. (2000): "Natural Openness and Good Government", *World Bank Working Paper* 2411, Washington: The World Bank; Lambsdorff, J. G. (2003): "How Corruption Affects Persistent Capital Flows", *Economics of Governance*, Vol. 4, pp. 229-243; Lambsdorff, J. G. (2005): "Between Two Evils, Investors Prefer Grand Corruption", *Diskussionsbeitrag* No. Vol.31-05, Passau: University of Passau; Aizenman, J. and Spiegel, M. M. (2006): "Institutional Efficiency, Monitoring Costs and the Investment Share of FDI's", *Review of International Economics*, Vol.14, pp. 683-697. *For Income inequality see:* Johnston, M. (1989): "Corruption, Inequality, and Change", in Ward, P. M. (ed.): *Corruption, Development and Inequality*, London: Routledge, pp. 13-38; Li, H., Xu, L. C. and Zou, H. F. (2000): "Corruption, Distribution and Growth", *Economics and Politics*, Vol. 12, pp. 155-182; Gupta, S., Davoodi, H. R. and Alonso-Terme, R. (2002), "Does Corruption Affect Income Inequality and Poverty?", *Economics of Governance*, Vol. 3, pp. 23-45; *For public finances/expenditures:* Tanzi, V. and Davoodi, H. R. (1998): "Corruption, Public Investment, and Growth", in Shibata, H. and Ihori, T. (eds.): *The Welfare State, Public Investments and Growth*, Tokyo: Springer Verlag; Mauro, P. (1998): "Corruption and the Composition of Government Expenditure", *Journal of Public Economics*, Vol. 69, pp. 263-279; Tanzi, V. and Davoodi, H. R. (2001): "Corruption, Growth, and Public Finances", in Jain, A. K. (ed.): *The Political Economy of Corruption*, New York and London: Routledge; Gupta, S. de Mello, L. and Sharan, R. (2001): "Corruption and Military Spending", *European Journal of Political Economy*, Vol. 17, pp. 749-777; Fjeldstad, O. H. and Tungodden, B. (2003): "Fiscal Corruption: A Vice or a Virtue?", *World Development*, Vol. 31, pp. 1459-1467;

<sup>38</sup>Tanzi, V. (1998): "Corruption Around the World: Causes, Consequences, Scope and Cures", *IMF Staff Papers*, Vol. 45, No. 4 (December 1998), pp.559-594

<sup>39</sup>Cooter, R. D. and Schaefer, H. B. (2012): *Solomon's Knot: How Law Can End the Poverty of Nations*, Princeton University Press, Chapter 11, p.159

<sup>40</sup>See: Mauro, P. (1995): "Corruption and Growth", *Quarterly Journal of Economics*, Vol. 110, pp. 681-712; Fisman, R. and Svensson, R. (2000): "Are Corruption and Taxation Really Harmful to Growth", *Policy Research Working Paper* 2485, Washington: The World Bank; Mo, P. H. (2001): "Corruption and Economic Growth", *Journal of Comparative Economics*, Vol. 29, pp. 66-79; Wei, S. J. (2001): "How Taxing is Corruption in International Investors", *Review of Economics and Statistics*, Vol. 82, pp. 1-11; Pellegrini, L. and Gerlagh, R. (2004): "Corruption's Effect on Growth and its Transmissions Channels", *Kyklos*, Vol. 57, pp. 429-456;

<sup>41</sup>Rose-Ackerman, S. (2006): *International Handbook on the Economics of Corruption*, Edward Elgar Publishing Limited, p. xvi

says that they simplify the phenomenon of corruption which is a “symptom that state/society relations operate in ways that undermines the fairness and legitimacy of the state”. Measures of economic growth are insufficient when it comes to the effectiveness of the public sector and the quality of state/society relationships. Therefore, Rose-Ackerman<sup>42</sup> stresses, that only by looking at the “...fine structure of the political and economic system...” one can understand the way corruption operates and attack it where it has the worst effects. Although corruption might be caused by culture and history it is above all an economic and political problem, which produces inefficiency and unfairness in the public benefits and costs distribution. It signals that the structure of the state does not channel private interests effectively and shows no concern for public interest. Tanzi<sup>43</sup> and Lamsdorff<sup>44</sup> share this view by saying that corruption could be reduced only if the way of government operation is changed and for meaningful corruption assessment institutional preconditions, which facilitate corrupt transactions, should be taken into account. However, the total elimination of corruption from society is, according to Tanzi<sup>45</sup>, unrealistic because even if it would be achievable it would be too costly. He explains that an optimal level of fighting corruption would be reached when the marginal social costs of the fight would be equal to its marginal benefits and therefore the level of corruption will remain above zero in all countries.

Therefore, the question of how to fight corruption arises. Rose-Ackerman<sup>46</sup> claims that “corruption is an archetypal topic for students of Public choice theory”. This theory, developed by economists, aims to apply economic discipline not only to the market issues but to the other disciplines which deal with various aspects of human behaviour.<sup>47</sup> Therefore Public choice theory sees politicians and bureaucrats as rational self-maximisers. Under the veil of this theory corruption is studied as an agency or principal model. Its first application goes back to Rose-Ackerman<sup>48</sup>, who states that corruption, although a legal category, has consequences for the economic analysis of the agent’s behaviour. After this application the principal-agent model became the standard of analysis to many economists, such as Jain<sup>49</sup>, Klitgaard<sup>50</sup>, etc. An agency relationship arises when two individuals enter a relationship in which one individual relies on another to carry out certain actions on his behalf. The actions of the agent affect the principal’s payoff particularly in the case of conflict of interest or in situations not regulated by the contract. Regarding this relationship, the agent is usually better informed than the principal.

<sup>42</sup>Rose-Ackerman, S. (1999): *Corruption and Government: Causes, Consequences and Reform*, Cambridge University Press, p. 4

<sup>43</sup>Tanzi, V. (1998): “Corruption Around the World: Causes, Consequences, Scope and Cures”, *IMF Staff Papers*, Vol. 45, No. 4 (December 1998), pp.559-594

<sup>44</sup>Lamsdorff, J. G., Taube, M. and Schramm, M. (2005): *The New Institutional Economics of Corruption*, Routledge, 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

<sup>45</sup>Tanzi, V. (1998): “Corruption Around the World: Causes, Consequences, Scope and Cures”, *IMF Staff Papers*, Vol. 45, No. 4 (December 1998), pp.559-594

<sup>46</sup>Rose-Ackerman, S. (2008): “Corruption” in Rowley, C. K. and Schneider, F. G. (eds.): *Readings in Public Choice and Constitutional Political Economy*, Springer, pp. 551-566

<sup>47</sup>Tullock, G. (1972): “Economic Imperialism” in Buchanan, J. M. and Tollison, R. D. (eds.): *Theory of Public Choice*, The University of Michigan Press

<sup>48</sup>Rose-Ackerman, S. (1978): *Corruption – A Study in Political Economy*, New Haven, CT: Academic Press.

<sup>49</sup>Jain, A. K. (1998): “Models of Corruption” in Jain, A. K. (ed.): *Economics of Corruption*, Boston, London, and Dordrecht, pp. 13–34.

<sup>50</sup>Klitgaard, R. (1988): *Controlling Corruption*, Berkeley, CA: University of California Press

Bearing in mind the asymmetry of information problem, the principal tries to put an incentive scheme in place to induce optimal action by the agent. Tirole<sup>51</sup> expanded this model to include another agent-supervisor in his early work on collusion in organizations including that within issues on corruption.

The agency structure is equally used for the analysis of political as well as administrative corruption. However, keeping in mind that this research focuses on administrative corruption, some crucial points are presented here. Rose-Ackerman<sup>52</sup> claims that keeping in mind specific characteristics of bureaucracy, e.g. secure jobs and low ability to suppress investigations, it should be easier to change its structure. However, the change is not omnipotent and in some cases cannot replace necessary morality and integrity. Regarding legal regulations and penalties, she claims that the setting of maximum fines and jail terms may deter only petty corruption. If the legal system aims to play an effective role, it should be designed in a way that expected penalties depend upon the gains of corrupt transactions of both parties and marginal expected penalties must exceed marginal expected benefits. On the other hand, expected penalties depend on the probability of detection and conviction which could be improved by a financial incentive system for reporting an act, such as a bounty scheme. However, Rose-Ackerman stresses that this approach is not without difficulties. People who might want to report corrupt deals are usually involved themselves, proving the wrongdoer's guilt also imposes additional obstacles and finally, police and prosecution might express a low level of engagement in combating corruption. Given all these situations, even a sophisticated sanctioning strategy will have a modest deterrent effect. Keeping in mind that the legal system might experience limitations, she points out that structural reforms of the system must play a central role. Since legalized bribery is not an option for various reasons, the variety of less drastic structural remedies should be considered, such as: reduction of discretionary powers by the simple rules, an increased number of thorough inspections and audits, the introduction of a competitive relationship between bureaucrats, and finally, the implementation of personal policies for changing official behaviour. Mishra<sup>53</sup> employs this framework in analysing the phenomenon of corruption in hierarchical bureaucratic structures. He claims that corruption within the organization affects its performance and distorts the incentive scheme in place. Therefore the optimal incentive scheme and the organizational structure of bureaucracies are closely related. If corruption lies inside hierarchies the only adequate check would be by an external agency whose honesty has to be impeccable otherwise it could only lead to additional corrupt organizations. This could be achieved by various means such as: income disclosure norms for public agents, clear guidelines for decision making, reduction of disclosure powers, effective engagement of honest individuals employed in the organization by preventing them from being passive or becoming corrupt, and careful design of recruitment policies and a promotion scheme.

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<sup>51</sup>Tirole, J. (1986): "Hierarchies and bureaucracies: on the role of collusion in organizations", *Journal of Law, Economics and Organization*, 2(2), pp. 181-214

<sup>52</sup>Rose-Ackerman, S. (1978): *Corruption – A Study in Political Economy*, New Haven, CT: Academic Press, pp. 219-222

<sup>53</sup>Mishra, A. (2006): "Corruption, hierarchies, bureaucratic structure", in Rose-Ackerman, S. (ed.): *International Handbook on the Economics of Corruption*, Edward Elgar Publishing Limited, pp. 189-215

The voluminous research on corruption made corruption visible and recognizable globally as an important issue which demands special attention and treatment. This move influenced some international and nongovernmental institutions to actively engage in supporting countries in combating corruption. The next section presents the main international actors together with their activities in this field.

#### 1.2.2.2. International Actor's engagement

The recognition of corruption as one of the problems with major consequences convinced the international community to take the necessary steps to ensure the improvement of its. Rose-Ackerman and Carrington<sup>54</sup> explain that a wide range of international institutions, such as international financial institutions, civil society groups, treaties, etc., are engaged in controlling corruption either as a main goal or as a complement to the primary activity. The range of activity of these institutions goes from carrying out concrete reform programs for strengthening government capacity, through training of domestic officials, journalists and civil society to identify and publicize corruption, and finally, to monitoring of financial flows and business deals. They categorize the institutions, which play an important role in fighting corruption, into four types. The first type includes the aid and lending organizations, more precisely International Financial Institutions (IFIs) such as the World Bank and bilateral donors. They act in accordance with two goals: economic growth and poverty alleviation and maintenance of integrity and legitimacy of their government structure. These organizations, besides sponsoring governance and anti-corruption projects in member states, try to avoid corruption in their own programs. The second type of organization is mainly interested in civil and criminal law enforcement by catching and punishing offenders and resolving commercial disputes. They do not, in general, have specific development or poverty alleviation agenda. The OECD's engagement belongs to this group. The third type is composed of diverse types of international non-profit institutions who have anti-corruption and good government agenda. Although without an official role within states or internationally, their legitimacy is drawn from their integrity and convincing arguments. Their way of operating is varied. Some work through franchises in the form of local chapters (Transparency International), some cooperate through standard-setting and monitoring process (Extractive Industries Transparency Initiative), some gather and organize country level data (Global Integrity), while others expose corruption and other wrongdoing (Global Witness). Civil society groups in this case operate as pressure groups which aim to introduce corruption to their reform agenda but also to place domestic reform efforts into an international context by publicizing their positive and negative results. Finally, the fourth type includes international business firms which ally with some of the non-profit groups in order to control corruption in the business world.

Rose-Ackerman<sup>55</sup> makes another classification of the international organizations according to the chosen strategies for combating corruption. The international actors fall into three broad categories: information provision, international frameworks and domestic reform

<sup>54</sup>Rose-Ackerman, S. and Carrington, P. D. (eds.) (2013): *Anti-Corruption Policy: Can International Actors Play a Constructive Role?*, Carolina Academic Press, Durham North Carolina, pp. 3-38

<sup>55</sup>Ibid, pp. 14-15

projects. The range of their engagement goes from those who receive some support from domestic actors, those who depend on the voluntary participation of the states and, finally those who put efforts into reforming a state's internal methods of operation. *Table 1.2* combines these strategies together with the goals set.

*Table 1.2: International Initiatives to Combat Corruption*

Strategies↓	Goals →	Growth & Poverty Alleviation	Government Legitimacy	Efficient International Markets
<i>Information Provision</i>		A	B	
<i>International Institutions</i>			C	D
<i>Anti-Corruption programs</i>		E	F	

Source: Rose-Ackerman and Carrington, "Anti-Corruption Policy: Can International Actors Play a Constructive Role?", p. 15

Describing this classification further she says that *information provision* strategy aims simply to aid domestic policy makers by providing information regarding corruption and leaves the final decision regarding its usage to them. This category covers cases A and B in the table. In *actions to control corruption*, *international institutions* can supplement domestic anti-corruption efforts but with no intervention in domestic practices. This, in a way, is achieved when countries ratify a treaty or join some cooperative effort by which they commit to pursuing anti-corruption policies. However, countries do this on a voluntary basis as part of their international responsibilities. There are two types of international bodies who are involved in this action: one that coordinates and supplements local anti-corruption efforts and others who resolve cross-border commercial disputes with corruption allegations. In general, this type includes cases C and D in the above table. Here it is necessary to point out that the research interest of this thesis is the law making of the former type of organization and its impact on the fight against corruption in countries in transition. The international laws within the scope are elaborated on later in this section. Finally, the third category includes the most intrusive forms of international intervention, such as aid and lending programs which explicitly ask for corruption to be limited. Funders in these cases intervene to support government reforms by two means: directly, by supporting specific programs or indirectly, through policy-based lending. Designing and monitoring of programs are supported by non-profit organizations and media which keeps anti-corruption issues on the IFIs agenda. However, international actors cannot force the governments to be honest and free of corruption. In the table, these cases are presented by letters E and F.

As mentioned earlier the subject of this research is the effect of the regulations adopted by international institutions in order to facilitate member countries in fighting against corruption. The description of the most influential ones is further provided. In the process of transformation from a socialist to a capitalist society, transitional countries had to adapt their legal systems to new circumstances and they achieved that by transplanting various laws and regulations into the domestic system. They also ratified anti-corruption conventions which are presented here. However, ratification does not necessarily mean the full implementation and the effects of adopted conventions are discussed in the next section.

One of the most globally influential conventions is *The United Nation Convention against Corruption (UNCC)*<sup>56</sup>, which came into force on December 14, 2005. It represents a comprehensive and multidisciplinary approach which aims to prevent and eradicate corruption. The United Nations recognized that corruption poses serious problems and threats to the stability and security of societies, it undermines the institutions and values of democracy, ethical values and justice and jeopardizes sustainable development and the rule of law. Therefore it cannot be treated as a local matter but a transnational phenomenon that affects all societies and economies. The Convention focuses on measures that should be applied in the public and private sector for fighting corruption, making suggestions to member states on implementing effective, coordinated and anti-corruption policies. Chapter II of the convention covers preventive measures which countries have to fulfil according to their international obligations. Articles 5 to 14 regulate among other aspects the establishment of a preventive anti-corruption body or bodies, improvement of the rules of operations of public sector which promote efficiency, transparency and objective merit criteria, adoption of codes of conduct for public officials, appropriate systems of procurement, public reporting, and measures relating to the judiciary and prosecution services. It also includes suggestions on private sector corruption as well as the manner of inclusion of these within society in the prevention of it. The main body of the Convention, more precisely Chapter III, is dedicated to criminalization and law enforcement in terms of corruption. *Table 1.3* shows the list of mandatory and non-mandatory offences that should be criminalised. In the area of criminalization it classifies the acts of corruption such as bribery, embezzlement, trading in influence, abuse of positions, bribery in the private sector and a few others. In terms of law enforcement it tackles, among others, immunity and jurisdictional privileges, discretionary legal powers, procedures for removing, suspending or resigning of accused public official, the protection of witnesses, experts and victims and special authorities.

*Table 1.3: List of acts in which criminalisation is required by the conventions*

<i>Convention</i>	<i>Mandatory offences for criminalization</i>	<i>Non mandatory offences</i>
UNCC	Bribery of national public officials	Bribery of foreign public officials and officials of public international organizations (bribing by)
	Bribery of foreign public officials and officials of public international organizations (bribing to)	Trading in influences
	Embezzlement, misappropriation or other diversion of property by a public official	Abuse of function
		Illicit enrichment
		Bribery in the private sector
		Embezzlement of property in the private sector
	Laundering of proceeds of crime	
	Obstruction of Justice	Concealment

Source: UN convention against corruption

<sup>56</sup>The preamble of the United Nations Convention against corruption describes its motives, vision and mission in taking steps necessary for corruption combat improvement around the world. Text of the Convention is available at: [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)



In order to promote, in an effective manner, the rapid entry into force of the Convention, the UN General Assembly requested the Secretary-General to designate the United Nations Office on Drugs and Crime (UNODC). It should serve as the secretariat for and under the direction of the Conference of the States Parties of the Convention, which is by the Convention defined as the main mechanism for implementation of the Convention (Article 63). UNODC created two documents important for the implementation of the Convention: the *Technical Guide to the United Nations Convention against Corruption*<sup>57</sup> and *UN Guide on Anti - Corruption Policies*<sup>58</sup>. Due to its comprehensiveness the Convention serves as an umbrella for all other international legal documents that address different issues and aspects of corruption.

Another influential international convention targets the area of bribing in international business transactions, including trade and investment. The Organization for Economic Co-Operation and Development (OECD)<sup>59</sup> recognized the seriousness of this problem since the bribery appeared as a widespread phenomenon in this area which raises serious moral and political concerns undermining good governance and economic development and distorts international competitive conditions. The result of this awareness was the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* which was adopted in 1997. The convention regulates only the “active bribery”, meaning the offence committed by the person who promises or offers the bribe, as opposed to “passive bribery”, and the offence committed by the official who receives the bribe. The monitoring of the implementation of the Convention is delegated to the OECD Working Group on Bribery in International Business Transactions, whose main tasks are the receipt of notifications and other information submitted by the Parties and regular reviews of steps taken by the countries in the process of implementation. The OECD has developed guidelines and recommendations in order to assist the parties of the Convention in the full implementation of it. One of these documents is Good practice guidance on implementing specific articles of the Convention on combating Bribery of Foreign Public Officials in International Business Transactions as well as Good practice guidance on internal control, ethics, and compliance.

An important set of conventions against corruption is adopted under the auspices of the Council of Europe. In 1999 the Council established *The Group of States against Corruption* (GRECO)<sup>60</sup> in order to monitor member states’ compliance with the organizations’ anti-corruption standards. GRECO’s objective is to improve the capacity of its members in fighting against corruption by monitoring their compliance with the Council’s anti-corruption standards through a dynamic process of mutual evaluation and peer pressure. It helps to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. GRECO also provides a platform for the sharing of best practices in the prevention and detection of corruption. The Council of Europe monitors the implementation of two conventions on corruption, the *Criminal Law Convention on Corruption*

<sup>57</sup>Text of the Guide available at: [http://www.unodc.org/documents/corruption/Technical\\_Guide\\_UNCAC.pdf](http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf)

<sup>58</sup>Text of the Guide available at: [http://www.unodc.org/pdf/crime/corruption/UN\\_Guide.pdf](http://www.unodc.org/pdf/crime/corruption/UN_Guide.pdf)

<sup>59</sup>The preamble of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions explains the motives, vision and mission of the convention adopted. Available at: <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/38028044.pdf>

<sup>60</sup>For more information see the Council of Europe web site: [http://www.coe.int/t/dghl/monitoring/greco/general/3.%20What%20is%20GRECO\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/general/3.%20What%20is%20GRECO_en.asp)

and its Additional Protocol and the *Civil Law Convention on Corruption*, two recommendations<sup>61</sup> and one resolution<sup>62</sup>. GRECO evaluation procedures involve the collection of information through questionnaire(s), on-site country visits which enable evaluation teams to solicit further information during high-level discussions with domestic key players, and drafting of evaluation reports. *Table 1.4* provides a list of acts which should be criminalised by the convention in the domestic system of the member countries.

*Table 1.4: List of acts in which criminalisation is required by the conventions*

<b>Convention</b>	<b>Mandatory offences for criminalization</b>
<b>GRECO</b>	Active bribery of domestic public officials
	Passive bribery of domestic public officials
	Bribery of members of domestic public assemblies
	Bribery of foreign public officials
	Bribery of members of foreign public assemblies
	Active bribery in the private sector
	Passive bribery in the private sector
	Bribery of officials of international organisations
	Bribery of members of international parliamentary assemblies
	Bribery of judges and officials of international courts
	Trading in influence
	Money laundering of proceeds from corruption offences
	Account offences
	Participatory acts

Source: *Criminal Law Convention on Corruption*

Last but not the least, the most important set of rules for transitional countries lies within the framework of the European Union (EU) since the majority of them at the beginning of the reform process set joining it as the main goal. In an attempt to reduce all forms of corruption, the European Union (EU) issued the *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a comprehensive EU policy against corruption*<sup>63</sup>. The document reviews EU progress in combating corruption and defines areas in which further steps should be taken. This document summarizes the legal documents on fighting corruption that the EU has produced so far and the instruments for tackling it. The Communication adopts the definition of corruption used by the United Nations' Global Programme against Corruption and in conclusion it sets out the principle elements of a future EU anti-corruption policy. It also explains the need to agree on common definitions of offences and common penalties and to elaborate on a multidisciplinary EU policy. Key elements here are the ratification of European and international anti-corruption

<sup>61</sup> The Council of Europe: Recommendation No. Rec (2003) 4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns and Recommendation No. Rec (2000) 10, on codes of conduct for public officials, [http://www.coe.int/t/dghl/monitoring/greco/documents/instruments\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/documents/instruments_en.asp)

<sup>62</sup> Council of Europe: Resolution (97) 24 on the twenty Guiding Principles for the fight against corruption [http://www.coe.int/t/dghl/monitoring/greco/documents/instruments\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/documents/instruments_en.asp)

<sup>63</sup> The document is available at:

[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!DocNumber&lg=en&type\\_doc=COMfinal&an\\_doc=2003&nu\\_doc=317](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2003&nu_doc=317)

instruments, the monitoring of their implementation and the fight against corruption in the private sector. In the area of cooperation agreements and external aid programmes, the Commission is currently reviewing its framework agreement, its specific financing agreements and tender documents in order to insert anti-corruption clauses. The Communication also explains the view of the European Commission which is in favour of accession to a number of instruments originating from other international bodies. The aim is to take account of the activities that already exist, in order to avoid duplication, and to ensure that measures already existing in the EU have the same mandatory character in other international organizations since the Organisation for Economic Cooperation and Development (OECD), the Council of Europe and the United Nations have already produced their own conventions on corruption.

The description of the anti-corruption international acts aimed at providing the legal framework in which countries, signatories of the conventions, operate in combating corruption. Their success in implementing conventions and law enforcement are still the subject of various debates. This research, however, focuses on transitional countries and their idiosyncrasies which affect enforcement of the anti-corruption laws based on these conventions. Before this analysis, the next section provides the debate in general on anti-corruption strategies adopted around the world under the influence of the international community and its act.

#### 1.2.2.3. Anti-corruption strategies

Theoretical discussions on corruption and activities of international actors have a significant impact on the creation of *anti-corruption strategies* which set the system of incentives necessary to encourage rule abiding and discourage self-interested agents and their opportunistic behaviour. McCusker<sup>64</sup> claims that these strategies mainly include reduction of the scope of corruption through policy change, increasing the costs of corruption via external monitoring and sanctioning, creating a system which induces self-restraint including rewards for non-corrupt behaviour or for its reporting. The general claim is that *prevention* should be at the forefront of anti-corruption reforms, with the stress on long term interventions in order to strengthen the systems and controls, together with the promotion of transparency, accountability and informed citizenship<sup>65</sup>. Further *deterrence*, through effective law enforcement, has the essential role of breaking cycles of impunity and, therefore, many countries enforced anticorruption laws as a first and necessary step in combating corruption. Punishing corrupt individuals in addition has a preventive role because it discourages potential offenders from engaging in corrupt activities. Within this structure the majority of countries adopted laws (civil, criminal, specific anti-corruption), implemented comprehensive legal reforms as well as international instruments recommended by various institutions, such as the World Bank and Transparency International.

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<sup>64</sup>McCusker, R. (2006): Review of anti-corruption strategies, Australian Institute of Criminology, April 2006, pp. 18-19 available at: <http://www.aic.gov.au/publications/current%20series/tbp/21-40/tbp023.aspx>

<sup>65</sup>U4 Anti-corruption Resource Centre, p. 2 ;

Publication available at: <http://www.u4.no/publications/international-good-practice-in-anti-corruption-legislation/>

Messick and Kleinfeld<sup>66</sup>, discuss the structure of the anti-corruption laws which should be tailored according to the enforcement capacity of a particular country supported by other legal reforms. The main issues in this process, according to them, relate to the judicial system and its capacity, competences and accountability and the characters of law enforced by the agencies, more precisely their clarity, precision and simple application. Transparency International (TI) in Sourcebook<sup>67</sup> suggests also some guiding principles for the design of anti-corruption policies. These principles include: punishment of both active and passive bribes, respect for human rights during the prosecution of corruption cases, protection of whistleblowers, application of the reverse burden of proof principle in trial cases of corruption, strengthening the bilateral and multilateral relations of countries in terms of legal assistance in dealing with corruption, monitoring of the implementation of anti-corruption laws should be carried out by civil society, and, finally, regular revision of the anti-corruption laws with the main goal of removing loopholes and unanticipated problems. Summarizing the common elements of anti-corruption programs and strategies around the world, McCusker<sup>68</sup> concludes that best practice shows that strategy should be holistic but focused. It should also construct a set of incentives to encourage rule-abiding behaviour and an independent anti-corruption body in charge of its implementation which is the crucial key to ultimate success. Finally, anti-corruption strategies cannot operate successfully within a vacuum but should rely upon the engagement of a wide range of participants.

However, the dominant approach in anti-corruption policies design described above came under the criticism of the New Institutional Economics. Lambsdorff and Nell<sup>69</sup> claim that societies are continuously engaged in the discipline of corruption of its civil servants and politicians and in combating this they use three approaches: repression, prevention and transparency. The first approach, *repression* includes draconic penalties and attempts to achieve higher probabilities of detecting corrupt acts. Although this approach has its merits they question its leading position in the future because “of a very likely event of decreasing marginal gains and increasing marginal costs”. This will further produce an outcome in which criminals are less deterred by higher penalties and absolute integrity becomes more expensive. The second approach focuses on *prevention* which, according to Lambsdorff and Nell relates to incentives and ethical training. Ethical training has some good aspects, such as better communication of conflicts of interest and developing of a transparent atmosphere and it will be an important issue in coming years. However, it is also costly and time consuming and it may serve to camouflage the true intent and interests of bureaucracy. Finally, the third approach is *transparency*, which they describe as an “overarching principle with latent benefits”. Transparency represents an immense potential for corruption reduction, although the

<sup>66</sup>Messick, R. E. and Kleinfeld, R. (2001): “Writing an Effective Anticorruption Law”, World Bank, Washington, DC. Available at: <https://openknowledge.worldbank.org/handle/10986/11362>

<sup>67</sup>Transparency International Source Book 2000: *Confronting Corruption: The Elements of National Integrity System*, Available at: <http://archive.transparency.org/publications/sourcebook>

<sup>68</sup>McCusker, R. (2006): “Review of anti-corruption strategies”, *Australian Institute of Criminology*, April 2006, available at: <http://www.aic.gov.au/publications/current%20series/tbp/21-40/tbp023.aspx>

<sup>69</sup>Lambsdorff, J. G. and Nell, M. (2006): “Corruption: Where We Stand and Where To Go,” in Kreutner, M. (ed.): *The Corruption Monster: Ethik, Politik und Korruption*, Vienna, 2006. Available at: <http://www.icgg.org/downloads/Corruption%20-20Where%20we%20stand%20and%20where%20to%20go.pdf>

administrative costs of increasing it are limited. However, this principle might be “fine-tuned in the future”. Concluding the critics of dominant anti-corruption approach, *repression-prevention-transparency*, Lambsdorff and Nell suggest that other approaches should be explored. They should implement the measures which will promote betrayal among corrupt parties, destabilize corrupt arrangements, disallow contracts to be legally enforced, and impair the operation of corrupt intermediaries. Although traditional approaches to anti-corruption certainly have their merits it is questionable “whether they should be the guiding principles for future reform measures”. In this context, an asymmetric design of sanctions, coupled with exemption from punishment, appears to be a promising avenue for future (legal) reform.

Discussing the set of conventional strategies for fighting corruption: increasing penalties and level of monitoring, increasing transparency and accountability in the decision-making process, Ogus<sup>70</sup> claims that they might not be sufficiently effective in the countries where judicial and law enforcement systems are themselves affected by it. Usually, these countries do not have enough resources available for monitoring the officials or “macro” approach to corruption combat is lacking. He claims that “classic approaches to constraining corruption usually advocated in Western industrialized societies often prove to be futile”. Therefore, it is necessary to provide an adequate institutional design, which should limit the opportunities for corruption or make them less profitable. Ogus<sup>71</sup> suggests that for designing the best regulatory regime for these countries, it should be checked whether they could be implemented regarding traditional, customary law and the institutional setting in a particular country. He explains that regulatory goals and principles should be more effective if internalized as social norms because community disapproval is usually more effective than conventional penal or administrative sanctions in inducing compliance. To some extent similar arguments were raised by McCusker<sup>72</sup> who points out that “one-size fits all” approach to anti-corruption strategies is no longer acceptable or practicable, because anti-corruption reform should be unique to every country. The existing strategies usually have numerous intrinsic weaknesses. One of them is over-reliance on the judiciary, police and financial sector without taking into account that in many countries such institutions are weak and corrupt themselves. Furthermore, political will is recognised as a key driver necessary for systematic change in any given country and therefore anti-corruption efforts need to be recognised by governments as priorities. These governments should receive assistance in the developing of appropriate policy recommendations as well as its implementation.

This section provided reader with general information on the corruption, the first important aspect of this research. It described its definition(s), calcifications, and measurement. It also stressed the importance of corruption in the present times, its consequences and reactions induced around the world to enable combat against it. The next section of this chapter introduces another key aspect of the research which is related to transitional, post-socialist countries. It includes its description, problems regarding corruption, unique challenges that

<sup>70</sup>Ogus, A. (2004): “Corruption and Regulatory Structures”, *Law & Policy*, July & October 2004, pp. 329-346

<sup>71</sup>Ogus, A. (2005): “Towards Appropriate Institutional arrangements for regulation in Less Developed countries”, Paper No. 119, Centre on Regulation and Competition, Institute for Development Policy and Management, University of Manchester,

<sup>72</sup>McCusker, R. (2006): “Review of anti-corruption strategies”, *Australian Institute of Criminology*, April 2006, available at: <http://www.aic.gov.au/publications/current%20series/tbp/21-40/tbp023.aspx>

these countries meet and finally, for a better illustration of the topic, presentation of the situation regarding corruption in some of them.

### 1.3. Transitional countries and corruption

#### 1.3.1. *Transition and its characteristics*

*Transitional countries* are the post-socialist countries which are in the process of transformation, from a centrally planned economy, based on the dominance of state property and bureaucratic control, to an open, free-market one, based on the market deregulation and the dominance of private property.<sup>73</sup> In these countries - which include the former republics of the Soviet Union, and the countries of the Central, Eastern and South-Eastern Europe China, Mongolia, Vietnam,<sup>74</sup> - the lives of around 1.65 billion people are affected by the process<sup>75</sup>. Transitional countries are distinguished from developing countries by a couple of aspects. Roland<sup>76</sup> claims that they have generalized state ownership, strong state power, “overindustrialization”, a relatively high level of human capital and economic development and a low initial income inequality. The problem of institutions’ functioning is the main inquiry in transitional economies. Society distorted by the collapse of the old regime attempts to find the solution for the problem by looking into other countries and modelling social institutions accordingly. In the later stages of socialism the general opinion was that old system should be replaced with a different regime, whose institutions would promote on the one hand prosperity and increased wealth for the citizens and on the other suppress the rent-seeking activities. However, what kind of institutions can achieve this goal is the main question. A great deal of theoretical and empirical work witnesses the efforts of scientists, researchers and politicians in answering these questions.

Roland<sup>77</sup> explains that at the beginning of transition, policy advice was derived from the Washington consensus<sup>78</sup> which advocates price liberalization, tight monetary policy and balanced budgets for stabilizing macroeconomy and, finally, privatizing state-owned companies for inducing profit-maximizing behaviour. This approach to the economic reform, called “*Big Bang*” or “*Shock therapy*”, inspired by the neoclassical theory, was widely supported by the international financial organizations and famous economists. It influenced

<sup>73</sup>Kolodko, G. W. (2006): *The World Economy and Great Post-Communist Change*, Nova Science Publishers, Inc., 2006, pp. 93 – 94.

<sup>74</sup>Some of the countries that are listed as transitional are: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, FY Republic of Macedonia, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovak Republic, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.

<sup>75</sup>Roland, G. (2000): *Transition and Economics: Politics, Markets and Firms*, The MIT Press Cambridge, Massachusetts, London, England, p. xpii

<sup>76</sup>Ibid, p. xpii

<sup>77</sup>Ibid, pp. xviii – xxvii

<sup>78</sup>Washington consensus is the set of 10 policies, based on the US capitalism, for which the US government and the international financial institutions believed were necessary elements of “first stage policy reform” that all countries should adopt to increase economic growth. At its heart is an emphasis on the importance of macroeconomic stability and integration into the international economy - in other words a neo-liberal view of globalization.

substantially the economic policies of the majority of transitional countries. Apart from China, Hungary and Slovenia, almost all other transitional countries applied the “Big Bang” strategy.

However, Roland<sup>79</sup> explains that this approach implemented in the case of transitional countries revealed important shortcomings: 1) the results of liberalization did not yield a positive supply; 2) a major unpredictable fall in output took place; 3) organized crime developed faster than markets in some countries; 4) stabilization attempts and soft budget constraints of enterprises proved unsuccessful in various countries and finally, 5) mass privatization mainly led to massive asset stripping and plundering by insider managers. These experiences, on the other hand, contributed to the reinforcement of the institutional perspective, also known as the “*Gradualist approach*”, which emphasizes the importance of institutions in developing successful capitalist economy. Roland explains that this approach had more support in academic but not in the international policy circles at the beginning of transition but over time it dominated the scene. The most prominent example of this approach is the case of China which never followed the recommendations of the Washington consensus<sup>80</sup>. In the process of transformation from socialism to capitalism it is necessary to take into account the existing starting point because defining only the end objectives might lead to unexpected outcomes. Roland claims that simple coping and imitation of the institutions of the other countries, without taking into consideration the situation in the field, provides no guarantee that positive ends would be reached. Therefore besides economic factors some other factors such as, geographical, historical or particular institutional context usually play an important role. Norgaard<sup>81</sup> explains that specificities of transitional countries, such as strong bureaucracy systems, stronger social response to social inequalities produced by social and ideological legacies of the socialist era as well as the weakly developed civil society, might have an impact on the reform course. In addition, “the vastly overgrown and outdated industrial sector, complete absence of a private sector and associated social groups and entrepreneurial mentalities” should also be considered important for this performance.

This became clear in the later stages of transition because the theoretical knowledge in achieving the listed changes in transitional countries was missing and, therefore, resulted in many surprises. Roland<sup>82</sup> concludes that in the end this picture shows that economists were not well prepared to face the tasks imposed by transition. A large number of coordination problems among economic agents in this case was not taken into account which imposed the difficulties in predicting the selections as well as the reasoning of the decisions made regarding the multiplicity of implied equilibria. In order to keep social cohesion and still implement the reforms, the broader support for reforms among the population is necessary. This further means that besides the adoption of adequate laws for protection of private property, fighting corruption and similar activities, “the condition of law enforcement, reform of the organization of government, and the development of self-enforcing social norms that foster

<sup>79</sup>Roland, G. (2000): *Transition and Economics: Politics, Markets and Firms*, The MIT Press Cambridge, Massachusetts, London, England, pp. xviii - xxvii

<sup>80</sup>Ibid, pp. 328-335

<sup>81</sup>Norgaard, O. (2000): *Economic Institutions and democratic Reform – A comparative Analysis of Post-Communist Countries*, Edward Elgar Publishing, Inc., 2000, p.45-60

<sup>82</sup>Roland, G. (2000): *Transition and Economics: Politics, Markets and Firms*, The MIT Press Cambridge, Massachusetts, London, England, p. 5

entrepreneurship, trust, and respect for legality and commitment...<sup>83</sup> should be taken into account. Instead of using the revolutionary metaphors and tabula rasa view, concepts spread among the shock therapy proponents which did not produce the expected results, the existing institutions should be used to prevent distortions in society while developing the new ones.

Pejovich<sup>84</sup> defines institutions as “legal, administrative and customary arrangements for repeated human interaction” with the major function of enhancing the predictability of human behaviour. The prevailing institutional framework in a society consists of both formal and informal rules. Formal rules are constitutions, statutes, common laws and other governmental regulations which are externally enforced and define the political, economic and protection system. Informal rules have their origins in the experiences, traditional values, ethos, religious beliefs, ethnicity and other factors that influence the subjective perceptions individuals form to interpret reality. Norgaard<sup>85</sup> claims that evolutionary economics focuses on the ability of agents in adapting to institutional settings change and does not accept the assumption of the economic actor as fully rational and fully informed. In neo-institutional theory, North and Thomas<sup>86</sup> focus on formal and informal institutional barriers to change claiming that effectiveness of any radical scheme, because any change of formal institutions and rules will inevitably clash with the informal aspects of institutions. The importance of the institutions is perhaps best explained by Coase<sup>87</sup> who stated that when it is costly to transact, institutions matter. In post-socialist regimes, rules that govern the creation of an open market should be established. Therefore, those institutions and the organisational structure which arose and evolved to minimise the transaction costs associated with the running of political and economic systems are the ones which should be identified and implemented<sup>88</sup>. The replacement of the institutions in transitional countries was mainly done by legal transplanting of the rules proven to be effective in the capitalist states, especially the EU rules and regulations. Regarding legal transplants Watson<sup>89</sup> explains that whenever society faces the need for change and progress, it reaches for more successful law structures from another country and implements them into its own legal system as a “legal transplant”. In the coming sections legal transplants in the domain of anti-corruption law are analysed and discussed.

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<sup>83</sup>Ibid, p. 333

<sup>84</sup>Pejovich, S. (1995): *Economic Analysis of Institutions and Systems*, Kluwer Academic Publishers, 1995, pp.30 - 32

<sup>85</sup>Norgaard, O. (2000): *Economic Institutions and democratic Reform – A comparative Analysis of Post-Communist Countries*, Edward Elgar Publishing, Inc., 2000, pp.45-60

<sup>86</sup>North, D. C. and Thomas, R. P. (1970): “An Economic theory of the Growth of the Western World”, *The Economic History Review*, 23, pp. 1-17

<sup>87</sup>Coase, R. H. (1937): “The nature of the firm”, *Economica*, 4, pp.386-405; Coase, R. H. (1960): “The Problem of Social Cost”, *Journal of Law and Economics*, 3, pp. 1-44; Coase, R. H. (1998): “The New Institutional Economics”, *American Economic Review*, 82, pp. 713-719

<sup>88</sup>North, D. C. and Thomas, R. P. (1970): “An Economic theory of the Growth of the Western World”, *The Economic History Review*, 23, pp. 1-17; Bardhan, P. (1989): “The New Institutional Economics and Development Theory: A Brief Critical Assessment”, *World Development*, 17, pp.1389- 1395.

<sup>89</sup>Watson, A. (1974): *Legal Transplants: An Approach to Comparative Law*, Scottish Academic Press, 1974; American ed. University Press of Virginia, 1974.



### 1.3.2. Transition and corruption

#### 1.3.2.1. Corruption in transitional countries

Discussing corruption Abed and Gupta<sup>90</sup> claim that the disintegration of the command structure in post-socialist regimes triggered some of the “...most chaotic economic, political and social changes in modern history...”. Lack of accountable governance systems and the rule of law in socialist countries resulted in rent seeking, corruption and thievery, partially visible after the collapse. Roland<sup>91</sup> states that corruption is one of the three important issues raised in post-socialist countries, besides the unofficial economy and private contracting under the weak law enforcement. Nowak<sup>92</sup> provides two reasons for the centrality of corruption in transitional countries. One lies in the wide range of impacts which socialist governments left on legitimacy and credibility. This created a specific attitude, summarized in the expression “if you are not stealing from the state, you are stealing from your family”, which may still prevail. Another relates to the privatisation process by which state properties went to private hands. Socialist states entered the process of transformation with different legacies which should be taken into account when it comes to tackling corruption. Nowak explains that the extraordinary scale of corruption in transitional countries could be seen in two ways: optimistic and pessimistic. The optimistic view claims that visibility of corruption is a sign of progress because after the decades of living in the totalitarian system in which public interest was constantly misused for private, the citizens of post-socialist states can now distinguish more clearly between the two. The pessimistic view on the other hand, claims that fundamental changes in society just confirmed the worst fears associated with the change to the market based and democratic system. Olson<sup>93</sup> stresses the specificities of socialist countries which contribute to the widespread corruption. In the market economy, based on private property and good institutions, actors are motivated due to selfish reasons to abide by the laws and discourage their violation. In contrast, in the “market contrary” economy, to which the socialist system belongs, the private property share was very small and resulted in the absence of a self-interest mechanism which should prevent theft of public goods and help the government in apprehending it.

Faced with the problem described above, transitional countries, in many aspects of their reform, took necessary steps to change the state structure. As mentioned earlier, they replaced the old system with the new one by translating laws and regulations from the developed capitalist states. *Table 1.5* shows the facts about the transitional countries regarding the EU status, since many of the countries pursued reforms under the umbrella of the EU regulations,

<sup>90</sup>Abed, G. T. and Gupta, S. (eds.) (2002): *Governance, Corruption and Economic performance*, Washington D.C. - International Monetary Fund, pp. 3

<sup>91</sup>Roland, G. (2000): *Transition and Economics: Politics, Markets and Firms*, The MIT Press Cambridge, Massachusetts, London, England, pp.184-194

<sup>92</sup>Nowak, R. (2001): “Corruption and transition economies”, presented to the Preparatory Seminar for the Ninth OSCE Economic Forum, Bucharest, 27-28 March 2001;

Available at: [http://www.unece.org/fileadmin/DAM/trans/osce/osceunece/misc\\_corruption.pdf](http://www.unece.org/fileadmin/DAM/trans/osce/osceunece/misc_corruption.pdf)

<sup>93</sup>Olson, M. (2000): *Power and Prosperity, Outgrowing Communist and Capitalist Dictatorships*, Basic Books, pp.106-110

and dates of the ratifications of international anti-corruption instruments, by which countries bind themselves to adjust their anti-corruption legal frameworks according to the convention's recommendations. The next section discusses the analysis of the literature on the results achieved regarding combating corruption.

*Table 1.5: Overall picture of international anti-corruption activities of transitional countries*

<b>Country</b>	<b>EU status</b>	<b>UN convention</b>	<b>OECD conv.</b>	<b>GRECO</b>
<i>Bulgaria</i>	Member (2007)	2006	1998	Criminal law (2001) Civil law (2000)
<i>Croatia</i>	Member (2013)	2005	-	Criminal law (2000) Civil law (2003)
<i>Check Republic</i>	Member (2004)	2013	2000	Criminal law (2000) Civil law (2003)
<i>Estonia</i>	Member (2004)	2010	2004	Criminal law (2001) Civil law (2000)
<i>Hungary</i>	Member (2004)	2005	1998	Criminal law (2000) Civil law (2003)
<i>Latvia</i>	Member (2004)	2006	-	Criminal law (2001) Civil law (2005)
<i>Lithuania</i>	Member (2004)	2006	-	Criminal law (2002) Civil law (2003)
<i>Poland</i>	Member (2004)	2006	2000	Criminal law (2002) Civil law (2002)
<i>Romania</i>	Member (2007)	2004	-	Criminal law (2002) Civil law (2002)
<i>Slovakia</i>	Member (2004)	2006	1999	Criminal law (2000) Civil law (2003)
<i>Slovenia</i>	Member (2004)	2008	2001	Criminal law (2000) Civil law (2003)
<i>Montenegro</i>	Candidate (2010)	2006	-	Criminal law (2002) Civil law (2008)
<i>Serbia</i>	Candidate (2012)	2005	-	Criminal law (2002) Civil law (2008)
<i>FYROM</i>	Candidate (2005)	2007	-	Criminal law (1999) Civil law (2002)
<i>Albania</i>	Potential candidate (2004)	2006	-	Criminal law (2001) Civil law (2000)
<i>BiH</i>	Potential candidate (2000)	2006	-	Criminal law (2002) Civil law (2002)
<i>Belarus</i>	-	2005	-	-
<i>Georgia</i>	-	2008	-	Criminal law (2008) Civil law (2003)
<i>Moldova</i>	-	2007	-	Criminal law (2004) Civil law (2004)
<i>Russia</i>	-	2006	2012	Criminal law (2006) Civil law (----)
<i>Ukraine</i>	-	2003	-	Criminal law (2009) Civil law (2005)

### 1.3.2.2. Hitherto results achieved in fighting corruption

The majority of transitional countries found and still find EU membership to be a good opportunity, helpful in building institutions necessary for development. By joining the EU acceding countries hope to increase economic integration with Western Europe, to provide long term economic growth and to raise living standards closer to the EU average. This could be achieved through the opportunities which membership brings: accession to the single market which includes benefits arising from free trade within it, free movement of capital which creates opportunities from foreign direct investment, free movement of people which expands the labour market and competitive pressure. Furthermore, most accession countries stand to be net recipients of income from the EU programmes, such as common agricultural policy and social cohesion and regional funds. This also includes some potential macroeconomic advantages, one of which is monetary policy coordination with the European Central Bank<sup>94</sup>. In the accession process the institutional system has to be replaced by the new one. This further means that the requirements of the European Union should be implemented into the law of an acceding country. However, this legal transplanting does not always stand for success. The literature on legal transplants shows that in order to be successful this transplanting should be pursued in a certain way. In the analysis of the effects of legal transplants Berkowitz et al.<sup>95</sup> show that if the borrowing of legal structures is not taking place from a country with a similar legal heritage, substantial investments should be made in terms of legal information and training prior to the adoption of a law. This is necessary for the domestic agents who can enhance their familiarity with the imported law and make an informed decision about how to adapt the law to local conditions.

Regarding corruption, transitional countries followed the trend set by the international community and joined the rest of the world in ratifying important anti-corruption instruments in order to confront corruption, one of the important problems, which hampers the reform process. However, this approach is not without critiques. Lambsdorff<sup>96</sup> stresses that current anti-corruption activities are mainly based on some of the best practices implemented without knowing “to what extent such approaches can claim global validity”. He claims that anti-corruption must go deeper in order to understand conflicts and the country’s system of norms. *Graph 1.1* shows the Transparency International Corruption Perception Index for the EU member states for the year 2013. A closer look at the graph shows that even though the post socialist countries which are now part of the EU made substantial progress in the reform process, they still lag behind the western capitalist states regarding corruption. They are mainly located in the second part of the Graph.

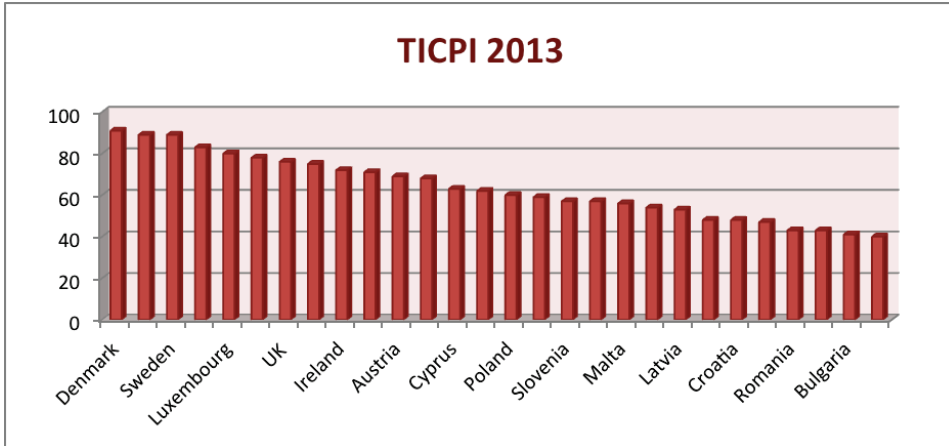
<sup>94</sup>For further information see the EU website:

[http://europa.eu/legislation\\_summaries/enlargement/ongoing\\_enlargement/114536\\_en.htm](http://europa.eu/legislation_summaries/enlargement/ongoing_enlargement/114536_en.htm)

<sup>95</sup>Berkowitz, D., Pistor, K. and Richard, J. F. (2003): "Economic development, legality, and the transplant effect," *European Economic Review*, Elsevier, vol. 47(1), pages 165-195

<sup>96</sup>Lambsdorff, J. G. (2007): *The Institutional Economics of Corruption: Theory, Evidence and Policy*, Cambridge University Press, p. 228

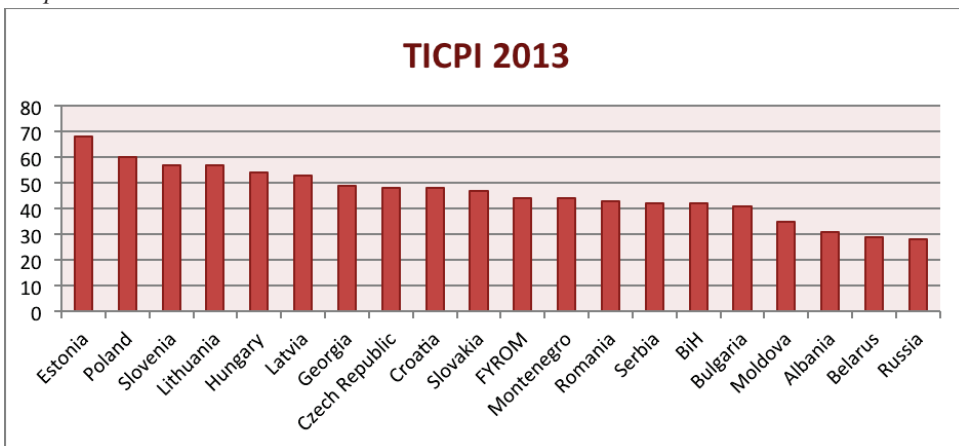
Graph 1.1: EU countries and TICPI for 2013



Source: TI website

On the other hand, the second Graph, *Graph 1.2*, shows, besides the EU member states, TICPI 2013 for other transitional countries, those on the way to EU membership but also those who do not have such goals on their political agendas. However, they all, generally, have the improvement of the fight against corruption as one of the priorities in the reform strategies. It is visible from the graph that regarding corruption the EU post-socialist member countries rank better compared to the others. However, the average score for all these countries is 46 on the scale of TICPI which goes from 0 to 100. This implies that work should be done regarding combating corruption in the countries which are emerging from a socialist to a capitalist system. The following discussion aims to point out the shortcomings of the existing approach to fighting against corruption which will be used as the starting point for the analysis and suggestions on improving the fight against corruption combat in transitional countries.

Graph 1.2: Transitional countries and TICPI 2013



Source: TI website

Rousso and Steves<sup>97</sup> claim that a comprehensive anti-corruption approach to combating corruption, adopted by transitional countries, has three aspects: one which includes the introduction of new or amended law in order to reduce rent seeking opportunities for public officials; another aspect includes cooperation with other governments in the fight against corruption. Finally, the third aspect refers to the implementation of a set of legal documents which create anti-corruption programs, such as: a concept document, anti-corruption law, anti-corruption plan and monitoring mechanisms. The justification for the adoption of these programs is twofold: on one hand they aimed to develop an integrated framework for policy and institutional reforms, and on the other, key domestic and international stakeholders wished to launch a process which can build consensus on strategy for fighting corruption and hold government accountable for its implementation. However, they point out that despite the rapid growth of anti-corruption programs around the world, there is very little research on their effectiveness in reducing corruption and their impact on the government and its commitment to anti-corruption efforts. Russo and Steves observed 26 transitional countries for the 2002-2005 period in order to measure the intensity of anti-corruption activity and its short-time impact in reducing the levels of administrative corruption. Their study shows that integrated anti-corruption programs, legislative reforms introduced to reduce the scope of corruption and membership of anti-corruption conventions are not associated with the reduction of administrative corruption.

Another analysis regarding the effects of the adoption of anti-corruption conventions in transitional countries was carried by Michael<sup>98</sup>. He questions the impact of this move in the countries of Central and Eastern Europe with the remark that instead of the commonly expressed approach “let’s regulate”, the cost benefits analysis should be used as a guide. He claims that both qualitative and empirical studies fail to find any significant correlation between the adopted anti-corruption legislation and more detections and prosecutions related to corruption. One of the questions that Michael analyses relates to the enactment of anti-corruption legislation by the executive agencies of Central European and Former Soviet countries. He found that anti-corruption law shows under-effectiveness due to the lack of implementation by the agencies in charge. There are two explanations for this situation: first, development and application of legal principles of civil servants’ accountability in CEE countries remain less advanced, compared to developed OECD ones, due to difficult and costly access to the law; second, the design of provisions in the conventions rarely take into account political or economic costs induced by its implementation. It is, therefore, more important to regulate correctly than to under or over regulate and to create compatible incentives which would be followed by civil servants. The incentives structure should allocate liability to civil servants to reduce their engagement in corrupt situations and to motivate them to report corruption in the workplace.

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<sup>97</sup>Rousso, A. and Steves, F. (2006): “The effectiveness of anti-corruption programs: preliminary evidence from the post-communist transition countries”, in Rose-Ackerman, S. (ed.) (2006): *International handbook on the economics of corruption*, Cheltenham, Glos., Edward Elgar, pp. 247-277

<sup>98</sup>Michael, B. (2010): "Issues in Anti-Corruption Law: Drafting Implementing Regulations for Anti-Corruption Conventions in Central Europe and the Former Soviet Union" *Journal of Legislation* 36.2 (2010), pp.272-277

Another aspect which Michael points out is that conventions impose increased criminalization as one of the important means in corruption combat, which comes from the common practice among developed OECD countries with effective judicial systems. On the contrary, for the countries with a weak judicial system, such as transitional ones, this criminalization creates serious problems for their successful prosecution. Criminal cases require extensive and expensive investigation by the police or prosecutor's office and the only appropriate anti-corruption regulation should assign jurisdiction over corruption cases to "the least cost, highest-benefit jurisdiction". To achieve this, administrative sanctions against corruption should be applied, based on the balance of probabilities standard for successful conviction. This approach can provide greater deterrence than a stronger criminal standard which requires proof beyond a reasonable doubt. In this context, criminal investigation and prosecutors should be part of corruption cases in CEE countries, only when "the benefits to society of treating the case as crime exceed the costs". *Table 1.6* shows that each level of jurisdiction corresponds roughly with the harms accompanying each type of corruption –relate offence.

*Table 1.6: The harms and standard of evidence required for corruption remedies*

	<i>Evidence requirement</i>	<i>Types of remedies</i>	<i>Advantages</i>
<b>Managerial</b> <i>(defined in Agency's law or Code)</i>	Suspicion of corruption	Written warning, reassignment, pass to administrative or criminal levels	Failure to prosecute opens to administrative and criminal liability
<b>Administrative</b> <i>(defined in Administrative Law)</i>	Balance of probabilities	Warning, reassignment, fine, firing	Failure to detect large number gives administrative court liability, contributory factors/accessory to a crime
<b>Civil</b> <i>(defined in Civil Code)</i>	Depends on legal tradition	Payment of damages and compensation	Address economic harms, provides for deterrence that jail time does not
<b>Criminal</b> <i>(defined in Criminal code)</i>	Beyond a reasonable doubt	Fine, censure, prison	If criminal prosecution does not succeed (because of corruption in judiciary), then rely on two other levels to obtain partial prosecution

*Source: Michael, "Issues in anti-corruption law: drafting implementing regulations for anti-corruption conventions in Central Europe and the former Soviet Union", p.282*

Finally, Michael stresses that the anti-corruption programs analysed are grossly underfinanced in all the ex-socialist countries examined and do not follow an incentive based approach, leaving corruption fighters with few incentives to do their job. Therefore, they should be designed to strike a balance between a more clear definition of methods for implementing regulation and constraints which regulations pose on an agency's staff in performing corrupt acts.

Recent analysis on the same topic but from a target compliance prospective was made by Batory<sup>99</sup> in which she points out that instead of asking what is wrong with the letter of the law the analysis should focus on some of the reasons why those who should comply with the

<sup>99</sup>Batory, A. (2012): "Why do anti-corruption laws fail in Central Eastern Europe? A target compliance perspective", *Regulation & Governance*, No. 6, pp. 65–82

law fail to do so. She suggests that anti-corruption interventions should be more oriented towards raising awareness among target groups, they have to take into account existing social norms and should rely on positive incentives rather than increasing penalties. Although some surveys describe legal framework of Poland, Hungary and Romania as strong, corruption remains “widespread and persistent problem in the CEE EU member states”. Looking for the reasons Batory mentions that the problem of implementation is evident and the variety of possible causes, discussed in the literature, could be detected, such as: lack of political will, legacies of past regimes, adoption of the anti-corruption laws aimed only to please the EU so after the accession they became “the world of dead letters”. However, she criticizes this approach saying that by exclusively focusing on the failures of governments and public administrations, only one part of the story is presented. The other part includes citizens who deal with the state. The main objective of the literature on target compliance is why target groups act or fail to act according to the goals of a particular policy. If more light would be shed on this aspect, the better policy interventions could be designed. Using Hungary for the study case, Batory approaches the target compliance problem through two dimensions. The first dimension relates to the incentive structure and shows that while penalties are in place for a high number of corruption-related crimes, all the other elements of credible deterrence are missing such as: weak incentives for corruption reporting or lack of information crucial for detection. The second aspect includes analysis of normative motivation and results in the explanation that credibility of law makers and implementers is weak for imposing binding norms on society. Therefore, it is of no relevance that most people condemn corruption, evidence around them does not motivate them to abstain from corruption. Policy implications from this analysis point in three directions. First, legislation should be better communicated and its targets actively informed. Second, incentives should also include carrots and not only sticks. Finally, the legislation which is not synchronized with social norms should be reversed or terminated.

The articles presented in this section stressed the problems of transitional countries in performing anti-corruption policies. They also pointed in the direction of further analysis in this thesis. The coming section introduces the idiosyncrasies of countries in transition which are, according to the author of this research, considered as unique challenges which create obstacles for effective anti-corruption combat. Their addressing and analysis should improve the understanding of transitional countries and their specificities important to be taken into account for any serious reform.

### 1.3.3. *Unique challenges of TC*

The socialist regime had its specificities expressed in the institutional and mind sets of the people who lived under it power. The importance of the institutions is widely discussed in the literature. North<sup>100</sup> explains that they present the rules of the game in a society or, “humanly devised constraints that shape human interaction”. They structure incentives in

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<sup>100</sup>North, D. C. (1990): *Institutions, Institutional Change and Economic Performance: Political Economy of Institutions and Decisions*, Cambridge University Press,

human exchange and shape the evolution pattern of society which is crucial for understanding historical change. The institutions are composed of formal written rules as well as unwritten codes and as such create the framework for human interaction. North stresses that formal rules follow official policies and they can change overnight while, on the other hand, informal rules embodied in customs, tradition and codes of conduct are more resistant to it. “Ideas and ideologies matter” and the level of their importance show the institutions. The mental construct of the individuals is shaped by the ideas and ideologies which they use to interpret the world around them and make choices. Denzau and North<sup>101</sup> claim that individuals with common cultural background *share(d) mental models (SMM)* which give them the sense that “they have an intellectual understanding of it with a set of concepts and language which makes communication easier”. Therefore, ideas matter and their evolution and way of communication are in essence a manner of developing useful theory which aims to shed light on our understanding of the performance of societies through history and in the present times. In line with the theory of mental models is the research conducted by Ariely et al.<sup>102</sup>. Their study, by comparing Germans from the East and West, tests whether the economic and political system from the past has an impact on people’s willingness to cheat for personal gain. The results show that socialism “has a lasting impact on citizen’s basic morality”. Authors provide a couple of reasons grounded in the characteristic of socialism. First, the merit-based work was not rewarded and made no opportunities for people to accumulate the wealth. Second, socialism failed to provide “functional public system or economic security”, even though it declared its existence was intended to serve people which “eroded the value citizens placed on honesty”. Finally, the structure of the political and economic system made people “work around official laws and cheat to game the system”. After all these claims a closer look at the socialist system is necessary. This section will present the historical aspects of the institutional setting of transitional countries and resulting consequences.

#### 1.3.3.1. Institutional design of socialism

Although the idea of socialism has a history which goes back further than the 19<sup>th</sup> century, it received full attention when systematized by Karl Marx. The common claim is, according to, Boettke<sup>103</sup>, that Marx’s analysis was rather a critique of capitalism than real assessment of the nature of socialism. However he claims that the fundamental point is that Marx did not avoid examining a socialist theory, but he advocated a particular method, a positive one, to social theory. By criticising a capitalist society he revealed “the main features of socialist society”. Baradat<sup>104</sup> lists three of them as basic: (1) public ownership of production,

<sup>101</sup>Denzau, A. T. and North, D. C. (1994): “Shared Mental Models: Ideologies and Institutions” , *Kyklos*, Vol. 47, pp. 3–31,

<sup>102</sup>Ariely, D., Garcia-Rada, X., Hornuf, L. and Mann, H. (2014): “The (True) Legacy of Two Really Existing Economic Systems”, *Munich Discussion Paper*, No. 2014-26, available at: <http://epub.ub.uni-muenchen.de/20974/>

<sup>103</sup>Boettke, J. P. (1993): *Why Perestroika Failed: The Politics and Economics of Socialist Transformation*, Routledge 11 New Fetter Lane, London EC4P 4EE, pp. 47-49

<sup>104</sup>Baradat, L. P. (1991): *Political Ideologies: Their Origins and Impact*, Prentice Hall, Inc., Englewood Cliffs, New Jersey 07632, pp. 164- 188



cooperative or nationalized; (2) a social welfare system, in which society cares for its members in need; (3) the intention of abundance, equality, and sharing that will free people from material want. The third one, the so called “socialist intent”, is required for the creation of an authentic socialist state because it is aimed to set people free from the condition of material dependence. This “happy state of affairs”, characterized by abundance of goods for all, will cause a “profound change in people’s beliefs, attitudes and conducts” because they do not need longer to compete with one another and therefore will become more human and noble. Cooperation rather than competition will dominate and that will lead to a new era of greater productivity and an improved lifestyle. The final results of this change will be the abolition of private ownership and disappearance of class differences which in sum heralds the establishment of new social order. As mentioned above, Marx did not invent the socialism but his theory of “scientific socialism”, which postulates “laws of human motivation and conduct” – economic determinism and dialectic materialism – completely dominated the socialist movement. However, Baradat<sup>105</sup> explains that Marxism had a variety of uses, different and sometimes contradictory interpretations of which four major settings are: the Soviet Union, Yugoslavia, China and Cuba.

In practical terms, what came out as a result of the implemented socialist idea Boettke<sup>106</sup> define as “an example of a theoretically impossible utopian dream”. In the analysis of Soviet-style socialism he claims that the institutional demands of the regime were inconsistent with the attainment of its goals, increased productivity and the moral improvement of mankind. Therefore, the unintended consequence of utopia implementation was “the Soviet reality of political oppression and economic deprivation”. Soviet-style socialism is described as a political and economic monopoly which created a loyal caste of bureaucrats who benefited from maintaining the system and did not take care about public interest and consumer well-being. Boettke further stresses that “the main objective of bureaucratic action was not to increase economic productivity per se, but rather to increase the rents and perquisites available”. Instead of planned cooperation, economic competition was replaced by the bureaucratic one and according to that the resources were allocated according to the political rationales rather than the economic ones with corresponding waste as a consequence. However, in the Soviet system waste was not treated as a bad act unless it did not meet the output targets. Furthermore, consumer demand was not part of the state’s company plans and calculations. However, this system, which Boettke<sup>107</sup> calls “the unintended by-product of attempting to implement the Marxian dream and the institutional legacy of that attempt”, stayed in place for over sixty years. Its long life is explained through a couple of factors such as accumulated surplus of inherited natural resources, internal imperialism, expressed through collectivization, and external colonization of Eastern Europe after the Second World War, as well as the existence of the illicit markets through the system and the use of world prices in the allocation of scarce natural resources.

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<sup>105</sup>Ibid, pp. 188-198

<sup>106</sup>Boettke, J. P. (1993): *Why Perestroika Failed: The Politics and Economics of Socialist Transformation*, Routledge 11 New Fetter Lane, London EC4P 4EE, p. 5-6

<sup>107</sup>Ibid, pp. 10-11

Although the economic reality was far from the illusion of a rationally planned economy, the Socialist/Communist Party did not give up on its ideology which made “the Soviet people live a lie”. This false reality was protected in order to legitimate the revolution and the Party and the major function of the economic bureaucracy was to maintain the illusion of the achieved tremendous economic growth. Parallel to the official economy a de facto economy existed fulfilling the gaps created by the failures of the official one. This means that “illicit market transactions attempted to correct for the long queues and poor quality of consumer goods found in the official state stores”<sup>108</sup>. On a practical level this opened the floor to side payments, such as barter or bribery, for various goods and services required.

Besides the double economic activity, duality was present in political, cultural and intellectual life and aimed to break the official system and establish an alternative order.

However, the officials were aware of these threats and employed various means to keep people in fear. Boettke<sup>109</sup> stresses that throughout history much of the Soviet people lived in the reality of constant fear caused by arbitrary political terror exercised by the Party and the secret services. Political opponents of the regime were either physically liquidated or sent to labour camps. The best illustration of the common practice might be the case of Vera Wollenberger<sup>110</sup>, an intellectual in the socialist East German. Becoming a dissident her normal life was gone because she was harassed and spied upon by the Stasi (the East German Secret Police), fired from her work and imprisoned for her political activities. When in 1992 the Stasi’s secret files were opened, Vera discovered that her husband had betrayed her. Like all other secret police in socialist regimes, the Stasi developed an extensive information network made of secret police agents, friends, neighbours and family members of the people under surveillance<sup>111</sup>. Therefore the dissident activity in Eastern Europe was rare and consent to the socialist Party rule was expected behaviour.

In the article about Samizdat literature<sup>112</sup>, Grzybowski<sup>113</sup> discusses its role in the publicizing of the abuse of legal processes against dissidents in the Soviet Union. He claims that the political aim of Samizdat was the struggle for the realization of individual and human rights through protests against the regime’s practice aimed to force it to respect Soviet laws despite their imperfection. It was also a “reaction to the disappointed high hopes of Soviet intellectuals” because the Soviet press was censored and sided with the regime and it either did not report the important events or it published untrue information. The Samizdat materials reveal that in politically sensitive cases the guarantees of fairness and legality were not respected and in preventing publicity of the trials the officials employed two techniques. One

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<sup>108</sup>Ibid, p. 65

<sup>109</sup>Ibid, p. 44

<sup>110</sup>More about Vera Wollenberger in her book *Virus der Heuchler: Innenansicht aus Stasi-Akten* and on other similar cases in book by Miller, B. (2004): *The Stasi Files Unveiled: Guilt and Compliance in a Unified Germany*, Transaction Publishers, New Brunswick, New Jersey

<sup>111</sup>Boettke, J. P. (1993): *Why Perestroika Failed: The Politics and Economics of Socialist Transformation*, Routledge 11 New Fetter Lane, London EC4P 4EE, pp.132-133

<sup>112</sup>Samizdat is a literature secretly written, copied, and circulated in the former Soviet Union and usually critical of practices of the Soviet government.

See more at: <http://www.britannica.com/EBchecked/topic/520512/samizdat>

<sup>113</sup>Grzybowski, K. (1978): “Socialist Legality and Uncensored Literature in the Soviet Union”, *Case Western Reserve University’s Journal of International Law*, Vol. 10:299

was by controlling the audience in the court rooms by putting the agents of the secret service or police there and preventing even relatives from being at the trial. This technique also included the misrepresentation of the facts by the press. The other was very broad interpretation of the criminal codes covering any act which might be dangerous for the regime, even though it was not criminalized.

A clear example of this practice was *verbal delict*. Krsmanović<sup>114</sup> explains that although the constitutions of socialist countries in many cases guaranteed the freedom of speech and citizen's right to make suggestions and participate in conducting public affairs, in reality they were limited by other laws and regulations and their broad interpretation. Basically, any opinion which deviated from the official criteria could be subsumed under the criminal code provisions such as: "hostile propaganda", "betrayal of the country", "call for the rebel", "distribution of false news", "insult of public officials" and "endangering the sovereignty and independence of the state". Besides imprisoning the people convicted for the above listed crimes, Krsmanović claims that another technique was used as well by socialist regime. It included the declaring insane of dissidents and hospitalizing them in mental institutions. This as consequence ensured their discretion and deprivation of any future expression of opinion. All the oppression measures resulted, according to Pipes<sup>115</sup>, in individuals withdrawing into private worlds, trying to be invisible in some sense and therefore the abandoning of any idea of independent public activity and concern about public affairs. This image does not correspond to the initial intention of the new kind of human being. The next section looks in more detail at the character of the people who lived under the socialist regime. More precisely, the *homo sovieticus* is presented.

### 1.3.3.2. Homo sovieticus

For the description of the phenomenon of *homo sovieticus* the quote "the road to hell is paved with good intentions" appears to be applicable<sup>116</sup>. The idea of socialism aimed to create a new kind of men and during Soviet times this man, according to Zinovyev<sup>117</sup>, was meant to be a hero, a new superman. This *Uomo Universale* is a part of the collectivity that incarnates the rationale of progression, social justice and equality. As previously stated, the socialist man is non-egoistic and cooperative and he creates and lives in the world better than the one that capitalist society provides. A closer look at the system provides an image in which "all citizens are equal" and everybody is entitled to the same amount of goods regardless of the individual efforts and contribution. This practically means that the state guaranteed free access to all to education, employment (the official data on unemployment were not available), health care and housing providing as such a life without existential problems. It also tolerated poor work ethic,

<sup>114</sup>Krsmanović, T. (2008): "Verbalni delikt i dusevno obolenje" ("Verbal delict and insanity"), *Hereticus*, 2/2008, available at: <http://www.hereticus.org/arhiva/verbalni-delikt-i-dusevno-obolenje.html>

<sup>115</sup>Pipes, R. (1992): "Russia's chance", *Commentary*, 93 (3), pp. 28–33.

<sup>116</sup>It seems that this term was for the first time used in 1962 by Joseph Novak in the book *Homo sovieticus, der Mensch unter Hammer und Sichel* (Homo sovieticus, a Man under the Hammer and Sickle). Hammer and Sickle were the symbols of the communism and they crossed together symbolize the urban industrial workers and the rural agricultural workers respectively. Their overlapping symbolizes the unity of the two as the working class.

<sup>117</sup>Zinovyev, A. (1984): *Homo Sovieticus*, Polonia, 209p.

petty theft of common property or its misuse, and any kind of similar behaviour. In return the state expected from its citizens not to interfere in public life. Economically speaking the incentives for individual improvement and achievements were distorted and resulted in the demoralization of the people, disintegration of values and finally moral corruption<sup>118</sup>. From all that is stated above it appears that the Utopian dream, defined by Marx and other socialist thinkers, was proven to be impossible to realise by the average human being. Therefore, during the time *the homo sovieticus*, from an originally positive concept, acquired many negative characteristics. Living under the indoctrination, suppression and deprived from any kind of social power he became, according to the literature<sup>119</sup>, an irresponsible being with low self-esteem and with a lack of knowledge about his own purpose. The failure of the system, expressed in a low living standard, high coercion and plenty of lies, substantially contributed to this development.

After the collapse of socialism, the *homo sovieticus* concept gained another meaning associated with the inability of people to make a sudden break and take distance from the previous regime. More precisely, it refers to the inability to replace the totalitarian mentality for a democratic one. This change put people into the situation in which they received freedom and became responsible for their lives, but the lack of skills necessary for achieving this goal was still present<sup>120</sup>. Tischner<sup>121</sup> writes that *homo sovieticus* is “the syndrome of post-communist form of escape from freedom” who is not a socialist but the client of socialism. He

<sup>118</sup>The system also reflected to the other spheres of the society and following the quote that “art and culture are mirrors of the society”, the research leads to the Socialist Realism doctrine. The foundation for the doctrine is defined according to the views of the socialist leaders in the Soviet Union. For instance, in 1932, Stalin stated that “... artist ought to show life truthfully. And if he shows it truthfully, he cannot fail to show it moving to socialism. This is and will be socialist realism”. Lenin thought that artist liberty confronts fundamentally social stability and the artistic control can serve the state’s goals. Trotsky agrees with him and claims that the state should determine artistic direction because art is powerful but dangerous tool. Therefore the appropriateness of art, like all other social activities, was controlled by the censorship apparatus established for that purpose. Krishnan explains that pro-regime artist also contributed to the development of the Socialist Realism because they asked for greater intervention of the state in order to pursue further the goals of the revolution and any other view expressed which deviated from the official one was considered “counter-revolutionary” or “bourgeois” tendencies. For more insights see: Hoffman, D. L. (2003): *Stalinist Values: The Cultural Norms of Soviet Modernity (1917-1941)*, Ithaca: Cornell University Press, 2003, p. 161; Treadgold, D. (1990): *Twentieth Century Russia: Seventh Edition*, Boulder: Westview Press, 1990, p. 222; Trotsky, L. (1998): “Literature and Revolution” in Kolocotroni, V., Goldman, J. and Taxidou, O. (eds.): *Modernism: An Anthology of Sources and Documents*, Chicago: The University of Chicago Press, 1998, p.229; Krishnan, M. (2009 – 2010): “Transformation of the human consciousness: The origins of socialist realism in the Soviet Union”, *The Concord Review*, pp. 225-249, Available at: [http://www.tcr.org/tcr/essays/EP\\_TCR\\_21\\_1\\_F10\\_Socialist.pdf](http://www.tcr.org/tcr/essays/EP_TCR_21_1_F10_Socialist.pdf)

<sup>119</sup>Govorukhin, S., Ganina, M., Lavrov, K. and Dudintsev, V. (1989): “Reviewed work(s)”, *World Affairs*, Vol. 152, No. 2, The Soviet Union on the Brink: Part Two (FALL 1989), pp. 104-108. For instance, Ganina in her articles gives a very depressive image of *homo sovieticus* by saying that... “Homo Sovieticus does not demand, nor does he ever get indignant or stand up for his rights. Instead, he lazily steals whatever is badly guarded, lets what he grows go to rot, turns good things into bad”. But, according to her, the description is even worse when it comes to young generations, because the older one still have some memories of pre-Soviet times when “conscience”, “duty”, “charity”, “decency” and “dignity” still had the meaning. She claims that the main crime of the Stalinist regime was the creation of the person who was raised in the atmosphere of lies, servile loyalty to the leader and destruction and misinterpretation of various social concepts.

<sup>120</sup>Zinovyev, A. (1984): *Homo Sovieticus*, Polonia, 209p. According to this view, the Homosos, how Zinovyev calls *homo sovieticus*, had to evolve from a “collectivistic creature”, which experiences himself only as member of the collective and its decisions, to the one responsible for his wellbeing.

<sup>121</sup>Tischner, J (2005): *Homo sovieticus*, in Tishner, J. (2005): *Etyka Solidanosci oraz Homo sovietius* [The Ethics of Solidarity and *Homo sovieticus*], Krakow: Znak, p.141-145

describes him as an individual incapable of taking any responsibility in making life decisions and therefore he looks for the force which will organize his life by setting up the framework in which he can operate. There are three factors that shaped him: work, power and self-dignity. Attitude towards work was shaped by top-down regulation of the economy. Work was perceived as “free creativity”, it guaranteed material stability to everyone by stable employment which did not depend on individual effort or input. This devalued work in the sense that people could not get satisfaction from it or it encouraged intellectual development and the acquiring new skills. All these reasons led to the break in work ethics and caused various pathological attitudes. The first one was “*learned helplessness*”. It meant that people were unable to make long-term plans and they did not see themselves as legitimate social agents because the whole social machinery was managed by alien and hostile groups. This attitude developed the tendency to blame others for personal failures and bad decisions, giving them power and responsibility over life. The “others” are the authorities and all “higher up” in the hierarchy. Tischner points to one important characteristic of *homo sovieticus*. He describes him as a person who “cannot tell the difference between his own interest and the common interest”<sup>122</sup>. Related to the attitude towards the work is a second pathological behaviour called “*amoral familism*”. It includes the existence of informal networks of family and friends in the community to which the main rule that anything good for me and my relatives is positive regardless of its consequences for society is applied. Finally, “*the culture of quasi-activity*” is the third phenomenon related to work factor. It includes any activity whose only purpose is to give the impression of achieving a specific goal. This attitude was present both on the high and everyday life levels. Its typical expression was the establishment of all sorts of decorative bodies, such as commissions, working groups, expert bodies, with the sole purpose of making an impression of a serious approach to the problem’s resolution.

Power is the second important factor listed by Tischner. *Homo sovieticus* defines himself regarding some dominant power over which he would like to take control and participate in it. However, this participation is perceived through the possession of the authority and its exercise with the sole purpose of acquiring privileges and access to scarce goods. Finally, the third factor, the sense of dignity of *homo sovieticus* was supported by the state’s providing material stability and giving the feeling of security. This feeling was very unique and strove for egalitarianism which in practice did not mean the availability of opportunities to everyone. It actually limited the possibility of any individual rising above the generally accepted level of mediocrity. This as a result lowered the standards because everybody was entitled to a guaranteed supply of commodities regardless of personal qualities and work performance. All factors combined, according to Tischner, made *homo sovieticus* a person with two faces and behaviours: one regarding public life and state and the other one regarding private life which in literature is called “value dimorphism” or “doublethink”. This behaviour led to opportunistic behaviour, ethical relativism, cynicism and disrespect for fundamental legal rules and norms of social life. It created a “Deceptive Man”<sup>123</sup>.

<sup>122</sup>Ibid, p.145

<sup>123</sup>Levada, I. A. (2002): “Homo Post-Sovieticus”, *Sociological Research*, vol. 40, no. 6, November–December 2001, pp. 6–41. © 2002 M.E. Sharpe, Inc., pp. 6-41; According to Levada, a “Deceptive Man” adapts to circumstances finding the way around the normative system by using it for own interests and at the same time he

For the sake of the truth it should be stressed that some authors, like Tyszka<sup>124</sup>, think the phenomenon of *homo sovieticus* in post-socialist transformation received too much attention and could not be “blamed” for all failures and such claims are classified as “ideologically biased”. Tyszka admits that there are mental legacies of communist days present, but does not identify them as main obstacles of the economic reform of post-socialist societies. However, in view of this two remarks can be made. The first one refers to the scope of his analysis. He discusses the phenomenon in the context of Polish society, disregarding its effects in other post-socialist countries. The second remark is that Tyszka does not make the distinction between the private and public sector, which operate according to different rules, and therefore disregards the possibility that the *homo sovieticus* mentality left different traces in these two areas. The assumption of this thesis is that it is more likely that the socialist mind setting is more rooted and persistent in the public sector, more precisely public administration, than in the private, entrepreneurial one. Therefore, the characteristics of *homo sovieticus* are considered important in defining anti-corruption policies for the prevention of corruption in the administrative sector of post-socialist countries. On the other hand the Tyszka’s argument that the institution and its setting and development are important in the process of change is considered important and will be elaborated on in one of the next chapters of this thesis. To complete the analysis of (post)socialist societies, a crucial ingredient has to be elaborated upon. This ingredient is considered essential for the functioning of market based democratic societies and it is called social trust. Its history and effects are presented in the following section.

#### 1.3.3.3. Trust

Discussion about the best way to reform countries in transition among shock therapists and gradualists was presented earlier in this chapter. Here will be presented a necessary precondition for the establishment of efficient institutions, *social trust*, which according to Kornai et al.<sup>125</sup> is disregarded in the discussion by both. The design of the socialist system and its consequences to societies initiated various discussions in the literature among which the one about trust appears to be crucial for many aspects relevant to the transition process. Uslaner and Badescu<sup>126</sup> say that trust leads people to believe that besides their differences they belong to the same moral community. It also makes them more willing to deal with different people keeping at the same time a high standard of honesty and fairness which provide the foundation for a rule of law and for policies that benefit the less fortunate.

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tries to justify himself by saying that “self-preservation is in question” or “ other people do the same”. In order to survive this man totally adapted to Soviet reality which took it as given since there were no available alternatives. Levada claims that the essence of the mentality became clear after the collapse of socialist states because it showed how Soviet Man was unprepared to adjust to the new situation.

<sup>124</sup>Tyszka, K. (2009): “Homo sovieticus Two Decades Later”, *Polish Sociological Review*, 4(168)/2009, pp.507-522, available on: [www.cceol.com](http://www.cceol.com)

<sup>125</sup>Kornai, J., Rothstein, B. and Rose-Ackerman, S. (eds.) (2004): *Creating Socialist Trust in Post-Socialist Transition*, Palgrave Macmillan™, 175 Fifth Avenue, New York pp.1-10

<sup>126</sup>Uslaner, E. M. and Badescu, G. (2004): “Honesty, Trust, and Legal Norms in the Transition to Democracy: Why Bo Rothstein is Better Able to Explain Sweden than Romania” in Kornai, J., Rothstein, B. and Rose-Ackerman, S. (eds.) (2004): *Creating Socialist Trust in Post-Socialist Transition*, Palgrave Macmillan™, 175 Fifth Avenue, New York pp.13-30

However, transitional countries face a specific situation caused by the change of the social system. In order to better understand the requirements of this change we have to go one step back and look closely at the socialist system, its characteristics and legacies. Traps<sup>127</sup> claims that “totalitarian, propagandist, rent-seeking centrally planned socialism” left unique and lasting effects on trust. Soviet-style socialism had, according to him, stronger and more significant negative effects than other authoritarian regimes because of a few reasons: it had massive and extensive interference by the party in the creation of wealth, constant propaganda which could never be realized, lack of economic incentives, suppressing of personal freedom, lack of privacy and hidden corruption. Successful democracy requires a major level of trust and therefore transitional countries should first increase the trust rather than setting up complex institutions which cannot function without trust. Lovell<sup>128</sup> describes socialism as a paradoxical system which on one side was dedicated to overcoming alienation by establishing a better society based on mutual trust and at the same time destroying it among people as well as their beliefs in the government. Instead of devotion to common good it raised egoism and narrow self-interest and instead of wealth, it created material and spiritual poverty, and active mistrust in the institutions of government due to official hypocrisy and corruption. Rothstein<sup>129</sup> claims that during the Soviet-style socialism state institutions were severely discredited among the people. Therefore, any kind of dishonest behaviour towards them was accepted and praised. Social capital could be produced and destroyed by the way the state organises its public institutions intended to implement public policy. When in interaction with public institutions people care not only about the outcome but also about the fairness of the procedure used as well.<sup>130</sup> Institutional design is therefore a central element for generating trust and honesty. Ledeneva<sup>131</sup> explains that in order to overcome the difficulties of life under the socialist regime, people established dense networks of informal connections but some of these practices continued after the collapse of socialism.

Rose-Ackerman<sup>132</sup> says that in transitional countries the two trust networks are competing, one called “reciprocal trust” created during the socialism and the other called “trust in rules” or confidence in new institutions that should operate in a fair and impartial manner. She claims that in this case personal links may hamper the reform. Cook et al.<sup>133</sup> explain that trust networks are crucial under the conditions of uncertainty, because they provide a more secure transaction environment. The transactions which are likely to occur firstly are among

<sup>127</sup>Traps, L. (2009): “Communism and Trust”, *Journal of Politics & International Affairs*, pp.63-76

<sup>128</sup>Lovell, D. W. (2001): “Trust and the politics of post-communism”, *Communist and Post-communist Studies* 34, pp.27-38

<sup>129</sup>Rothstein, B. (2004): “Social Trust and Honesty in Government: A Causal Mechanisms Approach“ in Kornai, J., Rothstein, B. and Rose-Ackerman, S. (eds.) (2004): *Creating Socialist Trust in Post-Socialist Transition*, Palgrave Macmillan™, 175 Fifth Avenue, New York pp.13-30

<sup>130</sup>Procedural justice issues are discussed more in details in the Chapter 3 of this thesis.

<sup>131</sup>Ledeneva, A. V. (1998): *Russia's Economy of Favours: Blat, Networking and Informal Exchange*, Cambridge UK: Cambridge University Press.

<sup>132</sup>Rose-Ackerman, S. (2000): “Trust, Honesty, and Corruption: Reflection on the State-building Process”, *European Journal of Sociology* Vol. 52, pp.526–570.

<sup>133</sup>Cook, K. S., Rice, E. R. and Gerbasi, W. (2004): “The Emergence of Trust Networks under Uncertainty: The Case of Transitional Economies – Insights from Social Psychological Research” in Kornai, J., Rothstein, B. and Rose-Ackerman, S. (eds.) (2004): *Creating Socialist Trust in Post-Socialist Transition*, Palgrave Macmillan™, 175 Fifth Avenue, New York pp. 193-212

those who know each other well. This further creates closed groups with clear boundaries which include insiders and exclude outsiders. The conditions for trade are hardly optimal under these conditions. Corruption may lead to this type of closed-association of trade.

The harmfulness of corruption was already described in the previous sections. Here it is important to stress its link with trust and its effects on the countries in transition. Uslaner and Badescu<sup>134</sup> state that corruption stands in direct opposition to trust. It mocks the rules of honesty and fairness providing advantages to certain people that others do not have. Corruption within the institutions results in lost faith in government. Not surprisingly with a high level of trust corruption is low. In societies where corruption is low people see themselves as honest, trust each other and their governments which results in strong legal systems being in place. These well-ordered societies depend upon a shared sense of justice. On the other hand, in post-socialist societies people see corruption everywhere; they lose faith in people and in public institutions. This is the product of socialist regimes which created much distrust from the above. People do not believe that any equitable system of justice exists. The authoritarian regime tried constantly to turn citizens against each other by asking them to report their friends and family which made interpersonal trust too risky and made people operate in very small circles. Uslaner and Badescu claim that in post-socialist countries corruption is something public officials are involved in. When ordinary people engage in corrupt deals, they are just getting by because they need to due to unfair treatment. Therefore, small-scale dishonesty is “good corruption”, based on the expectation of reciprocity. With little trust in one another people will treat corruption as “just another transaction” without any moral disapproval attached to it. Socialism left a strong legacy in the CEE countries. When socialism collapsed, instead of trusting open market civil society, the authoritarian state was replaced by “apathetic society” where people neither trust each other nor government. New capitalist businessmen were old socialist managers, some became rich and many, ordinary people became poorer than ever. This economic inequality caused a loss of faith in the new institutions and other people which in the end brought more corruption instead of less.

To repair this situation Mishler and Rose<sup>135</sup> claim that trust must be earned, more precisely, performance based trust should be developed. Institutions should provide some reasonable measure of individual and collective good in order to be accepted by the citizens. This is important because of the legacy of the regime in which “citizens are accustomed to hold government responsible for both macroeconomic conditions and individual welfare”. Mishler and Rose<sup>136</sup> further explain that aggregate corruption has the strongest effect on interpersonal trust which means that the more the institutions are corrupt the less trust there is in other people. The only way to increase trust in this situation is to improve government performance. It should respond promptly and effectively to public priorities, “rooting out corrupt practices”,

<sup>134</sup>Uslaner, E. M. and Badescu, G. (2004): “Honesty, Trust, and Legal Norms in the Transition to Democracy: Why Bo Rothstein is Better Able to Explain Sweden than Romania” in Kornai, J., Rothstein, B. and Rose-Ackerman, S. (2004): *Creating Socialist Trust in Post-Socialist Transition* (ed.), Palgrave Macmillan™, 175 Fifth Avenue, New York pp.13-30

<sup>135</sup>Mishler, W. and Rose, R. (1997): “Trust, Distrust and Scepticism: Popular Evaluations of Civil and Political Institutions in Post-Communist Societies”, *The Journal of Politics*, 59, pp 418-451.

<sup>136</sup>Mishler, W. and Rose, R. (2001): “What Are the Origins of Political Trust?: Testing Institutional and Cultural Theories in Post-communist Societies”, *Comparative political studies*, Vol. 34, No.1, pp.30-62



protecting citizens' freedom and implementing economic policies which will a better material future for the country. Finally, Mishler and Rose<sup>137</sup> extended their analysis to the political consequences of trust. Changing to some extent previous claims they claim that cultural aspects of trust should be incorporated into the institutional concept of rebuilding trust because the evaluation of political and economic performance is culturally conditioned. Therefore, culture matters not only to institutional performance because social capital and institutional trust contribute to democratic values.

An interesting analysis, which adds to the description of post-socialist societies, was made by Csepeli et al.<sup>138</sup>. They point to the aspects of transition which are very closely related to trust. They study attitudes to economic actors in terms of rich and poor people in transitional countries. Since the rich personify success, attitudes toward them could tell a lot about the society's economy as well as people's attitude towards social relations. The economic syndrome of social lack of confidence is reflected in the suspicion of the rich and successful. This suspicion can further degenerate into envy and suspicion of any outstanding achievement. Examination of envy emerges mostly in dilemmas of distributive justice. It is particularly interesting for the analysis of post-socialist countries. After the collapse of socialism people expected that a market based economic system would rapidly improve their working and living conditions. However, the expected change brought recession costing millions of jobs, low real wages, erosion of purchasing power of pensions, benefits and allowances. In socialism people were accustomed to secure employment and livelihood and it is not a surprise that in the transition they felt "that enrichment and success for some came at the expense and through the failure of others". This was a safety cushion for those who ended up as losers in the transition. They also succumb to envy together with a low level of self-confidence and self-respect. The rapid change during the transition confused and disturbed peoples social orientation and when looking at justice, trustworthiness and confidence people recognize corruption, untrustworthiness, injustice and undeserved enrichment by the new elite. Therefore, Csepeli et al. claim that success and wealth in transitional countries is mainly accompanied by "moral disapproval, presumptions of dishonour, dishonesty and injustice". These attitudes also show peoples perception towards the existing economic mechanisms. In the West, success and wealth are perceived as results of successful mobilization of individual resources while a market economy is perceived differently in the East. The rich become wealthy not based on hard work or merit but as an outcome of harmful economic and social conditions while the work and achievements of ordinary people are not adequately appreciated, recognized and compensated. Authors divide envy into two types: particularized envy, which arises from intensified competition and generalized envy, which makes people envious of everything and everybody. Envy is in psychology explained as a trait which increases personal satisfaction and excuses bad performance. In the case of transitional countries it is not directed against real

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<sup>137</sup>Ibid, pp.1050-1078

<sup>138</sup>Csepeli, G., Örkény, A. Székelyi, M. and Barna, I. (2004): "Blindness to Success: Social Psychological Objectives Along the Way to a Market Economy in Eastern Europe", in Kornai, J., Rothstein, B. and Rose-Ackerman, S. (eds.): *Creating Socialist Trust in Post-Socialist Transition*, Palgrave Macmillan™, 175 Fifth Avenue, New York, 2004, pp.213-240

persons, opponents or achievements, it is rather the manifestation of personal failure and disappointment in the political system in which they have no trust.

To conclude this discussion, the setting of the last regime left the post-socialist countries with a legacy of lack of trust in people but also in the government. A significant contribution to this trust erosion was made by corruption. Because corruption undermines trust and increases transaction costs, and thereby decreases social welfare, it should be fought strongly. However, new market based institutions could not be effectively established without the citizen's trust. The process of transition created winners and losers. In many cases the differentiation between the two put the majority of people in the second group which made them develop certain psychological mechanisms which in the end generate lack of trust in the reforms. Scholars suggest that this situation should be overcome by careful building of trust, which should be earned, and consequently it will lead to the full operation of new, market based, institutions and lowering of corruption.

#### 1.3.3.4. Another possible approach to combating corruption

The postulates of Public choice theory and the principle-agent model dominate the anti-corruption strategies and tools designed at international level and as such adopted by countries around the world. It is discussed earlier in this chapter that this option did not provide satisfactory result in transitional countries. The studies earlier showed why in practical terms the one size fits all model is not successful. This section looks into the alternative theories which aim to find the solution for the failures of Public choice theory.

Persson et al.<sup>139</sup> claim that systemic corruption in many countries cannot be tackled with the principle-agent model because systemic corruption in its essence represents rather a *collective action problem*<sup>140</sup> and as such has different characteristics from those stipulated by the agency model. More precisely, it is crucial for this aspect regarding the expectations of corrupt behaviour of other individuals in society. If corruption is expected behaviour it is less likely that the principle-agent techniques of monitoring and punishing will be effective due to the lack of incentivised actors for their enforcement. In sum, Persson et al. claim that where corruption is the rule rather than the exception it is likely that one is facing a collective action problem rather than a principle-agent one. Therefore, instead of fixing the incentives one should aim to “change the actor's beliefs about what all other actors are likely to do” in the sense that all expect fair play. The authors claim that in the cases of systemic corruption the whole system needs to be tilted from one type of value such as: particularism or limited access order, to another which presents the opposite of the former: universalism or open access order. Authors conclude that “the question of how revolutionary changes in institutions can be achieved” was not discussed in the literature. Therefore, beside monitoring and sanctioning

<sup>139</sup>Persson, A., Rothstein, B. and Teorell, J. (2013): “Why Anti-corruption Reforms Fail, Systemic Corruption as a Collective Action Problem”, *Governance: An International Journal of Policy, Administration and Institutions*, Vol. 26, No. 3, July 2013, pp. 449-471

<sup>140</sup>An interesting metaphor used to describe this problem is the fable “Belling the cat”, which aims to show that the ideas is sometimes not enough because it needs execution.

sound anti-corruption policy should include shared expectations about the honesty of other people.<sup>141</sup>

Miller<sup>142</sup> and Karklins<sup>143</sup> describe people in the post-socialist system as trapped in the paradox in which they condemn corruption but on the other hand they participate in it. One of the explanations is that they expect that all others will engage in corruption as well. The suggestions for shifting the equilibrium of social values from a socialist to a capitalist one relevant for combating corruption are discussed later in this thesis. The next section provides a closer look at the post-socialist countries which are the main subject of this thesis.

### 1.3.4. Closer look at transitional countries (TC)

#### 1.3.4.1. Corruption in the countries of Central and Eastern Europe

Soviet-type socialism dominated throughout the socialist world and included besides the Soviet Union, countries of Central and Eastern Europe. Some of these countries were the first to enter society change and started reforms. Among them are Estonia, Lithuania, Latvia, Poland, Czech Republic, Slovakia, and Hungary all of whom in 2004 became members of the EU. However, earlier in this chapter it was shown that besides significant progress these countries still have certain problems to resolve and corruption is one of them. This section in the analysis of corruption will focus on four countries which are considered representative of the group of Soviet-countries style whose transition was mainly successful, Visegrad countries (V4)<sup>144</sup>.

After the crash of socialism and its institutions the concept of looking at socialist countries as a coherent group became less adequate. It appeared that the socio-cultural, historical and economic backgrounds of the post-socialist societies are rather different. However, despite this difference a consensus has been reached that for analytical reasons concerns clustering the four Visegrad countries (V4) against two other post-socialist sub-regions – the Baltic States and South-Eastern Europe – is legitimate.<sup>145</sup> Within these three groups there are countries with different EU membership status but in general the still common problem of corruption. The latest report of TI on V4 on corruption risks shows that these countries are more consolidated democracies than the other Central and Eastern European

<sup>141</sup>Persson, A., Rothstein, B. and Teorell, J. (2013): "Why Anti-corruption Reforms Fail, Systemic Corruption as a Collective Action Problem", *Governance: An International Journal of Policy, Administration and Institutions*, Vol. 26, No. 3, July 2013, pp. 449-471

<sup>142</sup>Miller, W. L. (2006): "Corruption and Corruptibility", *World Development*, Vol. 34, No. 2, pp. 371-380

<sup>143</sup>Karklins, R. (2005): *The System Made Me Do It: Corruption in Post-Communist Societies*, Armonk, NY: M.E. Sharpe

<sup>144</sup>The Visegrad Group (also known as the "Visegrad Four" or simply "V4") reflects the efforts of the countries of the Central European region to work together in a number of fields of common interest within the all-European integration. The Czech Republic, Hungary, Poland and Slovakia have always been part of a single civilization sharing cultural and intellectual values and common roots in diverse religious traditions, which they wish to preserve and further strengthen. Web site: <http://www.visegradgroup.eu/about>

<sup>145</sup>Transparency International (2012): *Corruption risk in the Visegrad Countries – Visegrad Integrity System Study*, Available at: [http://www.transparency.cz/doc/aktuality/corruption\\_risks\\_in\\_visegrad\\_countries\\_full\\_report.pdf](http://www.transparency.cz/doc/aktuality/corruption_risks_in_visegrad_countries_full_report.pdf)

countries and measured with the average Democracy Index Scores<sup>146</sup> are closed to Western Europe. However, regarding corruption, although the average Corruption Perception Index (CPI) of the V4 countries is somewhat higher than the Central and Eastern European mean score, "...the region lagged far behind the EU 15 member states...". This also confirms the result of Eurobarometer survey<sup>147</sup> which finds that 87% of citizens in the V4 region think that corruption is a major problem in their country. This fact is explained by the change of the situation before and after the accession of V4 countries to the EU. Namely, during the process of accession the EU had significant influence over the acceding countries which were eager to accomplish all requirements with the main goal of getting into the "club". However, the "stick and carrot" approach, which worked well before the EU expanded, proved to be less powerful after new countries joined the Union. According to the EU rule transfer literature and Dimitrova<sup>148</sup>, there are significant setbacks in many areas in the region because there are no effective tools to influence countries that are already members of the EU. Therefore, besides many similarities, variability is also present in the region. For example, while the V4 countries were more or less homogeneous in their economic development paths during the first fifteen years of transition, after the EU accession each country started to follow different economic strategies.<sup>149</sup>

In the analysis of the corruption in transitional countries Transparency International recognizes that they may experience unique difficulties in the creation and/ or application of National Integrity System (NIS)<sup>150</sup>. NIS is a comprehensive measure for assessing a country's anti-corruption efficacy sector by sector in corruption combat. It evaluates key 'pillars' in a country's governance system, both in terms of their internal corruption risks and their contribution to fighting corruption in society at large. The pillars include: the legislative branch of government, executive branch of government, judiciary, public sector, law enforcement, electoral management body, ombudsman, audit institution, anti-corruption agencies, political parties, media, civil society and business. All these institutions can be classified into three main categories: Government, Public Sector and Non-Governmental institutions. Regarding these aspects it is recognized that transitional countries, aside from being inherently weak, may also have inherited bureaucracies which lack many of the regulatory institutions necessary for a modern state and economy to function, as well as the mechanisms required to ensure that

<sup>146</sup>The Democracy Index is an index compiled by the Economist Intelligence Unit (a private business) that measures the state of democracy in 167 countries, of which 166 are sovereign states and 165 are United Nations member states. The Economist Intelligence Unit's Democracy Index is based on 60 indicators grouped in five different categories: electoral process and pluralism, civil liberties, functioning of government, political participation and political culture. The Index was first produced in 2006, with updated lists produced in 2008, 2010 and 2011. Web: <http://www.eiu.com/Default.aspx>

<sup>147</sup>Eurobarometer is a series of surveys regularly performed on behalf of the European Commission since 1973. It produces reports of public opinion of certain issues relating to the European Union across the member states. The Eurobarometer results are published by the Public Opinion Analysis Sector of the European Commission Directorate-General Communication. Web: [http://ec.europa.eu/public\\_opinion/index\\_en.htm](http://ec.europa.eu/public_opinion/index_en.htm)

<sup>148</sup>Dimitrova, A. (2007): "Institutionalization of Imported Rules in the European Union's New Member States: Bringing Politics Back in the Research Agenda", *European University Institute*  
Available at: <http://cadmus.eui.eu/handle/1814/7674>

<sup>149</sup>Transparency International: *Corruption risk in the Visegrad Countries*, p.12

Available at: [http://www.transparency.cz/doc/aktuality/corruption\\_risks\\_in\\_visegrad\\_countries\\_full\\_report.pdf](http://www.transparency.cz/doc/aktuality/corruption_risks_in_visegrad_countries_full_report.pdf)

<sup>150</sup>See Transparency International web site: <http://www.transparency.org/whatwedo/nis/>

accountability is in place. By using NIS assessment, TI creates the picture of problems, achievements and the best practice relevant for the countries examined. The problems of the V4 countries are summarized in the *Table 1.7*.

*Table 1.7: List of weakest institutions in V4 region*

<b>Weakest Institutions in the V4 Region</b>			
<b>Czech Republic</b>	Public Administration	Prosecution	
<b>Hungary</b>	Political Parties	Business	
<b>Poland</b>	Civil Society	Business	
<b>Slovakia</b>	Law Enforcement	Judiciary	Prosecution

Source: Transparency International, "Corruption Risks in the Visegrad Countries", p. 15

This section illustrates the challenges which more advance transitional countries face in combating corruption. The next section describes briefly the countries of South-Eastern Europe, more precisely countries of the Western Balkans and particularly former Yugoslavia. Yugoslavian socialism had specific characteristics comparing to the rest of the socialist world. Here some general aspects will be shown but the detailed analysis will be provided in Chapter 5 of this thesis which as a case study analyses the Republic of Serbia, one of the ex-YU countries.

#### 1.3.4.2. Corruption in the countries of the Western Balkan Region

In the group of South Eastern European countries are the countries of the Western Balkan region<sup>151</sup>. Like the majority of transitional states, they also followed the pattern of change by accepting the standards of the EU, aiming to become full members. Countries of this region have a different situation regarding the EU membership. The scale goes from member status or a step away from it, through the status of a candidate country and a potential candidate aims to show the progress of each of them in transitional process (see *Table 1.5*). However, in the reports of the European Commission, issued every year, on the progress made in the process of European Union accession, corruption is listed as one of the biggest causes of underperformance of transitional countries in building new institutions in society.<sup>152</sup>

A large portion of the Balkan countries make up the countries of the Socialist Federal Republic of Yugoslavia (SFRY). SFRY was unique among the other socialist countries and its socialist path. Baradat<sup>153</sup> explains that uniqueness came from the implementation of "its own Marxist movement" and the creation of government without the aid of Soviet troops. Claiming that there are "many different paths to socialism", in 1948, Yugoslavian president Josip Broz Tito "withdrew from the Soviet orbit". He further made significant innovations, allowing some capitalism, introducing workers' self-management, introducing decentralization in some other

<sup>151</sup>Although geography has more precise definition of the countries of Western Balkans, here the term will include more colloquial meaning used for post-socialist countries. These countries are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia and the Former Yugoslavian Republic of Macedonia.

<sup>152</sup>The European Commission progress reports available at: [http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index\\_en.htm](http://ec.europa.eu/enlargement/countries/strategy-and-progress-report/index_en.htm)

<sup>153</sup>Baradat, L. P. (1991): *Political Ideologies: Their Origins and Impact*, Prentice Hall, Inc., Englewood Cliffs, New Jersey 07632, pp. 188-198

aspects and advocating for neutrality and cooperation with the Western countries. Although different in some aspects these countries more or less faced the same situation regarding the corruption problem.

As shown in *Table 1.8*, the patterns of fighting corruption are very similar with slight differences in measurement of the corruption, except Slovenia which joined the EU in 2004. The column TICPI for 2013 presents the relevant numbers for each of the countries discussed. All countries have ratified UN and GRECO conventions. Their progress in corruption combat is measured by the European Commission periodically through the reports which describe the strong and weak points of each country regarding the anti-corruption framework in play. Besides the progress made in the area of corruption combat the reports show that further improvements are required. The citations from the relevant reports for the each country are provided in the Table.

*Table 1.8: Western Balkan countries overview*

	<i>TICPI for 2013</i>	<i>EC report 2013</i>
<b>Bosnia &amp; Herzegovina</b>	42	"...is at an early stage in the fight against corruption..." <sup>154</sup>
<b>FYR of Macedonia</b>	43	"...corruption remains prevalent in many areas and continues to be a serious problem..." <sup>155</sup>
<b>Montenegro</b>	44	"...Corruption remains prevalent in many areas and continues to be a serious problem..." <sup>156</sup>
<b>Croatia</b>	48	"...implementation has still to demonstrate sustainable results..." <sup>157</sup>
<b>Serbia</b>	42	"...the implementation of the legal framework and the efficiency of anti-corruption institutions need to be improved..." <sup>158</sup>
<b>Slovenia</b>	57	"...corruption in a broader sense is a serious concern..." <sup>159</sup>
<b>Romania</b>	43	"...needs to be maintained small-scale corruption..." <sup>160</sup>
<b>Bulgaria</b>	41	"...weak and uncoordinated response to what is a systemic problem throughout the public administration..." <sup>161</sup>

<sup>154</sup>Bosnia and Herzegovina 2013 European Commission Progress Report,

available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/ba\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ba_rapport_2013.pdf)

<sup>155</sup>Former Yugoslav Republic of Macedonia 2013 European Commission Progress Report,

available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/mk\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mk_rapport_2013.pdf)

<sup>156</sup>Montenegro 2013 European Commission Progress Report,

available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/mn\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf)

<sup>157</sup>Annex report for Croatia in the EU Anti-corruption report for 2013, available at:

<sup>158</sup>Serbia 2013 European Commission Progress Report,

available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/serbia\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/serbia_2013.pdf)

<sup>159</sup>Report from the Commission to the Council and the European Parliament: EU Anti - Corruption Report for 2013, available at: [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf)

<sup>160</sup>Report from the Commission to the European Parliament and the Council On Progress in Romania under the Co-operation and Verification Mechanisms for 2013,

available at: [http://ec.europa.eu/cvm/docs/com\\_2014\\_37\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2014_37_en.pdf)

<sup>161</sup>Report from the Commission to the European Parliament and the Council On Progress in Bulgaria under the Co-operation and Verification Mechanisms for 2013,

Albania	31	“...corruption remains a particularly serious problem which will require determination and concerted efforts to address...” <sup>162</sup>
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#### 1.4. Conclusion

Corruption is today marked as one of the serious issues which produce many negative effects in the societies in which its level is high. It has many faces and forms and it is not easy to present it by a single definition or approach. Sometimes it is not clear to distinguish what are the causes and what are the consequences since the causal arrow often goes both ways. With globalization the discussion of corruption was placed high on the international agenda. International and nongovernmental institutions took an active role in order to help countries in corruption combat. Within the framework *repression-prevention-transparency* they created various rules and regulations which countries ratified and committed themselves to implement them. Among these countries are transitional, post-socialist countries as well.

Emerging from the centrally planned to the open market economy turned out not to be an easy task for ex-socialist countries. Confusion at the beginning of the process on the right strategy that should be implemented revealed the complexity of the process. The problems were numerous but corruption was referred to as one of the biggest. Many of the transitional countries set the EU membership as the main goal which should help in overcoming the obstacles to the reform process. During the accession they transplanted many laws and regulations adjusting their social systems, at least formally, to the ones from the Western world. The same pattern was followed for corruption combat. All international conventions and recommendations were ratified but, according to the various analyses, these steps did not provide the outcomes as expected. The main argument for this failure is that regarding the international regulation “one size cannot fit all” and the transitional countries have idiosyncrasies which ask for a different approach than the one offered. The specific institutional setting of socialism created a specific mentality of the people who lived under this regime. From the original idea of creating an *Uomo Universale, homo sovieticus* turn out to be its antagonist whose characteristics are difficult to remove overnight. The repression of the previous regime left the strongest impact on trust which appears to be low in post socialist countries. The research shows that people do not trust others but they do not trust government and public institutions as well. Therefore, the problem of the enforcement of anti-corruption law does not look surprising especially if we keep in mind that in the past corruption was not perceived, if perceived at all, as bad.

The main goal of this chapter was to draw attention to the specificities of transitional countries and the problems which they face in terms of corruption combat. The trust appears to be the first problem which should be resolved and according to the literature it could be achieved only through the impartial and strong social institutions which will act according to

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available at: [http://ec.europa.eu/cvm/docs/com\\_2014\\_36\\_en.pdf](http://ec.europa.eu/cvm/docs/com_2014_36_en.pdf)

<sup>162</sup>Serbia 2013 European Commission Progress Report,

available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/albania\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf)

the rules of procedural justice and as such deserve respect and trust. Based on the characteristics of post-socialist countries described in this chapter, further chapters will try to construct an optimal theoretical scheme which should improve the combating of corruption among civil servants who are in the spotlight in this thesis.



## ***Chapter 2: Designing an optimal anti-corruption structure of the administration in transitional countries***

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*Because power corrupts, society's demands for moral authority and character increase as the importance of the position increases.*  
John Adams,

### **2.1. Introduction**

Administration is a very important aspect for the running of a country and its functioning affects the lives of the citizens in various ways. As indicated earlier the research subject of this thesis is in the domain of administrative corruption, more precisely the corruption of public servants. Civil servants have power which the law entrusted them for performing routine government actions. This power, usually accompanied by discretion, non-transparency or massive procedures opens the floor for misuse and bribe extracting with major negative consequences for society. In socialist countries the administration had a crucial role for the state performance and therefore it is here considered very important for the corruption assessment in transitional countries. The introduction of this thesis presented the model *structure-conduct-performance* as a framework in which the analysis of corruption in transitional countries is here conducted and on that ground the proposal for new solutions in the combat against it. Adjusting this model for the purposes of this thesis, this chapter will start with the first above mentioned part of the model: structure. The main question aiming to be answered is: ***What is the optimal structure of public administration in post-socialist countries for improving corruption combat?*** In order to provide an answer two types of structures will be analysed: the structure of the institutions and its values and structure of human capital and its values. The chapter will first discuss issues related to public administration and corruption. It will then explain development and characteristics of various administration types in different state organization types: capitalism, communism and transition. Finally, the issues regarding public service motivation will be elaborated upon.

### **2.2. Public Administration and corruption**

#### *2.2.1. General description*

Before starting any discussion on types and principles of public administration, it is necessary to introduce some definitions important for a better understanding of the matter. The *Public sector*<sup>163</sup> is the part of a country's economy, controlled or supported financially by the government. The *Public service* is a service performed for the benefit of the public or its institutions.<sup>164</sup> It is provided by the government to people living within its jurisdiction, either directly through the public sector or by financing private provisions of the service. *Civil*

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<sup>163</sup>Definition available at: <http://www.collinsdictionary.com/dictionary/english/public-sector>

<sup>164</sup>Definition available at: <http://wordnetweb.princeton.edu/perl/webwn?s=public%20service>

*service*<sup>165</sup> is the service responsible for the public administration of the government of a country. It excludes the legislative, judicial, and military branches. Members of the civil service “have no official political allegiance” and in general should not be affected by the changes in government. *Public administration*<sup>166</sup> consists of civil servants whose job is to implement a specified policy within the government executive framework. In the literature on public administration one of the definitions, provided by Morgan and Perry<sup>167</sup> describes the civil service system as “the mediating institution authorized by constitutional rules which mobilizes human resources in the service of the civil affairs of the state in a given territory”.

Public administration is in the literature on law and economics often seen as one of the sources of corrupt behaviour. Lambsdorff<sup>168</sup> claims that the essence of understanding the social consequences of corruption lies in the failure of bureaucracy to commit to honesty. The readiness of the public servant to receive the bribe disqualifies him for professions in which commitment to honesty is vital. This readiness has its spillover effects on the reputation of honest civil servants who get no income from corruption. Lambsdorff further says that “...corruption involves the malfunctioning of some or all areas of public sector...” because individuals or whole units care about their interest and not the public. He argues that literature provides much evidence that countries burdened with corruption manifest “poor government institutions”. The decisions which bureaucrats make in the corrupt administration are most likely based on the expected corrupt gain rather than the public interest. This as a result causes the choosing of wrong competitors, promotion of wrong projects, etc. If benevolent government aims to stop this practice it has to design monitoring systems, proper incentives, and penalty threats. However, Lambsdorff claims, these attempts “will be imperfect because of informational asymmetries”. Tanzi<sup>169</sup> defines the quality of the public sector as “the characteristics that allow the state to pursue its objective in the most efficient way”. Since it presents the instrument for pursuing governmental policies, high public sector “is likely to promote good policies” while “low quality public sector is likely to promote poor policies”. Corruption should not be part of the decision making process of the bureaucrats and public resources entrusted to them should be used to maximise social wealth. Tanzi<sup>170</sup> explains that a variety of bureaucracy exists around the world and many factors contribute to its quality such as: merit based hiring and promotions and absence of patronage and nepotism. In order to understand why some bureaucrats are more corrupt than others one should look at the incentive structure and tradition because corruption is a complex phenomenon and “is almost never explained by a single cause”. Complexity of the phenomenon asks for complex measures and therefore, claims Tanzi, fighting corruption should be initiated on many fronts and not be focused on a single area. Increasing the salaries of civil servants as well as penalties for

<sup>165</sup>Definition available at: <http://www.thefreedictionary.com/civil+service>

<sup>166</sup>Definition available at: <http://www.publicadministration.net/resources/what-is-public-administration/>

<sup>167</sup>Morgan, E. P. and Perry, J. L. (1988): “Re-orienting the Comparative Study of Civil Service Systems”, *Review of Public Personnel Administration* 8, pp. 43-95

<sup>168</sup>Lambsdorff, J. G. (2007): *The Institutional Economics of Corruption and Reform: Theory, Evidence and Policy*, Cambridge University Press, pp.58-80

<sup>169</sup>Tanzi, V. (2000): “The Role of the State and the Quality of the Public Sector”, *International Monetary Fund*, WP/00/36, March 2000

<sup>170</sup>Tanzi, V. (1998): “Corruption Around the World: Causes, Consequences, Scope and Cures”, *IMF Staff Papers*, Vol. 45, No. 4 (December 1998), pp.559-594

corruption, or creating anti-corruption agencies, are not quick fixes and the good strategy should recognize the existence of the demand and supply of corruption with the necessary price which plays an important role. In the background of these activities lies the state which, Tanzi explains, “creates the environment and incentives that influence those who pay bribes and those who accept or demand them”.

Abed and Davoodi<sup>171</sup> claim that corruption “...undermines the state’s capacity to carry out its designated functions in the economy...”. A weak state and its institutions accompanied by economic distortions creates the fertile ground for corruption. Their research finds that progress on structural reforms is a more significant factor for economic growth than corruption impacts. Furthermore, these reforms are important as well in lowering corruption and increasing foreign direct investments. Explaining the effects of administrative corruption Rose-Ackerman<sup>172</sup> says that a high level of corruption has many negative outcomes such as: the inefficient and unfair distribution of scarce benefits, undermined purpose of public programs, encouragement of civil servants for the creation of red tape, increased costs of doing business and limited entry and finally, low state legitimacy.

By now there is a broad consensus among academics and policy makers alike that good governance matters to economic development and problems in its operation, such as corruption, produce the opposite outcome. In order to measure the level of good governance Kaufman et al.<sup>173</sup> developed six governance indicators of which each measures different aspects. The indicators are<sup>174</sup>: (1) *Voice and Accountability* which measures political, civil and human rights; (2) *Political Stability and Absence of Violence* which measures the likelihood of violent threats to/or changes in-government, including terrorism; (3) *Government effectiveness* which measures the competence of the bureaucracy and the quality of public service delivery; (4) *Regulatory Quality* which measures the incidence of market-unfriendly policies; (5) *Rule of Law* which measures the quality of contract enforcement, the police, and the courts as well as likelihood of crime and violence; (6) *Control of corruption* which measures the exercise of public power for private gain, including both petty and grand corruption, or “state capture”. Kaufman et al.<sup>175</sup> explain that the estimates of governance are based “on a large number of individual data sources on perception governance”. The data include “surveys of firms and individuals, assessments of commercial risk rating agencies, non-governmental organizations and number of multilateral aid agencies”.

<sup>171</sup>Abed, G. T. and Davoodi, H. R. (2002): “Corruption, Structural Reforms, and Economic Performance in the Transition Economies”, in Abed, G. T. and Gupta, S. (eds.) (2002): *Governance, Corruption, & Economic Performance*, International Monetary Fund, pp. 489-537

<sup>172</sup>Rose-Ackerman, S. (2006): *International Handbook on the Economics of Corruption*, Edward Elgar, p. xix

<sup>173</sup>Kaufman, D., Kraay, A. and Mastruzzi, M. (2006): “Measuring governance using cross-country perception data”, in Rose-Ackerman, S. (ed.): *International Handbook on the Economics of Corruption*, Edward Elgar 2006, pp.52-104

<sup>174</sup>For more details about methodology see: Kaufmann, D., Kraay, A. and Mastruzzi, M. (2004): “Governance matters III: governance indicators 1996, 1998, 2000, and 2002”, *World Bank Economic Review*, 18(2), pp. 253-287

<sup>175</sup>Kaufman, D., Kraay, A. and Mastruzzi, M. (2006): “Measuring governance using cross-country perception data”, in Rose-Ackerman, S. (ed.): *International Handbook on the Economics of Corruption*, Edward Elgar 2006, pp.52-104

From the literature provided above, intuition dictates that corruption in public administration corresponds to its weak performance and ineffectiveness. The support for this assumption could be found if some of the indicators, which measure both aspects, are compared. The *Table 2.1*, provides the correlation matrix of four compared indicators. The comparison is done for 185 world countries of which 25 are transitional at the 95% level of significance. The indicators compared are: (a) the *Government Effectiveness indicator* for which the average of 11 years was calculated (from 2002 till 2012) and it is indicated in the table as *gaiavg*<sup>176</sup>; (b) *Control of corruption index*, calculated as well for 11 years, marked as *ccavg*<sup>177</sup>; (c) *Transparency International Corruption Perception Index* also calculated for the period from 2002 till 2012 and marked as *ticpiavg*<sup>178</sup> and finally (d) *Global Corruption Barometer* for 2013, which provides opinions of people regarding corruption in different segments of society's public sector such as judiciary, police, parliament, military, administration, etc. The reason for taking into account only the year 2013 lies in the fact that previous reports have no standardized questions repeated from year to year. This implies that this index is still improving and some standardization might be expected in the near future. In order to answer the two questions included in the calculation of the GCB index, respondents had to rank their opinion on a scale from 1 to 5. In the analysis the aggregate values of their responses were taken into account. The first question is: to what extent do you think that corruption is a problem in the public sector in this country. The second question asked respondents to rank the sectors based on their perception of corruption present in them. The listed sectors are: political parties, parliament/legislature, military, non-governmental organizations (NGOs), media, religious bodies, business/private sector, education system, judiciary, medical/health care, police and public officials/civil servants. The aggregate results for civil servants were included in the present analysis and together with the aggregate result on the first question they formed an average indicator which is marked as *gcbavg*<sup>179</sup>.

*Table 2.1: Correlation matrix of the four indexes for 185 countries*

	<i>gaiavg</i>	<i>ticpiavg</i>	<i>gcbavg</i>	<i>ccavg</i>
<i>gaiavg</i>	1.0000			
<i>ticpiavg</i>	0.9407*	1.0000		
<i>gcbavg</i>	-0.3758*	-0.4618*	1.0000	
<i>ccavg</i>	0.9464*	0.9842*	-0.4499*	1.0000

The table shows the correlation among the indexes of which some of them are further explained by graphs. *Graph 2.1* presents the positive linear correlation between the government effectiveness and overall perception of the corruption and supports the intuitive claim made earlier in this section. It shows that the higher the effectiveness of the government, the less the country is perceived as corrupt. This is also true for the control of corruption which is presented in *Graph 2.2* in *Appendix 2.1*. The more the government is effective, the better it controls corruption. On the other hand, if administration is perceived as corrupt that means that

<sup>176</sup>Data available at: <http://info.worldbank.org/governance/wgi/index.aspx#home>

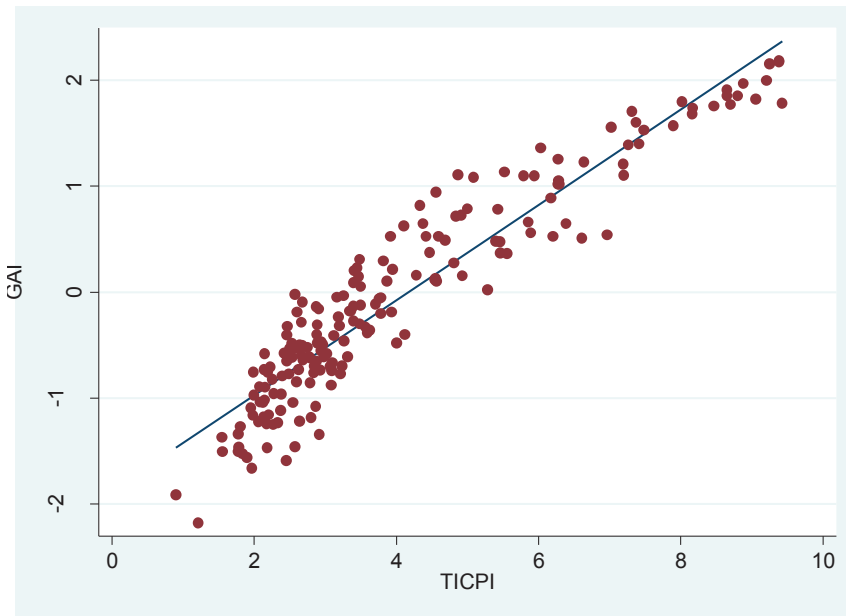
<sup>177</sup>Data available at: <http://info.worldbank.org/governance/wgi/index.aspx#home>

<sup>178</sup>Data available at: <http://www.transparency.org/research/cpi/overview>

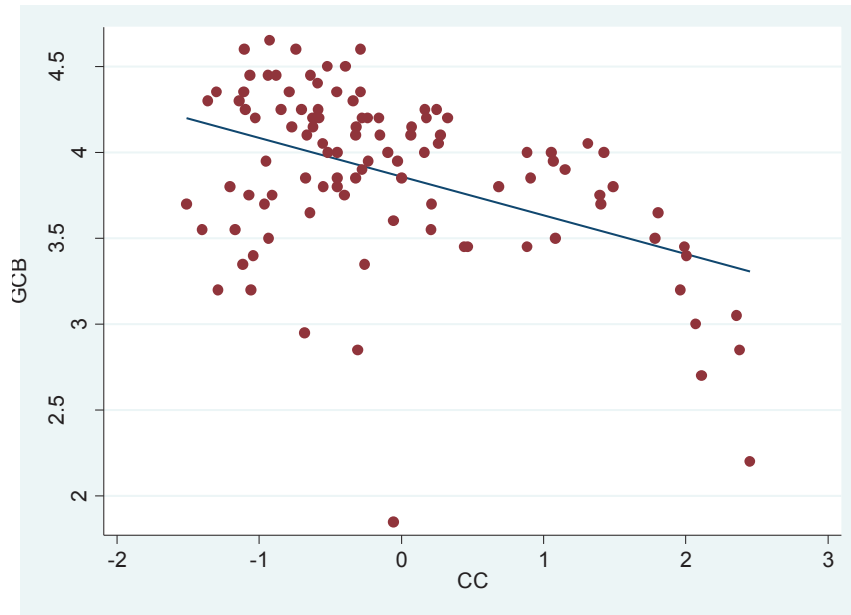
<sup>179</sup>Data available at: <http://www.transparency.org/research/gcb/overview>

control of corruption is very low which *Graph 2.3* shows. The more the administration is corrupt the more the country is perceived as corrupt (*Graph 2.4* in the *Appendix 2.1*). The higher the perception of the administration as corrupt the lower its effectiveness (*Graph 2.5* in the *Appendix 2.1*). Regarding the 25 transitional countries the correlation matrix among the indexes follows the patterns explained above. However, it appears to be less linear most probably due to the size of the sample. The table and the graphs which present the correlations are located in the *Appendix 2.2* of this chapter (Table and Graphs from 2.6 to 2.11).

*Graph 2.1: Correlation between GAI and TICPI for 185 countries*



Graph 2.3: Correlation between GCB and CC for 185 countries



### 2.2.2. Strategies for fighting corruption

The variety of anti-corruption strategies is suggested in the literature. Here some of them are presented which are considered relevant for the topic of this thesis. They are grouped according to the influence they made in the literature. To the first group strategies which are discussed as the dominant ones for pursuing effective combating of corruption belong and those are: privatization, decentralization, competition of the offices/officials, and special anti-corruption bodies will be analysed. In the second group is the approach which analyses various types of administrative systems and their norms in order to find which one of them curbs corruption in the most effective way. Since it started recently it is referred to here as “the more recent approach”.

#### 2.2.2.1. Dominant approaches in combating corruption

The economic aspect of corruption and its effects raised various debates in the literature which discusses the possible implementation of different strategies in the fight against corruption. In the essence of these claims lay the idea that an institutional organization setting affects the incentives of public employees regarding the engagement in corrupt deals. Some of these strategies, mainly discussed in the literature, will be described here and they are: privatization, decentralization, deregulation, and payment reform. However, the specific effects of these strategies on transitional countries will be presented in another section of this chapter. All these institutional reforms are, as noted earlier, based on the logic of the principal-agent framework.

### 2.2.2.1.1. Privatization

Privatization is the act or process of transferring industry operated by a government to private ownership.<sup>180</sup> Bjorvatn and Soreide<sup>181</sup> claim that the aim of privatization and deregulation is “to improve economic efficiency by reducing the role of the state and increasing the degree of private sector competition”. On the other hand Boycko et al.<sup>182</sup> argue that privatization is a means with two effects, it increases efficiency and decreases corruption. Clarke and Xu<sup>183</sup> see it as a means for combating corruption. They say that corruption in the utility sector could be reduced through privatization and increased competition. Privatization, on one hand, should be able to improve internal incentives, while competition, on the other hand, might reduce the ability to demand bribes. Some authors claim that the effects of the privatization are positive<sup>184</sup>. However, Kikeri and Nellis<sup>185</sup> say that such claims may be misleading because they measure success very narrowly, taking into account only the profitability of the privatized firms. The net welfare effect might not be positive if high profits are based on the higher prices for consumers. There are many studies which show that privatization does not always have the desired outcomes: increased competition and efficiency<sup>186</sup>.

Coming back to the relationship between privatization and, some authors try to explore it further. For instance, Laffont and Meleu<sup>187</sup> make suggestions, in which cases the privatization should be more thorough and less frequent. If the government has financial problems, generalized corruption, if corruption of high level officials is intermediary as well as at the level of democratic life, privatization should be more frequent. However, it should be less frequent if governments are very weak. Bjorvatn and Soreide<sup>188</sup> try to explain the reasons why corruption “may be a particularly severe problem in the sale of public assets”. One of the reasons is that it is usually very difficult to place a value on the assets. According to their

<sup>180</sup> Definition from Online dictionary, available at : <http://www.thefreedictionary.com/privatization>

<sup>181</sup> Bjorvatn, K. and Soreide, T. (2005): “Corruption and privatization”, *European Journal of Political Economy*, 21, 2005, pp. 903-914

<sup>182</sup> Boycko, M., Shleifer, A. and Vishny, R. (1996): “A Theory of Privatization”, *Economic Journal*, Vol. 106 (435), pp. 309–19.

<sup>183</sup> Clarke, G. and Xu, L. C. (2001): “Ownership, Competition and Corruption: Bribe Takers versus Bribe Payers”, *World Bank Working Paper 2783*. Washington, D.C.: World Bank.

<sup>184</sup> See for instance: Shleifer, A. (1998): “State versus private ownership”, *Journal of Economic Perspectives* 12, pp. 133– 150; Boubakri, N. and Cosset, J. C. (1998): “The financial and operating performance of newly-privatized firms: evidence from developing countries”, *Journal of Finance* 53, pp.1081–1110; Meggison, W. L. and Netter, J. M. (2001): “From state to market: a survey of empirical studies on privatization”, *Journal of Economic Literature* 39, pp. 321–389

<sup>185</sup> Kikeri, S. and Nellis, J. (2004): “Privatization in competitive sectors: the record so far”, *The World Bank Research Observer* 19, pp. 87–118.

<sup>186</sup> For more insights see: Manzetti, L. (1999): *Privatization South American Style*, Oxford University Press, New York; Puntillo, R. (1996): “Mass privatization in Poland and Russia: the case of the tortoise and the hare?”, *Journal of Emerging Markets* 1, pp.7– 28; Black, B., Kraakman, R., and Tarassova, A. (2000): “Russian privatization and corporate governance: what went wrong?”, *Stanford Law Review* 52, pp. 1731– 1808; and Turnovec, F. (1999): “Privatization, ownership structure and transparency: how to measure the true involvement of the state”, *European Journal of Political Economy* 15, pp. 605– 618.

<sup>187</sup> Laffont, J. J. and Meleu, M. (1999): “A positive theory of privatization for sub-Saharan Africa”, *Journal of African Economies* 8, pp. 30– 67

<sup>188</sup> Bjorvatn, K. and Soreide, T. (2005): “Corruption and privatization”, *European Journal of Political Economy*, 21, 2005, pp. 903-914

analysis, in the case of highly corrupt officials the acquisition price is higher compared to the situation when they are less corrupt or honest. However, the price can also fall if the official's propensity for corruption increases. Furthermore, under the corrupt regime the sale of the public firms may result in reduced economic efficiency due to highly concentrated industry, more precisely monopoly. Lambsdorff<sup>189</sup> claims that the impact of privatization on corruption is not still very clear although it may have economic advantages. With privatization, corruption might be shifted from the public sector to the private, a privatized firm might still pursue politically motivated interests, it may also augment corruption as in the case of transitional countries which experienced massive corruption within the process of privatization. Some authors try to explore this relationship. Without going into a deeper analysis of privatization, which is a highly complex topic and might be a subject for another doctorate, the main point of this section is that in the case of corruption, even though economically beneficial, some strategies, such as privatization, under corruption, provide results which do not always correspond to the desired outcomes.

#### 2.2.2.1.2. *Decentralization and deregulation*

##### *Decentralization*

Decentralization is the distribution of the administrative functions or powers of central authorities among several local authorities.<sup>190</sup> Bardhan and Mookherjee<sup>191</sup> explain that the "trend toward greater decentralization" was initiated by the disappointment in centralized government who were perceived as rent seeking, corrupt and unaccountable. They ask if decentralization could be a useful institutional reform for reducing corruption. There are various types of decentralisation. For instance, Fisman and Gatti<sup>192</sup> explore fiscal decentralization and claim that it has strong and significant effects of lowering corruption as predicted by the theory of decentralization. However, they say that further research is needed on the most effective type of decentralization for combating corruption combat and in which governmental services decentralization would have the strongest impact on corruption. Another type is political decentralisation. Nas et al.<sup>193</sup> and Rose-Ackerman<sup>194</sup>, claim that decentralized political systems tend to have lower corruption due to the stronger accountability mechanisms.

<sup>189</sup> Lambsdorff, J. G. (2006): "Causes and consequences of corruption: What do we know from a cross-section of countries?" in Rose-Ackerman, S. (ed.): *International Handbook on the Economics of Corruption*, Edward Elgar 2006, pp.3-52

<sup>190</sup> Definition from Online dictionary, available at: <http://www.thefreedictionary.com/decentralization>

<sup>191</sup> Bardhan, P. and Mookherjee, D. (2006): "Decentralization, corruption and government accountability", in Rose-Ackerman, S. (ed.): *International Handbook on the Economics of Corruption*, Edward Elgar 2006, pp. 161-188

<sup>192</sup> Fisman, R. and Gatti, R. (2002): "Decentralization and corruption: evidence across countries", *Journal of Public Economics*, 83, pp. 325-345

<sup>193</sup> Nas, T., Price, A. and Weber, C. (1986): "A policy-oriented theory of corruption", *American Political Science Review*, Vol. 80, No. 1 (March 1986): 107-119

<sup>194</sup> Rose-Ackerman, S. (1999): *Corruption and Government: Causes, Consequences and Reform*, Cambridge: Cambridge University Press



Lederman et al.<sup>195</sup> explain that political decentralization in the sense of enhancing local governments in practice has two effects: one effect increases the ability of the states to compete against each other for citizens, and the other allows the state to increase regulation over the areas already covered by the central government.

The term decentralization in the literature has various meanings and, besides the one provided by the definition at the beginning of this section, it also includes the competition of offices within the government. Lederman et al.<sup>196</sup> discuss corruption and institutional accountability and claim that decentralization can increase transparency which is one of the key aspects in combating corruption. Decentralized institutional design has the same effects on public servants and the level of corruption like the market structure on the price in any industry. More precisely, if several public agencies provide the same service with the possibility for citizens to choose from which one to obtain the service, competition among them will reduce corruption. In this case, the agencies compete and cannot control each other compared to the case in which agencies share the power and could extract the rent from the same source. In the former case, according to Shleifer and Vishny<sup>197</sup>, the service provided by different bureaucracies is substitute since they do not have control over each other. Some other authors, like Bowles<sup>198</sup> support this view saying that by opening up alternatives, competition is introduced because it lowers the capacity of the civil servant to uphold the citizen. Laffont and Martimort<sup>199</sup> argue that in the case of a benevolent regulator who is in charge of the implementation of socially optimal contract, separation of power, in the sense of splitting regulatory authorities among different bodies, is not necessary. It always uses its powers to maximize social welfare. However, in the opposite case, of a non-benevolent regulator, it is likely that power will be used for pursuing its personal agendas. Therefore, separation is required which divides the information available and limits the socially harmful activities. Rose-Ackerman<sup>200</sup> claims that the roots of corruption usually lay in the discretionary power of civil servants and it could be avoided if the same service is interchangeable among a few officials. Because no one of the bureaucrats has the monopoly, power citizens can choose who they want to approach and if one does not provide the required service there is always an alternative.

However, different types of decentralization affect corruption differently. In the case of the federal state Lederman et al.<sup>201</sup> explain that on the one hand political decentralization with states being able to overlap regulations appears to increase corruption. On the other hand,

<sup>195</sup> Lederman, D., Loayza, N. and Soares, R. R. (2001): "Accountability and Corruption: Political Institutions Matter", *World Bank Working Paper 2708*. Washington, D.C.: World Bank.

<sup>196</sup> Ibid

<sup>197</sup> Shleifer, A. and Vishny, R. W. (1993): "Corruption", *The Quarterly Journal of Economics*, Vol. 108, No. 3 (Aug., 1993), pp. 599-617

<sup>198</sup> Bowles, R. (2000): "Corruption", In *Encyclopaedia of Law and Economics*, edited by Bouckaert, B. and De Geest, G. Cheltenham, UK: Edward Elgar

<sup>199</sup> Laffont, J. J and Martimort, D. (1999): "Separation of regulators against collusive behaviour", *RAND Journal of Economics*, Vol. 30, No. 2, Summer 1999, pp. 232-262

<sup>200</sup> Rose-Ackerman, S. (1999): *Corruption and Government: Causes, Consequences and Reform*, Cambridge University Press, pp.69-88

<sup>201</sup> Lederman, D., Loayza, N. and Soares, R. R. (2001): "Accountability and Corruption: Political Institutions Matter", *World Bank Working Paper 2708*. Washington, D.C.: World Bank.

decentralization of the expenditures through the level of national government reduces it. Regarding competition among the offices, Lederman et al. claim that although beneficial if it introduces new layers of bureaucratic decision-making it could only deepen the problem of corruption. Bardhan and Mookherjee<sup>202</sup> make a distinction regarding the level of a country's development. They say that "...decentralization has different effects in different countries...". In developing and transitional countries it faces "common problem of capture and lack of accountability of local governments". The capture is related to poor functioning due to, among other things, asymmetry in local wealth, social status, literacy, and availability of information to the citizens. If decentralization in this case aimed to be successful it should be monitored by the central government. Regarding accountability, Bardhan and Mookherjee claim that "decentralization by itself is unlikely to be a panacea for its problems". It should be accompanied by "institutional safeguards" which should prevent the capture.

In general, decentralisation is seen as beneficial, although its application should be analysed carefully. Lambsdorff's<sup>203</sup> opinion is that bringing government closer to the people could reduce corruption although this approach is not without shortcomings. However, the alternative to a centralized public sector should be observed closely. If local government is "captured by strong local players" it is less likely that decentralization in that case would provide the desired outcome. He points out that empirical research on the effects of decentralization on corruption show mixed results and "depend on how decentralization is measured" because decentralisation, "a simple economic recipe", does not necessarily improve the fight against corruption. If put into corruption context, decentralization needs to be accompanied by other factors such as: culture, civic cooperation and trust. Therefore, one should also be aware that it does not work as a panacea. For instance, Fun et al.<sup>204</sup> claim that if a country has a high number of administrative "tiers" bribery is more frequent. Lessmann and Markwardt<sup>205</sup> stress that decentralization has the effect of lowering corruption only in the cases where freedom of press is high. If that is not the case in a certain country decentralization causes more harm than good. They claim that the only solution for this problem is to set up the monitoring system which should increase accountability of bureaucrats and strengthen the press freedom. They conclude that "decentralization is not in every case the technique to fight corruption" and "one size does not fit all".

<sup>202</sup>Bardhan, P. and Mookherjee, D. (2006): "Decentralization, corruption and government accountability", in Rose-Ackerman, S. (ed.): *International Handbook on the Economics of Corruption*, Edward Elgar 2006, pp. 161-188

<sup>203</sup>Lambsdorff, J. G. (2006): "Causes and consequences of corruption: What do we know from a cross-section of countries?" in Rose-Ackerman, S. (ed.): *International Handbook on the Economics of Corruption*, Edward Elgar 2006, pp.3-52

<sup>204</sup>Fun, S. C., Lin, C. and Treisman, D. (2009): "Political decentralization and corruption: Evidence from around the world", *Journal of Public Economics*, 93(2009), pp. 14-34

<sup>205</sup>Lessmann, C. and Markwardt, G. (2010): "One Size Fits All? Decentralization, Corruption, and the Monitoring of Bureaucrats", *World Development*, 2010, Vol. 38, No. 4, pp. 631-646

### *Deregulation*

Deregulation is defined as the reduction or elimination of government power in a particular industry, usually enacted to create more competition within the industry.<sup>206</sup> This practically means removing various rules and regulations which give the state authority to intervene. OECD report<sup>207</sup> stress that “administrative burden reduction policies” are in the last twenty years highly ranked on the political agendas of many countries. Administrative burdens are in that sense defined as “regulatory costs in the form of asking for permits, filling out forms, and reporting and notification requirements for the government”. The issue is sometimes also referred to as “cutting the red tape”. Bozeman and Feeney<sup>208</sup> define red tape as “rules, regulations and procedures that require compliance but do not meet the organization’s functional objective for the rule”. Discussing its effects they claim that research show red tape is negatively related to “performance outcomes and employee alienation, public service motivation, communication and performance”.<sup>209</sup>

Regarding the effects of over regulation on corruption Rose-Ackerman<sup>210</sup>, Ades and di Tella<sup>211</sup> and Bliss and di Tella<sup>212</sup> argue that corruption can be reduced only by increasing competition. Since the interdependence of the red tape and corruption is considered very strong, Guriev<sup>213</sup> claims that corruption and red tape “cannot be treated independently” in the attempts at making public administration efficient. Mishra<sup>214</sup> explains that anti-corruption strategies in general implement the widespread idea that “greater competition through liberalization and deregulation would lead to lower levels of corruption” and Ogus<sup>215</sup> stresses that from regulations many opportunities for corrupt transactions arose. Therefore, in order to decrease the opportunity space Western regulatory developments advocate for deregulation. Lederman et al.<sup>216</sup> say that reduction in the amount or intensity of regulation should, in general, reduce the level of corruption.

However, Mishra<sup>217</sup> explains that despite the cross country results, experiences of many countries present the reality in which deregulation and liberalization did not lower the

<sup>206</sup>Definition from Investopedia, available at: <http://www.investopedia.com/terms/d/deregulate.asp>

<sup>207</sup>OECD report (2006): *Cutting Red Tape: National Strategies for Administrative Simplification*, OECD Publishing, 2006, p.9

<sup>208</sup>Bozeman, B. and Feeney, M. K. (2011): *Rules and Red Tape: A Prism for Public Administration, Theory and Research*, M.E. Sharpe, Inc., p. 5

<sup>209</sup>Ibid, pp.128-129

<sup>210</sup>Rose-Ackerman, S. (1999): *Corruption and Government: Causes, Consequences and Reform*, Cambridge University Press,

<sup>211</sup>Ades, A. and di Tella, R. (1999): “Rents, Competition and Corruption”, *American Economic Review*, 89, pp. 982-993

<sup>212</sup>Bliss, C. and di Tella, R. (1997): “Does competition Kill corruption?”, *Journal of Political Economy*, 105, pp. 1001-1023

<sup>213</sup>Guriev, S. (2004): “Red tape and corruption”, *Journal of Development Economics* 73 (2004), pp. 489-504

<sup>214</sup>Mishra, A. (ed.) (2005): *The Economics of Corruption*, London: Oxford University Press, pp. 7-12

<sup>215</sup>Ogus, A. (2005): “Towards Appropriate Institutional arrangements for regulation in Less Developed countries”, Paper No. 119, Centre on Regulation and Competition, Institute for Development Policy and Management, University of Manchester,

<sup>216</sup>Lederman, D., Loayza, N. and Soares, R. R. (2001): “Accountability and Corruption: Political Institutions Matter”, *World Bank Working Paper 2708*. Washington, D.C.: World Bank.

<sup>217</sup>Mishra, A. (ed.) (2005): *The Economics of Corruption*, London: Oxford University Press, pp. 7-12

corruption but rather increased it<sup>218</sup>. Furthermore, Ogus<sup>219</sup> points out that a superficial conclusion on deregulation should be avoided. This applies especially to the cases of the jurisdictions in which private law is ineffective in dealing with many types of market failures and therefore the regulatory intervention is necessary. In this case, Platteau<sup>220</sup> argues that the question is how dismantling of regulatory opportunities excess could be achieved.

To sum up the previous section, it could be said that although aimed at achieving corruption combat effectively, decentralization and deregulation are not a universal cure which could be applied to any case. There are positive and negative sides of both approaches which should be analysed closely before making any decision on their implementation. Applied in the context of transitional countries they gave, in many cases, an outcome different from the desired one. Further discussion on this issue will be provided in this chapter in the section devoted specifically to transitional countries and the reform process of public administration carried out in the last two decades.

#### 2.2.2.1.3. *Civil servants payment*

The important aspects discussed in the literature on corruption and public administration concerns the level and structure of the salaries of civil servants. For the former one it is claimed that the wage level affects the bureaucrat's incentives to engage in corrupt transactions while the latter depends on various factors, such as the size of public and the strength of the private sector.

Regarding the level of salary Rose-Ackerman<sup>221</sup> claims that corruption is “a survival strategy” in cases when public sector wage is low. It may also produce a selection bias since the most skilled workers are not rewarded and therefore they look for job opportunities in private sector or abroad. She further explains that although some of the public servants are committed to public service it is less likely that the optimal number of them will be employed, or they might not be qualified enough on various grounds. Mishra<sup>222</sup> explains that low wages in bureaucracy are seen as one of the main reasons for corruption of public servants for two reasons. First, the financial status of the parties which put the civil servant in the unequal position to his client may induce him to abuse his power in order to improve his income. Second, high wages will deter corrupt behaviour because civil servants might not be ready to lose it once caught for corrupt behaviour. However, this is true if civil servants face a sufficiently high risk of being fired in case of corruption. Klitgaard<sup>223</sup> and Chand and Moene<sup>224</sup>

<sup>218</sup>For further discussion see: Laffont, J. J. and N'Guessan, T. (1999): “Competition and Corruption in an agency relationship”, *Journal of Development Economics*, 60, pp. 271-295; Dutta, I. and Mishra, A. (2003): “Corruption and Competition in the Presence of Inequality and Market Imperfections”, *Discussion Paper 152, University of Dundee*

<sup>219</sup>Ogus, A. (2005): “Towards Appropriate Institutional arrangements for regulation in Less Developed countries”, Paper No. 119, Centre on Regulation and Competition, Institute for Development Policy and Management, University of Manchester,

<sup>220</sup>Platteau, J. P. (1996): “The Evolutionary Theory of Land Rights as applied in Sub-Saharan Africa”, *Development and Change* 27, pp. 29-86

<sup>221</sup>Rose-Ackerman, S. (1999): *Corruption and Government: Causes, Consequences and Reform*, Cambridge University Press, pp. 69-88

<sup>222</sup>Mishra, A. (ed.) (2005): *The Economics of Corruption*, London: Oxford University Press, pp. 18-20

<sup>223</sup>Klitgaard, R. (1988): *Controlling Corruption*, Berkeley: Univ. of California Press

advocate for this “efficiency wage” approach, which should replace the system of large fines for taking bribes, usually difficult to implement. Enforcement literature also supports this view.<sup>225</sup> However, Mishra<sup>226</sup> explains that this approach is not without its shortcomings. It is based predominantly on the ability of monitoring officials and if the probability of detection is small this approach will not be effective.<sup>227</sup> They might even work in the opposite direction since the higher wages could raise the amount of the bribe.

A couple of studies tried to provide the empirical evidence between the level of wages and corruption. In a cross country regression of 28 countries Van Rijckeghem and Weder<sup>228</sup> find a “significant negative relationship between corruption and wages”. Some other studies do not find strong support for these claims.<sup>229</sup> Dabla-Norris<sup>230</sup> explains that in economies with high levels of corruption, the weak monitoring systems are present and low salaries for public service employees. In the case of massive bureaucratic apparatus providing of “proper wage incentives” might be costly and difficult to achieve. This measure cannot be applied alone but only as part of the general public service reform which assumes: restructuring, increasing of wages, strengthening the institutional controls by “enforcing the standards for ethical behaviour, improving accounting and auditing practices” and implementing well defined and transparent rules.

Discussing the structure of the salaries Rose-Ackerman<sup>231</sup> claims that an increase in the wages could be effective only if “tied to productivity” together with downsizing of the public sector in general. This is, however, achievable only if “jobs are available in the private sector”. If the private sector functions well then the reform of the public sector is possible. Furthermore, Seidman and Seidman<sup>232</sup> advocate raising the level of salaries as a reward for honest behaviour the promotion of which will alleviate corruption. However, the literature review provided above presents vivid discussion which shows that there are no universal strategies which automatically hit the target. They all appear to be context dependent and different types of countries should have different approaches towards them.

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<sup>224</sup>Chand, S. and Moene, K. (1999): “Controlling Fiscal Corruption”, *World Development*, 4, pp. 1129-1140

<sup>225</sup>Becker, G. and Stigler, G. (1974): “Law Enforcement, Malfeasance and Compensation Enforcers”, *Journal of Legal Studies* 3, pp. 1-18

<sup>226</sup>Mishra, A. (ed.) (2005): *The Economics of Corruption*, London: Oxford University Press, pp. 18-20

<sup>227</sup>Besley, T. and McLaren, J. (1993): “Taxes and Bribery: The Role of Wage Incentives”, *Economic Journal*, 103, pp. 119-141

<sup>228</sup>Van Rijckeghem, C. and Weder, B. S. (1997): “Corruption and the Rate of Temptation: Do Low Wages in Civil Service Cause Corruption”, *IMF Working Paper* 97/73

<sup>229</sup>Treisman, D. (2000): “The Causes of Corruption: A cross National Study”, *Journal of Public Economics*, 76, pp. 399-457 and Rauch, J. E. and Evans, P. B. (2000): “Bureaucratic structure and bureaucratic performance in less developed countries”, *Journal of Public Economics* 75, 2000, pp. 49-71

<sup>230</sup>Dabla-Norris, E. (2002): “A Game Theoretic Analysis of Corruption in Bureaucracies”, in Abed, G. T. and Gupta, S. (eds.) (2002): *Governance, Corruption and Economic performance*, Washington D.C. International Monetary Fund, pp.111-134

<sup>231</sup>Rose-Ackerman, S. (1999): *Corruption and Government: Causes, Consequences and Reform*, Cambridge University Press, pp. 69-88

<sup>232</sup>Seidman, A. and Seidman, R. D. (1994): *State and Law in the Development Process: Problem-Solving and Institutional Change in the Third World*, Basingstoke: Macmillan.

#### 2.2.2.1.4. *Special Anti-corruption Bodies*

Establishment of numerous anti-corruption agencies (ACA) in the last decades, as one of the important element in the fight against corruption, is according to Meagher<sup>233</sup> the result of two successful cases achieved in Singapore and Hong Kong. These two countries opted for the establishment of one strong agency for combating corruption instead of using a multiple-agency approach which assumes the strengthening of the capacity of various governmental agencies. Meagher explains the differences between the two approaches. A multiple-agency approach includes the combination of traditional state institutions with units/agencies specialized in combating corruption. In this system, judicial and administrative agencies still possess traditional capacities and legitimacy while newly established bodies aim to “address gaps, weaknesses and newly emerged opportunities for corruption.” The single-agency approach moves to the anti-corruption agency investigation and prevention, the core functions of combat. However, this approach does not move all functions into a single agency but places a “number of key capabilities, responsibilities and resources under one roof”. It further means that anti-corruption bodies are still required to interact with courts, prosecutors and ministries. Meagher provides the reasons for choosing the second approach. He says that experiences of both countries shows that this approach strengthened the legitimacy because a strong agency, with a centralized information system and intelligence reduces the coordination problems and sends a strong signal of confidence to investors.

The basic idea of the two agencies mentioned changed over time and the variety of agency types and anti-corruption bodies, commissions and committees arose in different countries. According to the OECD report<sup>234</sup> the creation of these types of institutions became important when the question of corruption gained international importance. It was closely related to the process of political democratization, building the rule of law and good governance in many post-authoritarian countries, transitional and developing. Despite variety some patterns can be established based on their different purpose. In general there are three models: 1) *multi-purpose agencies with law enforcement powers* – identified with Hong Kong and Singapore agencies. It has two key pillars, repression and prevention while prosecution is a separate function. Among transitional countries Latvia and Lithuania has adopted this model; 2) *law enforcement type institutions* is the most common model applied in Western Europe. It can be implemented in detection, investigation and prosecution of the anti-corruption body(s). Poland, Romania, Hungary and Croatia are transitional countries which adopted it; finally 3) *preventive, policy development and co-ordination institutions* which includes one or more prevention functions in the domain of assessing risks, monitoring in implementation of the strategies and action plans and conflict of interest rules, training of officials, etc. Transitional countries who implemented this model are Slovenia, FYROM, Albania, Montenegro, Bulgaria and Serbia.

<sup>233</sup>Meagher, P. (2005): “Anti-corruption Agencies: Rhetoric versus Reality”, *Journal of Policy Reform* 8:1, pp. 69-103.

<sup>234</sup>OECD – Anti-corruption Network for Eastern Europe and Central Asia: *Specialised Anti-corruption Institutions: Review of Models*, 2008

Hence, the performance of these bodies is questionable since the various reviews indicate failures rather than successes. Meagher<sup>235</sup> explains that when the anti-corruption agencies are established it is usually difficult to perceive their limitations. If they are not “structurally independent” they cannot be above bureaucrats and politicians. Their success depends on the cooperation with the government which is not well maintained in many cases. There are various explanations for this outcome. For instance, the OECD lists “Seven Deadly Sins”<sup>236</sup> which include: political, economic, governance, legal, organisational, performance and public confidence factors. The lesson learned from the OECD analysis dictates that although establishing an ACA has as a main goal the reduction of corruption some important facts should be kept in mind. One of them is the answer to a very important question: which model in the particular country context is appropriate since legal and institutional transplants have a tendency to fail in different, foreign social environment. Therefore in the decision making process some factors should be taken into account such as the level of the corruption in the country; competences, integrity and capacities of existing institutions; constitutional framework; existing legal and criminal justice system and financial resources. Johnsen et al.<sup>237</sup> explain that the initial enthusiasm about anti-corruption agencies is today replaced by defeatism. The UN report for 2005<sup>238</sup> concludes that “there are actually very few examples of successful independent anti-corruption commissions/agencies”. The reason for this lies, according to Johnsen et al.<sup>239</sup>, in the fact that they are “never given an easy or a well-defined task” because they were expected to “overcome the inadequacy of traditional law enforcement structures and processes and assume a leading role in implementing national anti-corruption strategies”. Authors explain that well-grounded debate on the agencies’ performance could be made only on the basis of a credible measure and evaluations of what they are able to achieve. Therefore, they develop a methodology which should in future help in monitoring the performance and the effectiveness of the anti-corruption agencies. The establishment and results of anti-corruption agencies in transitional countries will be presented in one of the coming sections.

#### 2.2.2.2. More recent approach for the improvement of corruption combat

If summarized, economic strategies which target the administration structure, described above, show mixed and sometimes limited results. They all try to encourage the setting up of proper incentive systems by providing the proper institutional framework. This brings into the discussion some other aspects of the corruption fight which targets the value system and its

<sup>235</sup>Meagher, P. (2005): “Anti-corruption Agencies: Rhetoric versus Reality”, *Journal of Policy Reform* 8:1, pp. 69-103.

<sup>236</sup>OECD – Anti-corruption Network for Eastern Europe and Central Asia: *Specialised Anti-corruption Institutions: Review of Models*, 2008, pp. 33-34

<sup>237</sup>Johnsen, J., Hechler, H., De Sousa, L. and Mathisen, H. (2011): *How to monitor and evaluate anti-corruption agencies*, U4 Anti-corruption Resource centre, September 2011, No.8, pp. 1-4  
available at: <http://www.cmi.no/publications/file/4171-how-to-monitor-and-evaluate-anti-corruption.pdf>

<sup>238</sup>UNDP (2005): *Institutional Arrangements to Combat Corruption: A Comparative Study*, Bangkok, UNDP, p. 5

<sup>239</sup>Johnsen, J., Hechler, H., De Sousa, L. and Mathisen, H. (2011): *How to monitor and evaluate anti-corruption agencies*, U4 Anti-corruption Resource centre, September 2011, No.8, p.2  
available at: <http://www.cmi.no/publications/file/4171-how-to-monitor-and-evaluate-anti-corruption.pdf>

connection to corruption. However, their suggestion is guided from clear economic perspective which does not include the internal values of the administration. Some authors see in this fact the shortcomings of the above described strategies. They aim to shed light on another aspect which is considered important for designing of sound anti-corruption policies. In that context Rauch and Evans<sup>240</sup> look at the institutional characteristics of bureaucracies which are associated with low levels of corruption or red tape. Their research is guided by “Weberian state hypothesis”, whose key characteristics are: recruitment based on merit through competitive examinations while further promoting and firing should be based on civil service procedures and not on political ones. Testing the hypothesis on 35 countries, they find that “meritocratic recruitment is...the most important for improving bureaucratic performance”, while internal promotion and career stability are in second place. This implies, according to authors, that “behaviour of bureaucrats is rooted in organizational norms and structures”. Olsen<sup>241</sup> discusses the “shift from Weberian bureaucracy to a market organization or network organization” and argues for rediscovering Weber’s analysis. He explains that “contemporary democracies are involved in a struggle over institutional identities and institutional balances” and therefore in order to better understand the current administration setting it is necessary to “rediscover bureaucracy as an administrative form”, more precisely as an “analytical concept” which has certain ideas about its organization. Olsen claims that since administrative theory and practice are context dependent, it is necessary to learn about “political, social, cultural and economic characteristics that impinge on the administration”.

Building upon the analysis of Rauch and Evans, Dahlström et al.<sup>242</sup> explore the role of professional bureaucracy in corruption combat. They claim that “actions and choices of public servants” are usually disregarded in discussions on corruption because current literature focuses “mainly on the political side of the state” while only a few studies “consider its bureaucratic side”. They test three hypotheses, by taking the “bureaucratic side of the state into account” and bridging political and bureaucratic factors into one approach. The focus on political factors in explaining corruption focuses on the impact of the type of political regime<sup>243</sup>, the members of the political elite<sup>244</sup> and the characteristics of the electoral system<sup>245</sup>.

<sup>240</sup>Rauch, J. E. and Evans, P. B. (2000): “Bureaucratic structure and bureaucratic performance in less developed countries”, *Journal of Public Economics* 75, 2000, pp. 49-71

<sup>241</sup>Olsen, J. P. (2005): “Maybe It Is Time to Rediscover Bureaucracy”, *Journal of Public Administration Research and Theory* 16, pp.1-24

<sup>242</sup>Dahlström, C., Lapuente, V. and Teorell, J. (2012): “The Merit of Meritocratization: Politics, Bureaucracy, and the Institutional Deterrents of Corruption”, *Political Research Quarterly*, SAGE Publications, 2012, 65: pp.656-668

<sup>243</sup>For further discussion see: Harris-White, B. and White, G. (1996): *Liberalization and New Forms of corruption*, Brighton, NJ: Institute of Development Studies; Sung, H. E. (2004): “Democracy and Political Corruption: A Cross-National Comparison”, *Crime, Law and Social Change* 41, pp.179-93; Montinola, G. R. and Jackman, R. W. (2002): “Sources of Corruption: A Cross-Country Study”, *British Journal of Political Science* 32, pp.147-170;

<sup>244</sup>For more insights see: Dollar, D., Fisman, R. and Gatti, R. (2001): “Are Women Really the ‘Fairer’ Sex? Corruption and Women in Government”, *Journal of Economic Behavior and Organization* 46, pp. 423-429; Wängnerud, L. (2009): “Women in Parliaments: Descriptive and Substantive Representation”, *Annual Review of Political Science* 12, pp.51-69.

<sup>245</sup>For further discussion see: Persson, T., Tabellini, G. and Trebbi, F. (2003): “Electoral Rules and Corruption”, *Journal of the European Economic Association* 1, pp.958-989; Kunikova, J. and Rose-Ackerman, S. (2005): “Electoral Rules and Constitutional Structures as Constraints on Corruption”, *British Journal of Political Science*



On the other hand, scarce studies regarding the administration's design show that the Weberian type of organization has "positive effects in terms of good governance". However, it has a wide set of structural characteristics with the main features such as: merit based recruitment and promotion, formalized and standardized procedures, hierarchical organization and life tenure. Dahlström et al. seek to find which of the characteristics mentioned has the highest influence on corruption control. As previously mentioned they focus on three issues presented in the Table 2.2.

Table 2.2: Bureaucratic structures as deterrents of corruption

<i>Hypotheses on the effects of bureaucratic structure over corruption</i>	<i>Causal mechanisms</i>	<i>Observable indicators</i>
<b><i>Hypothesis 1: A "closed bureaucracy" will curb corruption.</i></b>	<i>Esprit de corps:</i> The key is to "create better types" through socialization of certain values, strong ties among the members of the Corps, and isolation from external influences.	1a. Competitive formal examinations 1b. Career stability/secure tenure 1c. Special laws for public employment (as opposed to standard labour laws)
<b><i>Hypothesis 2: A "well-paid bureaucracy" will curb corruption</i></b>	<i>Temptation:</i> The key is to pay bureaucrats enough so they do not engage in corrupt behaviour to complement their salaries	2. Competitive salaries in the public sector
<b><i>Hypothesis 3: A "professional bureaucracy" will curb corruption</i></b>	<i>Separation of interests:</i> The interests of principals and bureaucratic agents are separated because they are responsive to different chains of accountability.	3a. Meritocratic recruitment 3b. Non-politicization of public service posts 3c. Internal promotions

Source: Dahlström et al., "The Merit of Meritocratization: Politics, Bureaucracy, and the Institutional Deterrents of Corruption, pp. 4

The first hypothesis questions the classification of the bureaucracies as "open and closed"<sup>246</sup> and their relation to corruption. The essential difference between the two lies in the institutional organization. While the latter is characterized by "career stability, life tenure and special labour laws which govern the public administration employment, the former are governed by the opposite rules. Closed bureaucracies operate according to inner rules called Corps which "set common norms...fostering impartial and non-corrupt behaviour". It is therefore assumed that this type, due to its stronger ties among bureaucrat's and devotion to the organizational goals, should prevent corruption<sup>247</sup>. However, the authors do not find the support for this claim. The second hypothesis tests the arguments from the economics literature that incentives of the civil servants could be affected by the level of wages as well as the

35, pp. 573-606; Chang, E. and Golden, M. (2006): "Electoral Systems, District Magnitude and Corruption." British Journal of Political Science 37, pp. 115-137.

<sup>246</sup>For further discussion see: Bekke, H. A. G. M., Perry, J. L. and Toonen, T. A. J. (1996): "Introduction: Conceptualizing Civil Service Systems" in Bekke, H. A. G. M., Perry, J. L. And Theo A. J. Toonen, T. A. J. (eds.): *Civil Service Systems in Comparative Perspective*, Bloomington, IN: Indiana University Press, pp. 1-10; Lægreid, P. and Wise, L. R. (2007): "Reforming Human Resource Management in Civil Service systems", in Jos, C. N., Raadschelders, J. C. N. and Toonen, T. A. J. and Van der Meer, F. M. (eds.): *The Civil Service in the 21st Century: Comparative Perspectives*, Basingstoke, UK: Palgrave Macmillan, pp. 169-182

<sup>247</sup>Rauch, J. E. and Evans, P. B. (2000): "Bureaucratic structure and bureaucratic performance in less developed countries", *Journal of Public Economics* 75, 2000, pp. 49-71

probability of detection and penalization for corruption<sup>248</sup> and, like the first one did not get support from the data. The third hypothesis, “based on overlooked Weberian characteristics”, tests the effects of professionalism of the bureaucracy on corruption. Using the distinction between “organizationally oriented” and “professionally oriented” bureaucrats, made by Silberman<sup>249</sup>, Dahlström et al.<sup>250</sup> claim that merit based recruitment of professional bureaucracy reduces corruption because it establishes the “separation of interests” since agents selected this way have interests different from politicians. Its formation creates the environment in which two groups, professional bureaucrats and elected officials, have different “chains of responsiveness”, different careers and the possibility to monitor each other and as such improve the fight against corruption. To conclude, according to this study the essential issues in the fight against corruption in public administration are “employment terms” and level of (in)dependence of public servants on politicians.

In a further analysis of the relationship between the administration design and corruption Dahlström and Lapuente<sup>251</sup> reflect upon the claims that politicians and public administration should be institutionally isolated. The isolation can happen in two ways: through the separation of activities and the separation of careers. In the former case the activities of the bureaucracy are “as separated as possible” from the activities of the elected politicians and the two cannot intervene in the processes of the other. This means that public servants cannot influence the policy making nor elected representatives the policy implementation. However, the results of the analysis follow the line of the previous study and authors conclude that the separation of careers, rather than the separation of activities, curbs corruption. This section aimed to shed light on the approach that analyses the values within the particular type of administration which a particular setting induces. As previously mentioned, their correlation with corruption is still the field which needs exploration.

### 2.3. Structure of the institutions: Public Administration and transition

As mentioned above, according to some authors, the dominantly applied anti-corruption strategies overlook specific issues in the public administration. Following this claim this

<sup>248</sup>See: Becker, G. and Stigler, G. (1974): “Law Enforcement, Malfeasance, and the Compensation of Enforcers”, *Journal of Legal Studies* 3, pp.1-19; Van Rijckeghem, C. and Weder, B. (2001): “Bureaucratic Corruption and the Rate of Temptation: Do Wages in the Civil Service Affect Corruption, and by How Much?”, *Journal of Development Economics* 65, pp. 307-331.

<sup>249</sup> Silberman, B. S. (1993): *Cages of Reason: The Rise of the Rational State in France, Japan, the United States, and Great Britain*, Chicago: Chicago University Press, pp. 10-15; The *organizational orientation* is described as a system in which “early commitment to the bureaucratic role is critical”. The higher officials should comply with the criteria which establish severe criteria and eligibility and recruitment. The criteria usually include passing the highly specific university training and/or attending of specific training schools. The *professional orientation* model stresses the importance of professional training is more important rather than orientation towards organizational roles and norms. Crucial aspect of this model, which is considered superior, is acquisition of a “body of knowledge and techniques by the individual”.

<sup>250</sup>Dahlström, C., Lapuente, V. and Teorell, J. (2012): “The Merit of Meritocratization: Politics, Bureaucracy, and the Institutional Deterrents of Corruption”, SAGE Publications, *Political Research Quarterly*, 2012, 65: pp.656-668

<sup>251</sup>Dahlström, C. and Lapuente, V. (2012): “Weberian bureaucracy and corruption prevention”, in Holmberg, S. and Rothstein, B. (eds.): *Good Government: The Relevance of Political Science*, Edward Elgar Publishing, July, 2012

chapter will look at two structural issues of public administration. The first refers to the structure of the institutions, their prescribed values and goals, while the second looks at the structure of human capital employed in public service, more precisely Public service motivation (PSM). Some of the administration values were already presented in previous sections. Different types of administration promote different values and their understanding is essential for any public administration research. As Bekke et al.<sup>252</sup> claim historical dimensions and specific political and social contexts are incorporated into the civil service systems of a certain country. Therefore this section presents the public administration in three types of the societies: capitalist, socialist and transitional. Each of these societies is characterized by a specific institutional setting which reflects the image of a particular society and as such should be helpful in locating corruption within it.

### 2.3.1. *Public administration in Capitalism*

The literature discussing public administration in capitalist, developed, societies makes a distinction between a few models of public administration: traditional public administration; public management, including new public management, and responsive governance. To this list some authors add New Weberian State approach, which among others, is presented in this section. According to the UN<sup>253</sup> many developing and transitional economies, with various histories and legacies, such as colonialism and socialism, applied these models of public administration which at the end have been modified in distinctive ways. The characteristics of the traditional public administration, public management and responsive governance are provided in the *Table 2.3*. It summarizes the differences among the models regarding: the positions of citizens towards the state, to whom senior officials are accountable, which principles guide the work of the administration and how the success is measured; finally, what are the key attributes considered important for the functioning of public administration. Following the above provided short introduction, the next sections will deal with particular characteristics of each of the administration types together with New Weberian State approach. These discussions aim to provide the full administrative picture for a better understanding of the points and arguments made in this thesis. It will start with the type which is considered the foundation of modern public administration, the Max Weber's bureaucracy.

*Table 2.3: Models of public administration*

	<b>Public administration</b>	<b>Public management</b>	<b>Responsive governance</b>
<b>Citizen-state relationship</b>	Obedience	Entitlement	Empowerment
<b>Accountability of senior officials</b>	Politicians	Customers	Citizens and stakeholders
<b>Guiding principles</b>	Compliance with rules and regulations	Efficiency and results	Accountability, transparency and participation

<sup>252</sup>Bekke, H. A. G. M., Perry, J. L. and Toonen, T. A. J. (eds.) (1996): *Civil Service Systems in Comparative Perspective*, Indiana University Press,

<sup>253</sup>UN (2005): *Unlocking the Human Potential for Public Sector Performance: World Public Sector Report 2005*, Department of Economic and Social Affairs, New York: UN.

<i>Criteria for success</i>	Output	Outcome	Process
<i>Key attribute</i>	Impartiality	Professionalism	Responsiveness

Source: UN report p.7

### 2.3.1.1. Traditional public administration (Max Weber)

The definition of *traditional public administration* relates to the second half of the 19<sup>th</sup> century in the countries with undergoing industrialization and emergence of civil service.<sup>254</sup> The goal in that time was to create an impartial civil service system which, by taking politics and politicians out of the field of personnel management, should be the protector of the public interest and therefore a symbol of continuity and stability. These ideas were expressed by Max Weber who is according to Menzel<sup>255</sup> “widely recognized as the intellectual father of modern bureaucracy”. Although Warner<sup>256</sup> agrees that the most commonly referenced treatment of bureaucracy is that of Max Weber, he reminds us that the analysis of administration in representative governments started with John Stuart Mill. He claims that Mill wrote before Weber and set out “succinct yet comprehensive theory of bureaucracy within the representative government”. In his work *Consideration on Representative Government (1861)* Mill draws some conclusions that are considered important for the discussion in this section. Mill’s<sup>257</sup> central concerns in his work are liberty, individual rights, and limited government. He claims that good government is more than honest officials and well-run institutions; it is striving for the development of the intelligence and virtue of the citizens while in return improving itself. However, he is concerned that in representative democracies the wrong perception of democracy itself can endanger good governance. Namely, the democracy is not about people governing themselves, but that they have the security of good government. Continuing the discussion on good governance, Mill says that governing requires professional training, skills and devotion and public business should be the primary occupation of a group that is specially trained for governing. Bureaucracy plays a major role in the progress of the state and the improvement of the people; its qualities of stability, skills, knowledge and experience help to mediate the passion and impulse of democratic decision making.

Analysing bureaucracy, Weber<sup>258</sup> describes the conversion of patrimonial bureaucracy into the modern rational one by linking the expertise and rational administrative capabilities of bureaucracy with industrial development. He argues that bureaucracy develops more perfectly, the more it is “dehumanized”. It is more complete if it succeeds in “eliminating from official business love, hatred, and all purely personal, irrational and emotional elements which escape

<sup>254</sup>Ibid

<sup>255</sup>Menzel, D. C. (2007): *Ethics management for Public Administrators: Building Organization of Integrity*, 2007, M.E. Sharpe, Inc. p.29

<sup>256</sup>Warner, B. E. (2001): “John Stuart Mill’s Theory of Bureaucracy within Representative Government: Balancing Competence and Participation”, *Public Administration Review*, July/August 2001, Vol. 61, No.4, pp.403 - 413 , p.403

<sup>257</sup>Mill, J. S. (2009): *Consideration of Representative Government*, The Floating Press, 2009, pp.59-87

<sup>258</sup>See: Weber, M. (1946): *From Max Weber: Essays in Sociology*, Gerth, H. H and Mills, C. W. (eds.), New York, Oxford University Press, 1946, pp. 196-204 and Weber, M. (1992/1968): *Economy and Society. An Outline of Interpretive Sociology*, Roth, G. and Wittich, C. (eds.), New York: Bedminster Press, pp.956-980

calculations”. This is appraised as its special virtue by capitalism. He also lists the principles by which officialdom is functioning: (1) the principle of fixed and official jurisdictional area ordered by the laws or administrative regulations; (2) the principle of office hierarchy in which superiors supervise subordinates; (3) the principle of written documents, “the files”, which ordain its preservation in the original or draught form; (4) requirements of thorough and expert training of office management; (5) in case of full development of the office, official activity demands the full working capacity of the officials; finally, (6) the management of the office follows general rules, which are more or less stable, more or less exhaustive and which can be learned. Regarding officials, Weber claims that, for the external position, office holding is a “vocation” and for the internal position some patterns could be noted: (1) officials enjoy social esteem, due to the specific position guaranteed by law; (2) an official is appointed by a superior authority and he derives his position “from above” in contrast to an elected official, who derived his position “from below”; (3) officials tenure is for life; (4) the officials receive pecuniary compensation of a normally fixed salary and the old age security provided by a pension; finally, (5) the official is set for a career within the hierarchical order of the public service. He moves from the lower, less important, and lower paid to the higher positions based on terms of “seniority” or grades achieved in a developed system of expert examination. Weber’s view of the administration was and still is a subject of discussion among scholars.

Peters<sup>259</sup> discusses the principles of the traditional administration and groups them in six “chestnuts” which governs the thinking of public service. The first one is *apolitical civil service* which assumes that civil servants should “serve any master” regardless of their own personal opinion due to the expectance of their loyalty towards the governments of the day. The complement to this principle is the concept of competences which promote objective qualifications as “the first hurdle for recruitment”. Peters claims that the policy role of civil servants is obvious not only in the implementation process but also in the formulation stage of the laws in which they have an advisory role. The second principle is that management should be *hierarchical and rule-bounded* within the public service and civil servants should have authority “to implement and enforce regulations outside of it”. The third principle assumes that the position of the public servant is permanent and stable, usually described as “*lifetime commitment*”. The fourth principle establishes the civil service as *institutionalized service* which “is governed as a separate body” which should make it “distinctive and professional”. Strong internal regulation is the fifth characteristic of traditional bureaucracy which should serve as a control and accountability mechanism. Finally, the equality as a principle of the traditional type of administration assumes a couple of aspects. First, it should provide equal employment conditions for all civil servants in the same rank. Second, in dealing with clients civil service should provide equality in front of the law for everybody following the principle “*sine irae et studio* (without anger or bias)”. As mentioned in the previous sector, some authors like Lægveid and Wise<sup>260</sup> call this model “closed” because of its main assumption that “public sector employment is different from work in other sectors” and as such asks for specific

<sup>259</sup>Peters, G. B. (2001): *The Future of Governing*, University Press of Kansas, 2001, (2<sup>nd</sup> edition), pp.1-22

<sup>260</sup>Lægveid, P. and Wise, L. R. (2007): “Reforming Human Resource Management in Civil Service systems”, in Jos C. N. Raadschelders, J. C. N. and Toonen, T. A. J. and Van der Meer, F. M. (eds.): *The Civil Service in the 21st Century: Comparative Perspectives*, Basingstoke, UK: Palgrave Macmillan, pp. 169-182

employment rules which will regulate “recruitment, promotion and mobility”. Based on the description provided above and some of the other discussions<sup>261</sup>, *Table 2.4* summarizes the principles and characteristics by which the “Weberian” public administration is organized. According to the UN report<sup>262</sup> the Weberian bureaucratic model when applied to different countries around the world, produced variations based on the national legal traditions and cultural factors. However, the underlying similarities were more crucial than the differences.

*Table 2.4: Principles and Characteristics of Weberian Administration*

<b>Weberian administration</b>	
<i>Principles</i>	<i>Characteristics</i>
<ul style="list-style-type: none"> <li>• <b>An apolitical civil service;</b></li> <li>• <b>Hierarchy and rules;</b></li> <li>• <b>Legality</b></li> <li>• <b>Permanence and stability;</b></li> <li>• <b>An institutional civil service;</b></li> <li>• <b>Internal regulation;</b></li> <li>• <b>Equality (internally and externally to the organization).</b></li> </ul>	<ul style="list-style-type: none"> <li>• official duties are fixed by <i>rules, laws, or administrative regulations</i>;</li> <li>• offices are arranged <i>hierarchical</i> with a clearly ordered system of super- and subordinate relationships;</li> <li>• management is based on <i>written documents</i>;</li> <li>• management is selected and promoted via the <i>merit principle</i>;</li> <li>• the official is a <i>full-time employee</i>;</li> <li>• management follows <i>general rules that are stable and can be learned</i></li> </ul>

Source: based on Peters, “*The Future of Governing*”, pp. 1-12

The discussion about Weberian administration here will be coloured by one line of criticism which points to some of its misinterpretations. Samier<sup>263</sup> claims that literature which discusses Weber’s administration mainly disregards history, values and three forms of authority, important features in his writings, which lead to “many distortions, misrepresentations and misuses of Weber”. The main point in this article is that instead of analysing the organizational structure one should focus on an individual level of analysis which is in this case mentality. Interpreting Weber, Samier says that causal factors, mentioned above, produce mentality. Historical factors create inherited conditions and a “conceptual framework through which we perceive and interpret the world”. Human nature, discussed by Weber and historical context together create the values “from which our social action is derived and authority fashioned”. Resolving the conflicts among these factors should lead to the changes and improvements towards the ideal type of bureaucracy. The criticism of Weberian administration introduced a new approach towards the public administration. The foundation for this approach lies in the market and its functioning mechanisms. The next section provides more insights into this approach.

<sup>261</sup>See: Menzel, D. C. (2007): *Ethics management for Public Administrators: Building Organization of Integrity*, 2007, M.E. Sharpe, Inc; Pfiffner, J. P. (1999): “Traditional Public Administration versus The New Public Management: Accountability versus Efficiency”, published in *Institutionenbildung in Regierung und Verwaltung: Festschrift für Klaus König zum 70 Geburtstag*, Benz, A., Siedentopf, H., and Sommermann, K. P. (eds.), Berlin, Germany: Duncker & Humboldt, 2004, pp. 443-454 ; and Peters, G. B. (2001): *The Future of Governing*, (2nd ed.), Lawrence, KS: University Press of Kansas 2001

<sup>262</sup>UN (2005): *Unlocking the Human Potential for Public Sector Performance*, World Public Sector Report 2005, Department of Economic and Social Affairs, New York: UN.

<sup>263</sup>Samire, E. (2005): “Toward a Weberian Public Administration: The Infinite Web of History, Values and Authority in Administrative Mentalities”, *Halduskultuur*, Vol. 6, pp.60-94

### 2.3.1.2. Public Management and New Public Management (NPM)

#### *Public management*

In the late 19<sup>th</sup> century the idea of business management entered into the discussions about public administration reforms. The UN<sup>264</sup> report says that the United States progressive movement stressed the importance of separating the administration and politics and employment of professional managers. At the core of the public management model, called “managerialism” are the practices developed in the private sector, such as: unsecured tenure; pay, remuneration and mobility governed by market conditions; use of contracts or temporary workers, etc. The public management model is not fond of strict, rigid rules, uniform systems and formal procedures which are typical of the traditional mode but for efficiency and results. Therefore, managers at all levels should exercise initiatives and be driven by the business objectives and bottom-line organizational performance. These ideas were the main starting point for reviewing the efficiency of the government in the USA and Europe during the 20<sup>th</sup> century. The change of terminology describing the essence of the administration understanding, from “personnel administration” to “human resource management” illustrates the difference between two concepts of traditional and new. The new model draws practices of managing human resources from management science and applies them according to the “business needs” and “business model” of the particular organization.<sup>265</sup>

The main criticism which public management addresses to traditional public administration is “one-size-fits-all” approach. Regarding the business circumstances different means should be employed: contracting, competition, permanent employment, team work, etc. However, ironically, the main critics addressed to public management are that it tries to impose itself globally, promoting in that way the “one-size-fits-all” approach. Although the proponents of this view believe that management is a generic term and it could be used in a sense “one size fits all”, reality shows that business management doctrines and practice are not that easy to categorize as a coherent component of the traditional public administration model. This is because of their constant change and adaptation due to business dynamics as well as the fact that they are susceptible to the influence of waves of fashion which spread around the world usually disregarding local environment and exhibiting constant experimentation.

#### *New Public Management (NPM)*

*New Public Management (NPM)* represents a modern development in public management tradition and it is an example of globalized public sector reform. It generates a set of similar doctrines, born mainly in Anglo-Saxons countries, which were in play in the 1970s in many OECD countries regarding the administrative reform. Olsen<sup>266</sup> describes it as a movement which aimed to promote the “opening up public administration to society, beyond

<sup>264</sup>UN (2005): *Unlocking the Human Potential for Public Sector Performance: World Public Sector Report 2005*, Department of Economic and Social Affairs, New York: UN, pp. 9-10

<sup>265</sup>Ibid

<sup>266</sup>Olsen, J. P. (2008): “The Ups and Downs of Bureaucratic Organization”, *Annual Review of Political Science* 11, pp.13-37

the traditional gate keeping institutions, and changing the relations between societal institutions". This practically means that the focus is shifted from public service to public service delivery. One of the founders of the NPM, Hood<sup>267</sup> describes it as a marriage of "new institutional economics and "managerialism" in which one partner brought to the marriage, on one hand, public choice, transaction costs and principle-agent theories, and on the other a set of administrative reform doctrines built on contestability, user choice, incentives and transparency. The other partner contributed with ideas of "professional management" and higher discretionary power in order to achieve a better output. Dunleavy and Hood<sup>268</sup> advocate strongly for the shift from the classical model towards the market based one. Osborne and Gaebler<sup>269</sup> say that this transformation was "inevitable" because of the need for advanced administration while Peters<sup>270</sup> explains that NPM includes at the internal level of the administration participation, flexibility, and deregulation while externally it uses market mechanisms. Describing the meaning of NPM idea, Pfiffner<sup>271</sup> claims that this view actually criticises the efficiency of the organizations with similar means of organization, more precisely fully developed government, and targets its marginal improvement. In order to achieve this, NPM argues for decentralized administration, delegation of discretion, contracting for goods and services and use of market mechanisms of competition and customer service. According to him the main contrast between NPM and traditional public administration is reflected through the tension between accountability and efficiency. The traditional model argues for accountability, while the NPM advocates for allowing more creativity and flexibility through the system which will encourage employees (managers) to take risks and be more entrepreneurial and as a result better fulfil the goals of efficiency and improved customer service. The accountability in this sense will be achieved through measuring output rather than by monitoring processes. Taking this into account it becomes clear that if a government system did not yet achieve the necessary level of accountability NPM methods could be very risky and harmful.

Olsen<sup>272</sup> explains that NPM reforms include the shrinking of the public sector and limiting the governmental role in society with the main goal of serving the economy. Neo-classical ideas are used as a foundation for "market-and-management reforms" which "celebrate individualism, consumer sovereignty and customer-driven services". According to him, compliance with formal rules and procedures are replaced by performance and cost-efficiency of which the main features are: privatization, deregulation, commercialization, etc.

<sup>267</sup>Hood, C. (1991): "A Public Management for All Seasons", *Public Administration*, Vol. 69, Spring 1991 pp. 3-19

<sup>268</sup>Dunleavy, P. and Hood, C. (1994): "From old public administration to new public management, *Public Money & Management*, 14:3, pp. 9-16,

<sup>269</sup>Osborn, D. and Gaebler, T. (1992): *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, Reading MA: Addison-Wesley

<sup>270</sup>Peters, G. B. (2001): *The Future of Governing*, 2nd ed., Lawrence, KS: University Press of Kansas 2001

<sup>271</sup>Pfiffner, J. P. (1999): "Traditional Public Administration versus The New Public Management: Accountability versus Efficiency", published in *Institutionenbildung in Regierung und Verwaltung: Festschrift für Klaus König zum 70. Geburtstag*, Benz, A., Siedentopf, H. and Sommermann, K.P. (eds.), Berlin, Germany: Duncker & Humboldt, 2004, pp. 443-454

<sup>272</sup>Olsen, J. P. (2008): "The Ups and Downs of Bureaucratic Organization", *Annual Review of Political Science* 11, pp.13-37



Administrative agencies have “clear tasks, goals, resources and borders”, and as such are responsible for the outcomes. The ideas of accountability and control exist but in a different form. They are related to “discover and accommodate market signals”. Olsen claims that according to the main idea of the movement that market actors and consumers are rational actors, NPM sees the population as a “collection of customers and clients focused on individual benefits”. As such they have a commercial relationship to the state instead of political which denies the “special nature” of the public sector.

Lægheid and Wise<sup>273</sup> describe NPM as an “open” bureaucratic system, as opposed to an earlier described “closed” one, which challenges two main doctrines of the traditional public administration concept. First, it abandons the strict employment procedures leaving “managers to manage” and shift the responsibility for the selection to their hands. Second, it tried to blur the lines between public and private employment through its key field Human Resource Management (HRM). According to this view HRM should: 1) *normalize* the status of the public sector employee, meaning their transformation to a business contract by excluding security of tenure; 2) focus on *performance* or output particularly expressed in “pay for performance” contracting practice; however this practice conflicts with the core capacities of the administration such as: continuity, integrity and commitment to the public service which might be blurred if private practices are adopted in total and 3) implement *customerization* with incorporation of customer-satisfaction indicators into measurement of performance.<sup>274</sup>

Nevertheless, like all approaches, NPM is not without criticism. The main argument, on which NPM based its criticism of the traditional bureaucracy, is that it has no adequate answer to efficiency except increasing the volume of regulations which further creates inefficiency.<sup>275</sup> However, these ideas are described as predominantly Anglo-Saxon and not well suited to the countries in which bureaucracy is substantially based on the traditional rules which are not so easy to change; therefore they are not receptive to marketization as a method of improving public administration. Hood<sup>276</sup> points out that although most OECD countries moved in an NPM direction it is questionable whether it is suitable for all OECD countries, not mentioning transitional or developing ones. Olsen<sup>277</sup> claims that in the early 1990s “the enthusiasm for a universal de-bureaucratization cure”, and insisting on its global validity, diminished. Minimalistic government is no longer seen as the best choice and when approaching administrative reforms each government should match them with “the needs, traditions and

<sup>273</sup>Lægheid, P. and Wise, L. R. (2007): “Reforming Human Resource Management in Civil Service systems”, in Jos, C. N. Raadschelders, J. C. N. and Toonen, T. A. J. and Van der Meer, F. M. (eds.): *The Civil Service in the 21st Century: Comparative Perspectives*, Basingstoke, UK: Palgrave Macmillan, pp. 169-182

<sup>274</sup>UN (2005): *Unlocking the Human Potential for Public Sector Performance: World Public Sector Report 2005*, Department of Economic and Social Affairs, New York: UN, p.12; and Lægheid, P. and Wise, L. R. (2007): “Reforming Human Resource Management in Civil Service systems”, in Jos, C. N., Raadschelders, J. C. N. and Toonen, T. A. J. and Van der Meer, F. M. (eds.): *The Civil Service in the 21st Century: Comparative Perspectives*, Basingstoke, UK: Palgrave Macmillan, pp. 169-182

<sup>275</sup>UN (2005): *Unlocking the Human Potential for Public Sector Performance: World Public Sector Report 2005*, Department of Economic and Social Affairs, New York: UN, pp. 10-12

<sup>276</sup>Hood, C. (1995): “Emerging Issues in Public Administration”, *Public Administration*, Vol. 73, Spring 1995, pp. 165-183

<sup>277</sup>Olsen, J. P. (2008): “The Ups and Downs of Bureaucratic Organization”, *Annual Review of Political Science* 11, pp.13-37

resources of each political system”. As usually happens, the critic of one approach introduces a new one. The next section elaborates on it.

### 2.3.1.3. New Weberian State (NWS)

The *New Weberian State (NWS)* is, according to Cepiku and Mititelu<sup>278</sup>, one of the most discussed “post-NPM” models recently introduced by Pollitt and Bouckaert<sup>279</sup>. The roots of the concept could be traced to the 1970s in the literature of political science, sociology and public administration.<sup>280</sup> The model assembles on the one hand principles which are considered as the core values of Weberian administration model and on the other positive elements of NPM such as standards of reliability, predictability, openness, transparency, accountability, efficiency and effectiveness. Pollit and Bouckaert<sup>281</sup> make a distinction between different groups of countries: the maintainers, the modernizers and the marketizers but only the last two are crucial for the reform. *Marketizers* are Anglo-American countries, the strong NPM proponents and *modernizers*, the continental European who advocate for the NWS. The NWS is based on the Weberian principles of bureaucracy which are married to some of the principles of NPM. Pollit and Bouckaert provide the explanation for each of them and they are summarized in the *Table 2.5*.

*Table 2.5: Elements of the Neo Weberian State approach*

Neo Weberian State	
<i>Weberian elements</i>	<i>Neo elements</i>
<ul style="list-style-type: none"> <li>• <b>Reaffirmation of the state</b> as the main facilitator of solutions to the new problems of globalization, technological change, shifting demographics and environmental <b>threat</b>;</li> <li>• <b>Reaffirmation of the role of representative democracy</b>(central, regional, and local) as the legitimating elements within the state apparatus;</li> <li>• <b>Reaffirmation of the role of administrative law</b> suitably modernized in preserving the basic principles pertaining to the citizen-state relationship, including equality before the law, legal security, and the availability of specialized legal scrutiny of state actions;</li> <li>• <b>Preservation of the idea of a public service</b> with a distinctive status, culture, and terms and conditions;</li> </ul>	<ul style="list-style-type: none"> <li>• <i>The shift from an internal orientation towards bureaucratic rules towards an external orientation towards meeting citizens’ needs and wishes.</i> The primary route to achieving this is not the employment of market mechanisms (although they may occasionally come in handy) but the creation of a professional culture of quality and service;</li> <li>• <i>Supplementation (not replacement) of the role of representative democracy</i> by a range of devices for consultation with, and the direct representation of, citizens’ views);</li> <li>• In the management of resources within government, a modernization of the relevant laws to encourage a greater orientation on the <i>achievement of results</i> rather than merely the correct following of procedure. This is expressed partly in a shift in the balance from <i>ex ante</i> to <i>ex post</i> controls, but not a complete abandonment of the former;</li> <li>• <i>A professionalization of public service</i>, so that the</li> </ul>

<sup>278</sup>Cepiku, D. and Mititelu, C. (2010): “Public Administration Reforms in Transitional Countries: Albania and Romania Between The Weberian Model and The New Public Management”, *Transylvania Review of Administrative Sciences*, No. 30E/2010 pp.55-78

<sup>279</sup>Pollitt, C. and Bouckaert, G. (2004): *Public Management Reform. A Comparative Analysis* (2<sup>nd</sup> edn), Oxford: Oxford University Press

<sup>280</sup>Brown, R. H. (1978): “Bureaucracy as Praxis: Towards a Political Phenomenology of Formal Organizations”, *Administrative Science Quarterly*, 1978, vol. 23, pp. 365-382

<sup>281</sup>Pollitt, C. and Bouckaert, G. (2004): *Public Management Reform: A Comparative Analysis*, Oxford: Oxford University Press (3<sup>rd</sup> edn), pp. 115-122

bureaucrat becomes not simply an expert in the law relevant to his or her sphere of activity, but also a professional manager, oriented to meeting the needs of his or her citizens/users;

Source: Pollitt and Bouckaert, "Public Management Reform: A Comparative Analysis", pp. 118-119

Dunn and Miller<sup>282</sup> claim that NWS was developed in Europe "primarily as a challenge to NPM". The concept is built on principles, promoted by OECD and applied in the EU public administration. Since the national public sectors in the EU are in the jurisdiction of member states *Acquis Communautaire* contains only broad principles such as: reliability and predictability; openness and transparency; accountability<sup>283</sup>; monitoring and evaluation of government outputs, and their control through the Regulatory Impact Assessment (RIA)<sup>284</sup>. Dunn and Miller claim that the guiding principles of NWS, drawn from the work of Drechsler<sup>285</sup> and Pollitt and Bouckaert<sup>286</sup>, refer to "a specifically European perspective of bureaucratic organization" whose foundation lies in Weber's views and NPM. Since the EU is composed of a variety of countries Dunn and Miler analyse each of the NWS principles in that context, providing a sort of background for the necessity of its use. The interesting description is the one regarding Weberian principles which are presented here about which they claim the following: 1) *Centrality of the State*, which is assumed in "strong countries" is necessary in the "weak" ones in order to enable them to deal with domestic and international problems; 2) *Reform and Enforcement of Administrative Law*, aims to protect the individuals and groups by guaranteeing them equality before the law and protection against arbitrary and unpredictable actions by public administration; 3) *Preservation of Public Service* is necessary in post socialist EU accession countries to stress the importance of public service distinct status, culture, and conditions of employment because in the history these states had poorly paid civil servants who were poorly educated and under the influence of political authorities; 4) *Representative Democracy* is a necessary basis for the legitimate, controlled and stable public administration, the ideal type described by Weber. It is particularly important when put in the context of post socialist countries where, according to Bendix<sup>287</sup>, public administration was unstable, unreliable, inefficient and "unbureaucratic". This approach will, together with

<sup>282</sup>Dunn, W. N. and Miller, D. Y. (2007): "A Critique of the New Public Management and the Neo-Weberian State: Advancing a Critical Theory of Administrative Reform", *Public Organization Review* (2007) 7, pp. 345–358

<sup>283</sup>For further discussion see: Rutgers, M. R., and Scheurs, P. (2000): "Briefly noted from Europe: Discovering the European notion of public administration", *Administrative Theory and Praxis*, 22(3), pp. 621–629

<sup>284</sup>*Regulatory Impact Assessment* (RIA) is a method of policy analysis created to assist policy makers in designing, implementation and monitoring of improvements of regulatory system. It provides a methodology for assessing the likely consequences of proposed regulation and the actual consequences of existing regulation. For more see: Kirkpatrick, C. and Parker, D. (eds.) (2007): *Regulatory Impact Assessment: Towards Better Regulation?*, Edward Elgar Publishing Limited; and Staronova, K., Kovacsy, Z., and Kasemets, A. (2006): "Comparing experiences of introducing an impact assessment requirement to draft legislation in CEE: The case of Slovakia, Hungary, and Estonia", in Dunn, B. Staronova, K. and Puskarev, S. (eds.): *Implementation: The Missing Link in Public Administration Reform in CEE*, pp.165–198, Bratislava: NISPAcee.

<sup>285</sup>Drechsler, W. (2005): "The rise and demise of the new public management", *Post-Autistic Economics Review*, 33, p. 14, September 2005, available at: <http://www.paecon.net/PAERReview/issue 33/Drechsler33.htm>.

<sup>286</sup>Pollitt, C. and Bouckaert, G. (2004): *Public management reform: A comparative analysis*, 2nd edn. Oxford: Oxford University Press

<sup>287</sup>Bendix, R. (1989): *Embattled reason, Vol. II: Essays on social knowledge*, New Brunswick, NJ: Transaction, p. 384-385

Weberian administration, be discussed once again in this chapter in the context of the reforms pursued in transitional countries. Before that, the description of another public administration type is provided.

#### 2.3.1.4. Responsive/good governance

The responsive/good governance approach focuses on “creating public value”<sup>288</sup> and its significance lies in the fact that it tries to overcome the failures on NPM in a sense of narrow assumptions and values by defining broader and a more inclusive set of principles and practices called “governance”.<sup>289</sup> A UN report indicates that this term is being used since the 1990s and in the beginning it mainly referred to financial accountability of governments. Later it was re-conceptualized as the “exercise of political, economic and administrative authority to manage a country’s affairs”. Ladi<sup>290</sup> says that the term “good governance” has been widely used for more than a decade in an international concept and she describes it as a “container concept”. This means that it consists of a variety of principles but it is at the same time very general. The discussion on the definition of the term is vivid. Weiss<sup>291</sup> explains that at the beginning the term “good governance” assumed that the force which cares for human rights and the rule of law strengthens democracy and promotes transparency and capacity in public administration. However, the term is expanded to “multiparty elections, a judiciary and a parliament”. Doornbos<sup>292</sup> concludes that over time it became “an elastic term... rather than constituting a concept on its own”. Since the quantity of goals related to governance increased, which in practice might impose the problems for states with weak governance in its capacity building, Grindle<sup>293</sup> introduced a new term, “good enough governance”. She explains that “not all government deficits need to be tackled at once” and the interventions should be carefully examined and prioritized. For prioritization government needs to take into account the individual characteristics of the country, more precisely it should be based on “historical evidence, sequence, and timing”.

Like many other principles, good governance gained global popularity through its use by international organizations. The World Bank<sup>294</sup> defines governance as “the manner in which power is exercised in the management of a country’s economic and social resources for development”. It stresses the importance of three aspects for governance: first, the type of political regime; second, the public management of economic and social resources and, finally,

<sup>288</sup>Moore, M. H. (1995): *Creating Public Value: Strategic Management in Government*, Cambridge, MA: Harvard University Press

<sup>289</sup>UN (2005): *Unlocking the Human Potential for Public Sector Performance. World Public Sector Report 2005*, Department of Economic and Social Affairs, New York: UN, pp. 12-14

<sup>290</sup>Ladi, S. (2008): *Good Governance and Public Administration Reform in the Black Sea Economic Cooperation (BSEC) Member States*, International Centre for Black Sea Studies (ICBSS),

<sup>291</sup>Weiss, T. G. (2000): “Governance, Good Governance and Global Governance: Conceptual and Actual Challenges,” *Third World Quarterly* 21, No. 5, 2000, pp. 795-814.

<sup>292</sup>Doornbos, M. (2001): “Good Governance: The Rise and Decline of a Policy Metaphor?” *Journal of Development Studies* 37, No. 6 (2001), pp. 93-108.

<sup>293</sup>Grindle, M. S. (2007): “Good Enough Governance Revisited”, *Development Policy Review* 25, No. 5 (2007), pp. 553-574.

<sup>294</sup>World Bank (1994): *Governance: The World Bank’s Experience*, The World Bank, Washington D.C., 1994

third, the capacity of government to design, formulate and implement policies<sup>295</sup>. According to a UN report<sup>296</sup> the main goal of governing institutions is to ensure interaction between all stakeholders: state, private sector and civil society by institutionalizing transparency, accountability, due process and efficiency. More precisely the “good governance” approach has in mind government, open and responsive to civil society, accountable and better regulated by law and external watchdogs. Important aspects of this approach are non-governmental organizations (NGOs) which should be the “voice” of civil society and should provide a partnership of community participation. Therefore, including citizens in all stakeholders’ roles and the creation of public values rather than simply consumer satisfaction is the goal of “good governance”. Ladi<sup>297</sup> explains that good governance principles were used in the form of conditionality but also through “their inclusion in the modernization agendas of many countries”. This demands a closer look at “policy transfer framework” which is rooted in the part of public policy analysis which deals with the impact of “exogenous factors upon policy making and policy institutions”. Following this line of argument the analysis of the concept should start by looking at Dolowitz and Marsh<sup>298</sup>. They introduce concepts such as “policy learning”, “lesson drawing”, “emulation” and “diffusion”, to explain the transfer of specific institutional knowledge from one time or place to another. However, they make a distinction between the terms by explaining that “lesson-drawing” refers only to voluntary transfer, while “policy transfer” may include both, coercive and voluntary. Ladi<sup>299</sup> explains that the distinction between voluntary and coercive policy is not always easy to make because “most of the cases concern indirectly coercive transfer...put forward by international organizations or foreign governments”.

Rhodes<sup>300</sup>, argue that the new approach first provides variety regarding networks on which the state relies rather than hierarchy and second, these self-regulating models together with non-governmental institutions provide light government authority. Behn<sup>301</sup> stresses the importance of various public accountability forms which are present in different public administration organizations. Unlike Weberian administration and NPM, which advocate for hierarchical and professional accountability, responsive governance proclaims the “360-degree” accountability in which all stakeholders involved are accountable to each other. This could not be achieved without the presence of a variety of mechanisms such as: transparency, openness, professional and personal ethics, which further demand well-developed HR strategies.

<sup>295</sup>Ibid, pp. xiv

<sup>296</sup>UN (2005): *Unlocking the Human Potential for Public Sector Performance. World Public Sector Report 2005*, Department of Economic and Social Affairs, New York: UN, pp. 12-14

<sup>297</sup>Ladi, S. (2008): *Good Governance and Public Administration Reform in the Black Sea Economic Cooperation (BSEC) Member States*, International Centre for Black Sea Studies (ICBSS),

<sup>298</sup>Dolowitz, D. and Marsh, D. (1996): “Who Learns from Whom?”, *Political Studies*, XLV (1996): 344.

<sup>299</sup>Ladi, S. (2008): *Good Governance and Public Administration Reform in the Black Sea Economic Cooperation (BSEC) Member States*, International Centre for Black Sea Studies (ICBSS),

<sup>300</sup>Rhodes, R. A. W. (2000): “Governance and Public Administration” in Pierre, J. (ed.): *Debating Governance: Authority, Steering, and Democracy*, Oxford: Oxford University Press, 2000, pp. 54-90

<sup>301</sup>Behn, R. (2001): *Rethinking Democratic Accountability*, Brookings Institution Press Washington, D.C.

However, like all the approaches towards the government organization this one is not without critique. Grindle<sup>302</sup> argues that “the good governance agenda is unrealistically long and growing longer over time” with little guidance on priorities among the goals which should be achieved. That is the reason for her introduction of the above mentioned term “good enough governance”. This label could be applied to the countries which score high on the factors essential for the reduction of society’s problems. The problem of good governance is that the agenda is overwhelmed by many indicators which are in practice difficult to achieve especially in the countries which lack financial or human resources. De Vries<sup>303</sup> explains that, although originally seen “as an alternative for government”, the governance approach became synonymous with “steering of developments” not by governmental hierarchy but by social actors through social networks. However, he claims, the concept is no longer used “to describe different trends in the steering of societal developments” but for “the role of the government and creation of good institutions by government” which “added a normative prefix to it”. De Vries points out that the descriptive characteristic “good” brought overloaded agendas to which governments are expected to comply. At the initial stage the criteria were not that numerous. For instance, UNDP listed five good governance principles: legitimacy and voice, direction, performance, accountability and fairness<sup>304</sup>. The World Bank cites six dimensions of the concept<sup>305</sup>: voice and accountability, government effectiveness, regulatory quality, political stability and absence of violence, rule of law and control of corruption, of which some were already used in this chapter. However, behind listed dimensions there are multiple indicators taken into account for their measurement. Kettl<sup>306</sup>, therefore, describes the concept of good governance as “slippery”.

### 2.3.2. Public administration in socialism

For transitional, post-socialist countries, socialism is the starting point on their journey towards capitalism. For a better understanding of the transitional process it is necessary first to learn about the characteristics of the institutions of socialism and their way of functioning. Developed as a critique of capitalism it promoted certain values which are expected to be created by establishing new organizational setting. According to Glassman et al.<sup>307</sup> in the analysis of the relationship between bureaucracy and socialism Weber claimed that socialism, according to its ideology, would require even more bureaucratization than capitalism and

<sup>302</sup>Grindle, M. (2004): “Good Enough Governance: Poverty Reduction and Reform in Developing Countries”, *Governance*, 17(4): 525 – 548.

<sup>303</sup>De Vries, M. (2013): “The Challenge of Good Governance”, *The Innovation Journal: The Public Sector Innovation Journal*, 18(1), 2013, article 2.

<sup>304</sup>Graham, J., Amos, B. and Plumptre, T. (2003): *Principles for Good Governance in the 21st Century*, Policy Brief No. 15, Institute on Good Governance, Accessed September 14, 2012, available at: <http://www.iog.ca/publications/policybrief15.pdf>.

<sup>305</sup>Kaufman, D., Kraay, A. and Mastruzzi, M. (2006): “Measuring governance using cross-country perception data”, in Rose-Ackerman, S. (ed.): *International Handbook on the Economics of Corruption*, Edward Elgar 2006, pp.52-104

<sup>306</sup>Kettl, D. F. (2002): *The Transformation of Governance: Public Administration for Twenty-First Century America*, Baltimore, MD: Johns Hopkins University Press.

<sup>307</sup>Glassman, R. M., Rosen, P., Swatos Jr, W. H. and Fisher, J. (1987): *Bureaucracy against Democracy and Socialism*, Greenwood Press., p.4

would be fully fused with the politico-military might of the state. This, as a result, would indicate an increase in the tendency toward despotic control. If private capitalism was eliminated, state bureaucracy would rule alone. The private and public bureaucracies, which in capitalism work next to and potentially against each other and hence check one another to a certain degree, would in socialism be merged into a single hierarchy.<sup>308</sup> Furthermore, the abolition would mean that the top management of the nationalized or socialized firms would become bureaucratic. This would as a consequence have less freedom, because of the hopeless struggle with the state and lack of agency which should limit the employer's power.<sup>309</sup> Weber's predictions regarding socialism appeared to be fulfilled with the history of post-socialist countries, described further in this section.

Bendix<sup>310</sup> claims that since Marx refused to specify the structure of the coming socialist society, his views should be inferred from his interpretation of historical trends. The important objective of socialism is the gradual abolition of the division of labour which affects bureaucracy in the sense that it would eliminate the necessity for coercion. Lenin elaborated the idea by claiming that under socialism the administrative apparatus would diminish in size, because a special force for suppression was no longer needed. Since most functions of government would be exercised by the masses, special functionaries are no longer needed. Hence, the reality was different. Bendix explains that in practice, bureaucracy in socialism was composed of the apparatus of party or the state or a specific mass organization, e.g. labour union, which broadened its understanding compared to the one in capitalism. Kornai<sup>311</sup> defines forces that bind bureaucracy together: (1) *ideology* with ideas, aims and values; (2) *power*; (3) *prestige and privileges* combined together make the system in which the level of position attained in the bureaucracy corresponds to the measure of rank. The result of this is the phenomenon called "cult of personality" which is created when the ultimate instance of prestige is attached to high office; (4) *coercion* – the functionary has faithfully to follow a currently correct political line and any departure from it incurs the disciplinary punishment by the party or prosecution by the state. The behaviour of obedience is highly evaluated and rewarded and is a guarantee for a successful career in bureaucracy. The main criteria for the selection of the candidates are political reliability, loyalty, and fidelity to the party and its ideas.<sup>312</sup>

Although constitutions of socialist countries formally separate the power into three branches in practice all of them are subordinated to the Socialist/Communist party. According to Kornai<sup>313</sup>, all major appointments, promotions, and dismissals are decided upon by the various bodies of the party. This practically means that the party apparatus plays the crucial role in selecting the members of the legislature, the state administration and the judiciary. It is

<sup>308</sup>Weber, M. (1992/1968): *Economy and Society. An Outline of Interpretive Sociology*, Roth, G. and Wittich, C. (eds.), New York: Bedminster Press p. 1402

<sup>309</sup>Ibid, pp.1401-1402

<sup>310</sup>Bendix, R. (1950): "Socialism and the Theory of Bureaucracy", *The Canadian Journal of Economics and Political Science*, Vol. 16, No.4, (Nov., 1950), pp.501-514,

<sup>311</sup>Kornai, J. (1992): *The Socialist System: The Political Economy of Socialism*, Princeton University Press, pp. 41-44

<sup>312</sup>Ibid, p.57

<sup>313</sup>Ibid, pp.37-48

in direct touch with the apparatus of state which further means that party functionaries are responsible for every important sphere of state activity. Since the party people are few compared to the parallel state organizations the small circle has great power in the state administration. The constitution did not prescribe the obligation of obedience for state officials to the instructions of socialist/communist party however, in practice they were members of the party and as such obliged to follow them. Therefore, Kornai<sup>314</sup> says that the main characteristic of socialist administration is the duplication of functional and regional vertical chains, which supervise and overlap each other's activities due to the lack of trust in the system. No superior has full confidence in his subordinates. The direction of the influence within the vertical chain goes from top to bottom meaning that the superior may issue a command to a subordinate but not the reverse. Boettke<sup>315</sup> explains that while in representative government bureaucracies grow slowly over time in the continuous and gradual process, in the former Soviet Union the hiring of personnel was carried on through nomenklatura<sup>316</sup> system and political patronage. Moreover, the bulk of state administration came to power at the same time and therefore the same cohort controlled the key positions in bureaucracy. In a book edited by Verheijen<sup>317</sup> the description of crucial characteristics of the civil service system in socialist countries is provided. They are summarized in the *Table 2.6.* located in the *Appendix 2.3.*

The socialist system had a specific approach towards corruption. Orthodox socialists believed that corruption was a by-product of capitalism. Their argument was based on the belief that corruption cannot be created in socialist countries.<sup>318</sup> However, this argument has been overthrown, along with the political system, beginning in 1989 when most of the socialist countries in the West collapsed, in part because of the prevalent corruption. Lovell<sup>319</sup> claims that even without adequate studding or quantification, in socialism corruption was widespread and systemic. It was reinforced by a culture of bureaucratic secrecy. Shlapentokh<sup>320</sup> describes the corruption in the Soviet Union claiming that the most important condition for developing corruption in the public sector –bureaucracy- is mutual trust of those involved which means that family and friends form the base for most enterprises in unofficial spheres. Corruption presents abuse of public office for private gain and soviet officials abused it by deceiving the state with statistical reports in many ways. Hiding the real potential production of the enterprises, diminishing the planned targets, wasting resources are just some of them. By having access to the great share of scarce goods they had the opportunity of exploiting them by exchanging it for equivalent goods or services. However, this behaviour was not properly, if

<sup>314</sup>Ibid, pp.97-100

<sup>315</sup>Boettke, J. P. (1993): *Why Perestroika Failed: The Politics and Economics of Socialist Transformation*, Routledge 11 New Fetter Lane, London EC4P 4EE, p.82

<sup>316</sup>The nomenklatura in the socialist context refers to people who were Party members and held various key administrative positions in all spheres of the society and they held them only on the ground of Party's approval.

<sup>317</sup>Verheijen, T. (ed.) (1999): *Civil Service Systems in Central and Eastern Europe*, Edward Elgar Publishing

<sup>318</sup>Torkunov, A. (1992): "Bureaucracy and Policy in the Socialist Countries" in *Proceedings of the International Conference of Bureaucracy and Policy: A Comparative Perspective*, KAPA.

<sup>319</sup>Lovell, D. W. (2001): "Trust and the politics of post-communism", *Communist and Post-communist Studies* 34, pp.27-38

<sup>320</sup>Shlapentokh, V. (1989): *Public and Private life of the Soviet people*, Oxford University Press, pp. 203-216



ever, sanctioned. Holms<sup>321</sup> claims that a distinction has to be made in the first place regarding the punishment of corruption between officials who are members of the party and everyone else. This means that party members found guilty of corruption faced a party disciplinary process instead of regular courts. For minor infringements the party used “educational and influential” measures such as: “comradely criticism”, “advice” and “warnings before the members’ assembly”. For more serious misdemeanours, the sanctions range from reprimand (or censure) to severe reprimand (or severe censure), severe reprimand with the explicit treat of expulsion and finally, expulsion.

When compared, capitalist and socialist systems express many structural differences. This also applies to corruption and some authors claim that although present in both societies they are not the same. According to Kim<sup>322</sup>, the specificity is shown in the following: (1) some types of corruption exist only in socialist countries; (2) corruption appears to be more destructive in socialist than in capitalist countries; (3) anti-corruption campaigns in socialism are mainly used temporarily by political leaders and are rarely sustained for a longer period; (4) levels of corruption between socialist and capitalist countries can be seen to be related to economic growth; (5) the role of individual subsystems could be an important issue for the design of the efficient and effective anti-corruption policy of a certain country since the top-down mechanism was so far unsuccessful; and finally (6) corruption in socialist countries has until recently rarely been reported to the outside world. These differences should be taken into account when addressing corruption in administration in transitional countries. They provide the view of different starting points of the two systems in terms of corruption combat and therefore should be used as a guide for defining sound anti-corruption policies.

From the descriptions provided above, some conclusions important for this thesis could be drawn. While writers on the administration organization in capitalism insist on professionalism, skills and competences, socialist administration in practice shines the spotlight on obedience to socialist/communist ideology and its interpretation by the party. These two approaches in reality create the incentive systems opposite to each other regarding behaviour, values and concepts of functioning and understanding civil service. On one side the demand for professionalism creates incentives for responsibility and “using one's own head” while on the other, unquestionable following of the socialist ideology stimulates the avoidance of it and hiding behind the superiors. This further influences people’s opinion, first about themselves and their self-esteem and, second, how they see the institutions that they are working for, more precisely whether they have respect and trust in them or not.

### 2.3.3. *Public administration in transition*

#### 2.3.3.1. Reform process

The collapse of socialist system inevitably raised the question of the institutional reform in a variety of aspects. The development of administration in transitional countries is

<sup>321</sup>Holms, L. (1993): *The End of Communist Power: Anti-corruption Campaigns and Legitimation Crisis*, Melbourne University Press, Melbourne pp. 255-257

<sup>322</sup>Kim, J. Y. (1998): “Corruption in Socialist and Capitalist Countries”, pp. 91-101 in Sampford, C. and Preston, N: *Public Sector Ethics: Finding and Implementing Value*, The Federation Press/ Routledge, pp.93-95

sometimes seen as turbulent or interrupted.<sup>323</sup> After the collapse of the socialist regimes, these countries dismantled many of the socialist-style bureaucracy instruments and took steps towards the modernization and rationalization of public administration, particularly under the influence of the European Union Accession. Norgaard<sup>324</sup> explains that the experience of post-socialist countries showed the need for new standards which should govern the public sector. When faced with a new social and economic context the old bureaucracy was “inadequate”, in terms of organizational structure as well as human capital. The steps taken towards the reform were, according to Abed and Davoodi<sup>325</sup>, associated with the reduction in the public administration size and the narrowing down of the authorization for resources distribution. However, although it sounded simple, the transformation process was anything but that. Verheijen<sup>326</sup> summarizing the achievements of post-socialist countries claims that when it comes to public administration change, instead of reform one should rather talk about development since previous regimes, “with the partial exception of Yugoslavia”, did not leave any legacy of the civil service system in its traditional meaning. According to Nunberg<sup>327</sup>, CEE countries initiated the creation of new, modern government on the ruins of “formerly communist-dominated bureaucracy”. She recognizes two important issues in this process: the development of appropriate rules of the game and the development of the “new civil servant”. The first issue addresses establishing legitimate legal framework and merit-based mechanisms for recruitment, promotion, and assessment which should reinforce probity and politically neutral competence. This is necessary in order to replace past corrupt and ideological system. The second task is to create the “new civil servant” who is able to make decisions independently of higher authority and “demonstrates effectiveness in carrying out very different tasks than previously required”. However, in most of the cases the governments of the CEE countries did not undertake a holistic reform approach, but rather they created several “ad hoc routes” to construct a civil service framework. Nunberg claims that although the communist content has been removed from the procedures, in the beginning the basic elements of compensation, recruitment, promotion, and evaluation mechanisms have remained. One of the assumptions, at the beginning of reforms, was that the bureaucratic class would resist or subvert modernization and change. Therefore the best approach to deal with this obstacle was to clear away the habits, characteristics and values of those who served under the socialist regime. She explains that the opinion was that this could be achieved through the building of new skills and loyalties in “those who replaced the old guard”. However, reality demonstrated that the “new civil servant” was a rehabilitated version of the old one. Initial efforts for “fixing” this were through new recruitment and training. Nunberg says that the former were

<sup>323</sup>UN (2005): *Unlocking the Human Potential for Public Sector Performance*. World Public Sector Report 2005, Department of Economic and Social Affairs, New York: UN.

<sup>324</sup>Norgaard, O. (2000): *Economic Institutions and Democratic Reform – A comparative Analysis of Post-Communist Countries*, Edward Elgar Publishing, Inc., 2000, p. 26-27

<sup>325</sup>Abed, G. T. and Davoodi, H. R. (2002): “Corruption, Structural Reforms, and Economic Performance in the Transition Economies”, in Abed, G. T. and Gupta, S. (eds.) (2002): *Governance, Corruption, & Economic Performance*, International Monetary Fund, pp. 489-537

<sup>326</sup>Verheijen, T. (ed.) (1999): *Civil Service Systems in Central and Eastern Europe*, Edward Elgar Publishing Limited, 1999, pp.334-335

<sup>327</sup>Nunberg, B. (1999): *The State after Communism: Administrative Transitions in Central and Eastern Europe*, World Bank, Washington D.C., 1999

quite limited due to, for instance, the informal process of hiring through personal networks, while the latter were not very well planned and applied. In conclusion, incentive structures of bureaucracy which rewards performance or recognizes the merit should be established in order to professionalize civil service because in most of the cases the systems of remuneration and promotion practices were based mainly on seniority and non-transparent managerial preferences.

Transformation of the socialist bureaucracy into a modern civil service depends on the attitude and behaviour change in the interaction between public servants and citizens. In achieving this task, post socialist countries had or still have to make some decisions regarding the type of the administration which fulfils the above described goals. Pevkur<sup>328</sup> claims that reforms from hierarchical public service to open a modern administration brought many questions to the table regarding common values and ethical demands. As already described in previous sections, different approaches toward the “best design” of public administration carry different characteristics and value systems. In order to present the variety of options among which post-socialist countries choose, Cepiku and Mititelu<sup>329</sup> summarize the main characteristics of Weberian, New Public Management, Neo-Weberian State and Public Governance approaches, shown in *Table 2.8*.

*Table 2.8: Characteristics of Weberianism, NPM, Neo-Weberianism and Public Governance*

<i>Weberian characteristics</i>	<i>NPM characteristics</i>	<i>Neo-Weberian Characteristics</i>	<i>Public Governance</i>
Dominance of rule of law, focus on rules and policy systems	Inward focus on (private sector) management techniques	External orientation towards citizens needs	Outwards focus and a systematic approach
Central role for the bureaucracy in the policy making and implementation	Input and output control	Central role of professional managers	Process and outcome control
Unitary state	Fragmented state	Unitary state and collaboration	Plural and pluralist state (networks)
Public service ethos	Competition and market place	Public service ethos	Neo-corporatist
Representative democracy as the legitimating element	Client empowerment through redress and market mechanisms	Supplementation of democracy with consultation and participation	Participative decision-making
Political-administration split within public organizations	Political-administration split within and between (agencification) organization	Political-administration separation and emphasis on professionalization of the latter	Collaborative relations between politicians and managers

Source: Cepiku and Mititelu, “Public Administration Reforms in Transitional Countries: Albania and Romania between the Weberian Model and the New Public management”, p.61

<sup>328</sup>Pevkur, A. (2007): “Compatibility of Public Administration Systems and Ethics Management”, *ISSN 1648-2603, Viesoji Politika Ir Administravimas*, 2007, Nr. 19, pp. 16-24

<sup>329</sup>Cepiku, D. and Mititelu, C. (2010): “Public Administration Reforms in Transitional Countries: Albania and Romania Between The Weberian Model and The New Public Management”, *Transylvania Review of Administrative Sciences*, No. 30E/2010 pp.55-78

The influences of the approaches are diverse. Randma-Liiv<sup>330</sup> describe the early years of transition as a period which coincided with the neo-liberal concepts of public administration, more precisely NPM, coming from the west. These views were dominant in international financial organizations such as World Bank and IMF, which provided assistance and financial means for transitional countries. Therefore, policy transfer in the area of public administration development in CEE countries has two types of consequences. One is the adoption of similar ideas in a number of these countries and second due to the shortage of competent local policy makers it has been difficult for governments in transitional countries to judge foreign experience and compare various models. Cepiku and Mititelu<sup>331</sup> claim that the agreement on the scope, contents and sequence of public administration reforms in transitional countries, cannot be found in the literature. Nonetheless, three central areas of public administration reform are recognized: strategic planning and coordination across public administration, stable financial and budgetary management and human resource management. However all these levels are considered separately most of the time and “very often synergies have not been achieved”. Jacobs<sup>332</sup> says that reforms of public administration in post-socialist countries entail a broad agenda which is not clearly defined and prioritized in terms of effective implementation, although created with high-level intentions. Therefore, Cepiku and Mititelu<sup>333</sup> argue, the model of public service modernization in transitional countries should be based on the key characteristics and needs of the countries in question, instead of following current trends and, as such should be used for interpreting and assessing results.

As previously mentioned, since the imperative of PA reforms became clearer during the 1990s, which coincides with the NPM current fashion, it is understandable why this approach had echoed in both transitional countries and international institutions.<sup>334</sup> However, according to Læg Reid<sup>335</sup> the NPM public administration model can only work in the countries with strong Weberian culture and trust relations. He therefore concludes that the introduction of NPM is not advisable in low trust countries, which transitional countries are, and suggests that either Weberian or Neo-Weberian models should be applied. Peters<sup>336</sup> agrees by saying that NPM is not a good choice for the countries, such as transitional, which attempt to build effective administration and democracy because efficiency and effectiveness, which dominate this approach, are not crucial for the creation of probity and responsibility. Instead it might be necessary first to create “a proper Weberian” administration before breaking that style down.

<sup>330</sup>Randma-Liiv, T. (2008): “New Public Management versus Neo-Weberian State in Central and Eastern Europe”, *Trans-European Dialogue 1, Towards the Neo-Weberian State? Europe and Beyond* 31 Jan-1 Feb 2008, Tallinn

<sup>331</sup>Cepiku, D. and Mititelu, C. (2010): “Public Administration Reforms in Transitional Countries: Albania and Romania Between The Weberian Model and The New Public Management”, *Transylvania Review of Administrative Sciences*, No. 30E/2010 pp.55-78

<sup>332</sup>Jacobs, C. (2004): “The Challenge of Public Sector Reform in EC Accession Countries: Reflections from the Baltics, Especially Latvia”, 2004, *Public Administration and Development*, vol. 24, no. 4, pp. 321-331.

<sup>333</sup>Cepiku, D. and Mititelu, C. (2010): “Public Administration Reforms in Transitional Countries: Albania and Romania Between The Weberian Model and The New Public Management”, *Transylvania Review of Administrative Sciences*, No. 30E/2010 pp.55-78

<sup>334</sup>Ibid

<sup>335</sup>Læg Reid, P. (2008): “The New Public Management and Beyond: Towards a Whole-of-Government or a Neo-Weberian Model?”, International Conference “Challenges of governance in South Asia”, Nepal, December 15-16, 2008.

<sup>336</sup>Peters, G. B. (2001): *The Future of Governing*, University Press of Kansas, 2001, (2<sup>nd</sup> edition), pp.163-176

Going “back to basics” is also Olsen’s<sup>337</sup> opinion. However, the two approaches towards the public administration structure comply with these suggestions. One is the original, traditional Weberian administration and the modern one is the Neo-Weberian State. The literature discusses both and they are presented here.

### *Weberian administration proponents*

Discussing the situation in CEE countries Drechsler<sup>338</sup> points out that their fundamental challenge is “insufficient development of the concept of State” which practically means that the problem does not lie in the structure of the institutions but in people’s perception. In other words, Drechsler identifies the lack of well-qualified, motivated civil servants and says that the state must react accordingly by offering classical virtues such as: security, honour, stability, civility and fulfilment. Referring to the reform towards the traditional model he claims that NPM is bad if pushed upon transitional countries because it only makes sense in well-functioning democratic administrative structure not applicable to transitional countries. Transitional and “western” countries, for which NPM was developed, do not share the same problems regarding the public administration reform. Continuing the discussion on administrative reforms in transitional countries Lee<sup>339</sup> says that both Weberian and NPM models have influenced them, although the EU accession gives a greater prominence to the former ones. Goetz<sup>340</sup> agrees with him, explaining that modernization in the sense of creating a managerialist administration in line with NPM did not feature it significantly. Pierre and Rothstein<sup>341</sup> claim that Weberianism has no alternative in transitional countries and the application of NPM is not an adequate solution since it depends on professional managers and skilful politician. Weberianism is considered the perfect model of public administration in societies where trust in institutions and public officials is low. A similar claim is brought by Rodrik<sup>342</sup> and Rothstein<sup>343</sup> who say that the Weberian type of administration by creating security against arbitrariness and favouritism, respect for contracts and transparency, can create a fair amount of social trust. Pierre and Rothstein<sup>344</sup> explain that by establishing values of legality, hierarchy impartiality, Weberian philosophy allows citizens to engage with the public bureaucracy without trusting its officials, because they have a minimum of latitude and

<sup>337</sup>Olsen, J. P. (2005): “Maybe It Is Time to Rediscover Bureaucracy” , *Journal of Public Administration Research and Theory* 16, pp.1-24

<sup>338</sup>Drechsler, W. (2005): “The Re-Emergence of “Weberian” Public Administration after the Fall of New Public Management: The Central and Eastern European Perspective”, *Halduskultuur*, 2005, Vol. 6, pp. 94-108.

<sup>339</sup>Lee, C.(2009): “Towards a professional civil service in post-transition Romania”, *Public Administration and Development*, 29, pp. 274-288

<sup>340</sup>Goetz, K. H. (2001): “Making sense of post-communist central administration: modernization, Europeanization or Latinization?” *Journal of European Public Policy* 8:6 December: 1032-1051

<sup>341</sup>Pierre, J. and Rothstein, B. (2010): “Reinventing Weber: The Role of Institutions in Creating Social Trust” in Lagreid, P. and Christensen, T. (eds.): *The Ashgate Research Companion to New Public Management*, Ashgate Publishing, Burlington 2010, pp. 407-419

<sup>342</sup>Rodrik, D. (2007): *One Economics, Many Recipes: Globalization, Institutions and Economic Growth*, Princeton: Princeton University Press

<sup>343</sup>Rothstein, B. (2005): *Social Traps and the Problem of Trust*, Cambridge: Cambridge University Press

<sup>344</sup>Pierre, J. and Rothstein, B. (2010): “Reinventing Weber: The Role of Institutions in Creating Social Trust” in Lagreid, P. and Christensen, T. (eds.): *The Ashgate Research Companion to New Public Management*, Ashgate Publishing, Burlington 2010, pp. 407-419

discretion. They also draw the conclusion that in fighting corruption, the “old-fashioned” Weberianism could be much more important than it was perceived by NPM movement.

### *New Weberian State proponents*

Arguing for the Neo-Weberian State approach, Randma-Liiv<sup>345</sup> claims that CEE countries faced the absence of basic reform policy directions which created tense atmosphere and scepticism. Thus, a conceptual clarification as well as informed thinking is necessary to target the needs of the state for successful public administration reform. The only way to achieve this is to first establish the rules based on the Weberian principles of administration before accessing the modern managerial techniques advocated by the NPM. Therefore she analyses public administration reform of transitional countries from the few aspects suggesting that the New Weberian State approach is a solution for all problems detected.

The first one is ***minimal vs. strong state***. During the socialist era the state was usually equated with the Communist Party, with the massive, overly intrusive administration and as a result it had a bad reputation. Following this Drechsler claims that CEE have no concept of state, she explains that automatic loyalty of the citizens to the state is lacking and as a result cooperation with the government or respect for legal and administrative decisions. Therefore the ideas of the minimal state and jumping into the modern management system without developing a base for democratic development were some of the challenges. However, for CEE countries, anti-state minimizing could have disastrous consequences as well as the predomination of NPM tools which may threaten long-term development and sustainability. The second one is ***flexibility vs. stability***. Public sector in CEE countries in the transitional period struggles with many constant changes which decreased the commitment and the motivation of civil servants. Therefore, the problem of these countries is not the rigid system but rather frequent change of it. The key solution for this issue is finding a balance between flexibility and stability. Third aspect is ***deregulation vs. regulation***. Transitional countries require more regulation in order to create conditions necessary for institutional development and elimination of nepotism. Therefore, deregulation and decentralization can lead to politicization, instability and an increased level of corruption if applied before the establishment of the principles which will allow government to operate in an accountable and non-corrupt manner. The fourth aspect questions whether the ***marketization*** is good ***or not***. In the environment of non-competitive markets, hidden internal costs, poor management experience, applied deregulation, decentralization, flexibility, competition and governance through non-state actors may prove very problematic under these circumstances and undermine the legitimacy of the state and diminish trust in public organizations. The fifth aspect discusses ***fragmentation vs. unity***. The legacy of the past regime in which integration and implementation control of the policies laid within the Communist Party caused the lack of elements, such as co-ordination of mechanisms and professionalism, which could bind the different parts of public administration together. Therefore the decentralizing administrative

<sup>345</sup>Randma-Liiv, T. (2008): “New Public Management versus Neo-Weberian State in Central and Eastern Europe”, *Trans-European Dialogue 1, Towards the Neo-Weberian State? Europe and Beyond* 31 Jan-1 Feb 2008, Tallinn

reform model, in the case of transitional countries, could be very risky due to the lack of the capacity to monitor and assess effectively the performance of the decentralized units. Transitional countries first need to develop a public service which is unified, less politicized, with identifiable administrative culture and unified standards of conduct. The sixth aspect, which Randma-Liiv analyses is *democratic vs. technocratic values*. According to her, several democratic goals: transparency, equal opportunities, access to public services, fair procedures and citizen's participation may conflict with technocratic/rational goals such as efficiency, effectiveness, value-for money or rapid decision making. Transitional countries should avoid this situation by strengthening the legitimacy of the state, giving confidence to politicians and public servants and at the same time weaker business actors that dominate civil society.

In conclusion, Jenei<sup>346</sup> claims that a state whose governmental actions are based on the rule of law and private enterprises are involved for competing quality in the service delivery, and civil society organizations have a full range involvement in public policy making, from decision making to service provision is the desired goal of the transitional which could be achieved to a Neo-Weberian State type of public administration. This approach is a requirement in these countries because "it is the only solution for providing a synthesis between legalism and managerialism".

### 2.3.3.2. Anti-corruption strategies and special bodies

The importance of fighting corruption in transitional countries was already discussed earlier. Following the widely advocated strategies they made the required changes. However, the implemented privatization, decentralization, deregulation, payment reform and establishment of anti-corruption agencies, did not provide the expected results. The explanations for this outcome are various and will be described here in order to complete the picture of the complexity of the reforms through which transitional countries are going.

*Privatization* – Regarding privatization Roland<sup>347</sup> pointed out that faced with transition, economists advocated for privatization which should induce economic growth, but they could not perceive that privatization in transitional countries would be one of the generators of corruption. According to experience, it mainly led "to massive asset stripping and plundering by insider managers". Bjorvatn and Soreide<sup>348</sup> say that concerns about privatization in transitional countries were raised in terms of the asset price as well as its effects on the economy. Kaufman and Siegelbaum<sup>349</sup> claim that privatization is seen as a mechanism which should restore the market and deprive the state bureaucrats and politicians of control over the enterprise sector. Nevertheless, in transitional economies an increase in corruption coincided with the process of privatization. However, Kaufman and Siegelbaum claim that it does not

<sup>346</sup>Jenei, G. (2008): "A post-accession Crisis? Political Developments and Public Sector Modernization in Hungary", *The NISPAcee Journal of Public Administration and Policy*, I (2)

<sup>347</sup>Roland, G. (2000): *Transition and Economics: Politics, Markets and Firms*, The MIT Press Cambridge, Massachusetts, London, England, pp. xviii - xxvii

<sup>348</sup>Bjorvatn, K. and Soreide, T. (2005): "Corruption and privatization", *European Journal of Political Economy*, 21, 2005, pp. 903-914

<sup>349</sup>Kaufmann, D. and Siegelbaum, P. (1996): "Privatization and Corruption in Transition Economies," *Journal of International Affairs* 50: 419-98.

necessarily mean that privatization caused this. One of the explanations could be that privatization was a convenient vehicle for ongoing and unchecked corruption. The variety of types of privatization can either stimulate or hinder public officials and private counterparties to engage in corruption. Nevertheless, privatization is still a preferable method for transitional economies to climb out of the economic problems and fight against corruption. Without it, corruption would be more widespread since it prevails in non-privatized sectors.

*Decentralization and deregulation* –The two types of strategies were already discussed and, based on that literature review, some interesting questions on their effects in transitional countries should be raised. To remind the reader, it should be said that Lessmann and Markwardt<sup>350</sup> claim that “one size does not fit all” and in the application of decentralization as an anti-corruption strategy one should be very careful. Peters<sup>351</sup> argues that “deregulation may not be the most appropriate response for the governments of transitional countries”. The need for higher predictability and accountability is dominant in these types of countries and not “greater demand for entrepreneurship”. Following these lines of argument a couple of observations could be made in line with the arguments of Randma-Liiv provided in the previous section. Since transitional countries are going through the institutional change which includes comprehensive transformation of values, mind setting and institutional design if public administration is for instance deregulated, it might leave an “empty space” in some areas which first of all cannot help in internalising new values and secondly could open the floor to misinterpretation of the regulations and misuse of the position. Furthermore, decentralisation should bring the service closer to the people and that claim assumes that central government already has a certain quality which should be spread towards the lower levels of the state organisation. But what are the effects of government decentralisation if there are no established and well founded values to be transferred? Again, it appears highly possible that misinterpretation and misuse of the regulations can occur.

*Payment* –Discussion about increasing wages as a strategy to confront corruption provides, like in all other cases, different results. Some studies show that it improves anti-corruption combat but some deny its significance. However, speaking in practical terms, and some authors mention it as an argument, for some countries this strategy is difficult to implement due to economic reasons. More precisely, it is less likely that countries which, first of all, face economic problems could afford to use it, which is usually the case of transitional countries. Vanyolos and Hajnal<sup>352</sup> and Damiran and Pratt<sup>353</sup> explain that a lack of funds subverted many ideas for increasing performance and lowering corruption with money incentives.

<sup>350</sup>Lessmann, C. and Markwardt, G. (2010): “One Size Fits All? Decentralization, Corruption, and the Monitoring of Bureaucrats”, *World Development*, Vol. 38, No. 4, pp. 631–646, 2010

<sup>351</sup>Peters, G. B. (2001): *The Future of Governing*, University Press of Kansas, 2001, (2<sup>nd</sup> edition), p. 11

<sup>352</sup>Vanyolos, I. and Hajnal, G. (2013): “Hungarian Public Administration: From Transition to Consolidation”, in Liebert, S., Condrez, S. E. and Goncharov, D. (eds.): *Public Administration in Post-Communist Countries*, CRC Press, 2013, pp. 277-292

<sup>353</sup>Damiran, T. and Pratt, R. (2013): “Public Administration in Mongolia”, in Liebert, S., Condrez, S. E. and Goncharov, D. (eds.): *Public Administration in Post-Communist Countries*, CRC Press, 2013, pp.319-338



*Anti-corruption Agencies* - For the majority of transitional countries, accessing the EU was the most important step in establishing stability after the fall of socialism. Charron<sup>354</sup> argues that EU accession brought into the play a significant number of anti-corruption agencies which are mainly located in post-socialist CEE countries than in other regions in the world. However, Batory<sup>355</sup> claims that empirical analysis, which focuses on these types of countries, is relatively novel and rare and still leaves the open floor for research due to the fact that researchers were more curious about agencies in post-colonial contexts. She points out that ACAs offer a way out in countries with weak institutions by providing “island-like isolation”, hence successful stories are rather an exception than a rule. According to her there are four factors for this suggested outcome to which experience can point: an initial official mandate of the agency, de-facto operational autonomy, political support and leadership. A diversified picture of the agency’s organizational form in CEE countries, which include all three above mentioned models, is not an easy task to be explained although these countries present in a way a homogeneous group. Public administration, burdened with the post-socialist legacy, mixed with western NPM reforms and almost no tradition of power delegation to independent agencies before EU accession, are some of the possible explanations for this situation. Batory in her paper argues that the scope of delegated powers and the organizational form of the agency depend on the one hand on the external actor’s requirements, such as EU, or domestic public opinion and on the other the creator’s assurance that the agency will not backfire against him. In compromising all these factors the scope of delegated powers to the agencies appears in two ways: strongly politically controlled agencies with no autonomy and “paper tigers” but with the goal to punish electoral opponents. In these circumstances the key de facto responsibility lies in the integrity and “zealotry” of the agency’s leadership which is, in this case, rather a result of chance. Therefore the suggestion is that the creation of agencies in CEE countries should be made only if lasting consensus among politicians about their purpose and goals can be achieved.

Discussing the achievements in fighting corruption in CEE, Dionisie and Checchi<sup>356</sup> argue that progress in this matter remains scarce, besides the creation of an institution charged with this task. They claim that requirements during the EU accession did not have a significant contribution towards meaningful anti-corruption combat. On the contrary, in some cases the external pressure for delivering quick results diverted the intention of dealing with complex anti-corruption efforts to those who can be fixed promptly. Experience of post-socialist EU member states has shown that progress in governance reforms dominates over effectiveness of anti-corruption measures in accession-related monitoring. Experience with anti-corruption agencies in CEE suggest that there is no quick solution in building an anti-corruption system in post-socialist countries even with political will present. Due to its complexity, instead of a narrow sectorial approach, corruption should be rather assessed through a broader multi-

<sup>354</sup>Charron, N. (2008) “Mapping and Measuring the Impact of Anti-Corruption Agencies: A New Dataset for 18 Countries”, Paper prepared for the New Public Management and the Quality of Government conference.

<sup>355</sup>Batory, A. (2010): “The politics of scandal: Political time horizons, organizational life cycles, and anti-corruption agencies in the “new” EU member states”, Paper prepared for the EGPA Conference, Permanent Study Group on Governance of Public Sector Organizations, Toulouse

<sup>356</sup>Dionisie, D. and Checchi, F. (2008), “Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: a Practitioners’ Experience”, *UNDP Bratislava*.

disciplinary one which reforms state and its vital aspects such as civil service reforms, institutional capacity development, etc. Dionisie and Checchi conclude that anti-corruption agencies cannot play alone in the anti-corruption game but as a team with the rest of the public institutions.

## 2.4. Structure of human capital: Public Service Motivation – PSM

### 2.4.1. General remarks

It was explained earlier that this thesis applies the broader economic point of view which in the analysis includes the specific social context and mental models created as a result.<sup>357</sup> According to it, the internal values of people employed in the administration matter. This claim is supported in the literature and in the context of public service, reform in transitional countries appears to be particularly relevant. This approach called *Public Service Motivation* (PSM) analyses the motivation of people who work for public institutions. As in many other cases, in the literature of PSM many disputes arise regarding the definitions, measurement and etc., of which the author is fully aware. In this case, with no intention to engage in any discussion regarding the above mentioned issues and leaving them aside, the original meaning of the ideas are taken into consideration.

### 2.4.2. PSM in capitalism

In describing civil servants Demmke<sup>358</sup> claims that for a long time the prevailing opinion about civil servants was that since they work for the state they have specific characteristics which distinguish them from private employees. They are characterized as people with high integrity standards because they are the public interest protectors. Somewhere on the way the image changed and a negative campaign against bureaucrats took place. In this respect civil servants were described as “expensive, slow, inefficient, and unresponsive”. Demmke explains that this situation created a paradox in which “*at one moment public employees are praised for helping the less fortunate, protecting society, or participating in grand projects designed to enhance the well-being of all members of society and on the other, they are accused of being more motivated by power and are lazy, corrupt and egoistic*”. He further claims that serious studies show the reality in which public servants are not lazy and do care about the public good. They possess an “immaterial motivator and respond to immaterial incentives”. These comments provided an introduction to the discussion about Public service motivation and its importance for the functioning of public administration.

The critics of bureaucrats in the USA in the 60’s depicted them as budget maximising, self-centred and unable to pursue public goals. However, Goodsell<sup>359</sup> in the 80’s tuned this view to a positive approach towards bureaucracy. The PSM approach was born as an idea which aimed to approach the analysis of public service from a different point of view by

<sup>357</sup>See Supra note 101, p. 44

<sup>358</sup>Demmke, C. (2005): *Are civil servants different because they are civil servants?*, European Institute of Public Administration, June 2005, pp. 1-6

<sup>359</sup>Goodsell, C. (1985): *The case for Bureaucracy*, (2<sup>nd</sup> edn.), Chatham, NJ: Chatham House

criticizing the principal-agent dominant one. Dilulio<sup>360</sup> explains that instead of using the perspective of principal-agent model in which the agent is the rational actor who is always ready to maximize his wealth, one should take a different approach. In this approach the focus should be on bureaucrats, who work hard, respect the rules, put organizational goals before private ones, make sacrifices and cooperate with colleagues. Public Service Motivation originates from a belief that employees in the public sector possess unique motives different from those found among people employed in the private sector. Although ideas and ideals of PSM could be traced back to Aristotle and Plato<sup>361</sup>, the foundation for the modern approach is set by Perry and Wise<sup>362</sup> who claim that a unique motive of a high sense of public interest is one of the important elements for individuals who choose public service careers compared to those who work in the private sector. They define PSM as “an individual’s predisposition to respond to motives grounded primarily or uniquely in public institutions and organizations”.<sup>363</sup> By this definition they identified the type of motives associated with public service which includes rational, norm-based, and affective motives.<sup>364</sup>

Regarding the causes of PSM, Perry<sup>365</sup> defines the most comprehensive theory which identifies the socio-historical context, such as parental relations, religion, observational learning and modelling during the course of their lives, education, and professional training, has a primary influence. Therefore, according to the literature people could be driven not only by self-interest but some other motives as well. Perry offers an alternative to the rational choice theories which dominate research about motivation. In a further analysis Perry and Vandenberg<sup>366</sup> claim that although proven effective in explaining and predicting certain behaviour, rational choice theories cannot explain the variety of behaviours within the public service. They claim that institutions form the rules and norms for society members which shape their values and guide them in their behaviours. The rules and norms partially influence people because the social and cultural mechanisms which transmit the content vary across the countries. This information will play out according to the individual’s identity which is the foundation of his self-regulated behaviour. The guidance of an individual’s behaviour by public service motivation will depend on factors such as the public nature of an individual’s identity, PSM alignment with incentive systems which govern the situation, “the extent to which the identity is regulated autonomously rather than controlled”, goal content and goal intensity. Perry and Vandenberg conclude that their theory suggests that behaviour has many

<sup>360</sup>Dilulio, J. D. (1994): “Principled agents: The cultural bases of behaviour in a federal government bureaucracy”, *Journal of Public Administration Research and Theory*, 4, 277–318.

<sup>361</sup>For more information see: Horton, S. (2008): “History and Persistence of an idea and an Ideal”, in Perry, J. L. and Hondeghem, A. (eds.) *Motivation in Public Management: The Call of Public Service*, Oxford University Press, pp.17-32

<sup>362</sup> Perry, J. L. and Wise, R. L. (1990): “The Motivational Bases of Public Service”, *Public Administration Review* 50(3), pp.367–73.

<sup>363</sup>Ibid, p. 368

<sup>364</sup>Perry, J. L. and Hondeghem, A. (eds.) (2008):*Motivation in Public Management: The Call of Public Service*, Oxford University Press, pp. 1-14

<sup>365</sup>Perry, J. L. (2000): “Bringing Society In: Toward a Theory of Public-Service Motivation”, *Journal of Public Administration Research and Theory*, 10 (2), pp. 471 – 488

<sup>366</sup>Perry, J. L. and Vandenberg, W. (2008): “Behavioural Dynamics: Institutions, Identities, and Self-Regulation”, in Perry, J. L. and Hondeghem, A. (eds.): *Motivation in Public Management: The Call of Public Service*, Oxford University Press, pp. 56-79

origins. Two of them, individual's identity and values, are particularly important for the operation of motivational processes. However, the individual's identity is not created in a vacuum because individuals are social creatures exposed to variety of institutions and social mechanisms. Perry<sup>367</sup> also developed a measurement scale which empirically reduces the types of motives to four dimensions: attraction to public policy making, commitment to the public interest and civic duty, compassion and self-sacrifice. Vandenabeele<sup>368</sup> expands Perry's measurement by adding one more value as a component of institutional identity. This fifth component includes democratic governance with traditional bureaucratic values. Therefore, Perry and Wise see PSM as "institutional unique motives associated with public service", while Vandenabeele presents it as "beliefs and values that transcend self and organizational interests on behalf of a larger political entity"<sup>369</sup>.

In analysing PSM, Perry and Wise<sup>370</sup> offered three propositions which guided subsequent various empirical researches. These propositions relate to the relationships of PSM and factors which are considered important for its analysis and they are: (1) the relationship between PSM and the likelihood of an individual selecting a public organization, (2) the relationship between PSM and individual performance, (3) the relationship between PSM and the structure of organizational incentives. Perry et al.<sup>371</sup> assess the validity of the propositions through analysis of existing empirical research. The first proposition: "*The greater an individual's public service motivation, the more likely the individual will seek membership in a public organization*" relates to the prediction that individuals with high PSM would be attracted to the organizations which satisfied their prosocial and altruistic behaviour. It is in general supported by the empirical research in the field of public administration although some aspects, such as attraction-selection-attrition relationships with PSM are more nuanced than Perry and Wise predicted and demand further research.<sup>372</sup> The attraction-selection-attrition model is developed by Schneider<sup>373</sup> who claims that forces within the organization are in charge of the structure of employees. They operate to attract, select and retain a certain group of homogeneous people. On the other hand people who look for a job base their decision while keeping in mind organization values perception on which basis they make job related decisions. This, as a consequence, implies that only people who fit into the system stay in the organization which over time makes the group more homogenous and potentially dangerous because it could

<sup>367</sup>Perry, J. L. (1996): "Measuring public service motivation: An assessment of construct reliability and validity", *Journal of Public Administration Research and Theory*, 6(1), pp. 5-24

<sup>368</sup>Vandenabeele, W. (2007): "Toward a public administration theory of public service motivation: An institutional approach", *Public Management Review*, 9 (4), pp. 54-60.

<sup>369</sup>Perry, J. L. and Hondeghem, A. (eds.) (2008): *Motivation in Public Management: The Call of Public Service*, Oxford University Press, pp. 294-313

<sup>370</sup>Perry, J. L. and Wise, L. R. (1990): "The Motivational Bases of Public Service", *Public Administration Review* 50(3), pp. 367-73.

<sup>371</sup>Perry, J. L., Hondeghem, A. and Wise, L. R. (2010): "Revisiting the Motivational Bases of Public Service: Twenty Years of Research and an Agenda for the Future", *Public Administration Review*, , September/October 2010, pp. 681-690

<sup>372</sup>For further discussion see: Wright, B. and Christensen, K. S. (2010): "Public Service Motivation: A longitudinal analysis of the Job Attraction-Selection-Attrition Model", *International Public Management Journal* 13(2), pp. 155-178

<sup>373</sup>Schneider, B. (1987). "The people make the place", *Personnel Psychology*, 40(3), 437-53. See also: Schneider, B. (2001), "Fits about fit", *Applied Psychology: An International Review*, 50(1), 141-52.

generate resistance to change.<sup>374</sup> Another aspect which asks for more attention within this model is the person-environment fit concept<sup>375</sup> which implies that individuals will most likely behave according to their essence if they are well adapted.

The second proposition: “*In public organizations, PSM is positively related to individual performance*”<sup>376</sup> is based on two premises: first, public jobs are motivating for individuals with high PSM because of their specific characteristics such as high task significance, and second, PSM is likely to positively affect organizational commitment and innovative activities. This proposition is supported by public administration research as well as organizational behaviour and economics. However some important questions such as to what degree PSM matters for the performance, how they interact over time, are its effects collective or individual, still remain open. The special attention is drawn to the last question because it points in a direction which departs from the original Perry and Wise’s<sup>377</sup> view because instead of focusing on an individual level of analysis it opens up research and institutional design options, which is the focus of economics studies. Finally, the third proposition: “*Public organizations that attract members with high levels of public service motivation are likely to be less dependent on utilitarian incentives to manage individual performance effectively*”<sup>378</sup> is based on Knoke and Wright-Isak’s<sup>379</sup> claims. They develop a predisposition-opportunity model which discusses the degree of dependence of PSM on the utilitarian and monetary rewards system within the organization for stimulating the individual performances of the employees. Perry et al.<sup>380</sup> claim that this proposition has empirical support in all literature which deals with this issue, the public administration literature, social and behavioural. An interesting research trajectory in this domain is carried out by Frey<sup>381</sup> who develops a *theory of motivation crowding effects* building it on Ryan and Deci’s<sup>382</sup> definition of extrinsic and intrinsic

<sup>374</sup>Leisnik, P. and Steijn, B. (2008): “Recruitment, Attraction and Selection” in Perry, J. L. and Hondeghem, A. (eds.): *Motivation in Public Management: The Call of Public Service*, (2008), Oxford University Press, pp. 118-135

<sup>375</sup>For further discussion see: Kristof-Brown, A. L., Zimmerman, R. D. and Johnson, E. C. (2005): “Consequences of Individuals’ Fit at Work: A Meta-Analysis of Person-Job, Person-Organization, Person-Group, and Person-Supervisor Fit”, *Personnel Psychology*, 58(2), pp. 281-320

<sup>376</sup>Perry, J. L., Hondeghem, A. and Wise, L. R. (2010): “Revisiting the Motivational Bases of Public Service: Twenty Years of Research and an Agenda for the Future”, *Public Administration Review*, September/October 2010, pp. 681-690

<sup>377</sup>Perry, J. L. and Wise, L. R. (1990): “The Motivational Bases of Public Service”, *Public Administration Review* 50(3), pp. 367-73.

<sup>378</sup>Perry, J. L., Hondeghem, A. and Wise, L. R. (2010): “Revisiting the Motivational Bases of Public Service: Twenty Years of Research and an Agenda for the Future”, *Public Administration Review*, September/October 2010, pp. 681-690

<sup>379</sup>Knoke, D. and Wright-Isak, C. (1982): “Individual Motives and Organizational Incentive Systems”, *Research in the Sociology of Organizations*, 1, pp. 209-254.

<sup>380</sup>Perry, J. L., Hondeghem, A. and Wise, L. R. (2010): “Revisiting the Motivational Bases of Public Service: Twenty Years of Research and an Agenda for the Future”, *Public Administration Review*, September/October 2010, pp. 681-690

<sup>381</sup>Frey, B. S. (2000): “Motivation and Human behavior”, in Taylor-Gooby, P. (ed.), *Risk, trust and welfare* (pp. 31-50). New York: St. Martin’s Press. See also: Frey, B. S. (1997): “A constitution for knaves crowds out Civic Virtues”, *The Economic Journal*, Vol. 107, No. 443, (Jul., 1997), pp. 1043-1053

<sup>382</sup>Ryan, R. M. and Deci, E. L. (2000): “Intrinsic and extrinsic motivations: Classic definitions and new directions” *Contemporary Educational Psychology*, 25, 54-67. See also: Ryan, R. M. and Deci, E. L. (2000): “Self-determination theory and the facilitation of intrinsic motivation, social development, and well-being”,

motivation. He explains that economics considers that individuals are influenced by preferences and constraints. Since preferences are hard to measure, economists assume they are constant and therefore targeting constraints in order to determine behaviour because individuals act differently when the constraints are manipulated. He further argues that if constraint in the form of extrinsic motivation is perceived as controlling it could have a “crowding out” effect which reduces the individual’s intrinsic motivation for performing the action. This is due to the weakened self-determination and self-esteem of a performer and therefore he reduces the level of activity. On the other side of the coin of extrinsic incentives (motivation), claims Frey, is the “crowding-in” effect. The perception of the individual is that these incentives are supportive which, as a consequence, has an increase of the person’s self-esteem and self-determination, and therefore motivates him intrinsically to perform action. This analysis is important in the context of the New Public Management approach proposed as the alternative to the traditional one of public administration. Referring to Frey, Moynihan<sup>383</sup> points out that NPM may erode the normative model and this should be taken into account when reform is discussed.

Regarding the relationship of PSM and organizational institutions, Moynihan and Pandey<sup>384</sup> aim to contribute to the limited empirical research regarding this issue. They extend Perry’s<sup>385</sup> model in order to test the effect of organizational institutions on PSM implementing numerous organizational variables such as organizational culture, red tape, hierarchy, reform orientation and length of organizational membership. The argument is that work-related rules and norms shape not only “the administrative behaviour of civil servants but also the basic attitudes that these actors hold about the value of public service”. The aim of the analysis was to test the work-environment aspect of the theory. More precisely, Moynihan and Pandey claim, and find support for the claims in their research, that socio-historical context influences PSM before the individual enters the organization but once he enters it the organization environment affects him as well. Although additional research is needed this analysis shows the importance of organizational institutions for PSM. Authors say that PMS helps in the recruitment of individuals and strengthens their ties with the public sector “providing a basis for loyalty, motivation and commitment that is more effective than monetary incentives”. According to Moynihan and Pandey<sup>386</sup>, once having joined an organization, the contribution of individuals with a high level of PSM is varied: engaging in whistle-blowing is higher among them<sup>387</sup> as well as organizational commitment<sup>388</sup>, they work harder<sup>389</sup> and enjoy higher job

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*American Psychologist*, 55(1), 68–78; Deci, E. L., and Ryan, R. M. (eds.) (2002): *Handbook of self-determination research*, Rochester, NY: University of Rochester Press

<sup>383</sup>Moynihan, D. (2008): “The Normative Model in Decline? Public Service Motivation in the Age of Governance” in Perry, J. L. and Hondeghem, A. (eds.): *Motivation in Public Management: The Call of Public Service*, Oxford University Press, 2008, pp. 247 - 267

<sup>384</sup>Moynihan, D. P. and Pandey, S. K. (2007): “The role of organizations in fostering public service motivation”, *Public Administration Review*, 67(1), 40–53

<sup>385</sup>Perry, J. L. (2000): “Bringing Society In: Toward a Theory of Public-Service Motivation”, *Journal of Public Administration Research and Theory* 10 (2), pp. 471 – 88

<sup>386</sup>Moynihan, D. P. and Pandey, S. K. (2007): The role of organizations in fostering public service motivation, *Public Administration Review*, 67(1), 40–53

<sup>387</sup>Brewer, A.G. and Selden, S. C. (1998): “Whistleblowers in the Federal Civil Service: New Evidence of the Public Service Ethic”, *Journal of Public Administration Research and Theory* 8 ( 3 ): 413 – 39

satisfaction and therefore are less likely to leave their jobs<sup>390</sup>. However, the fostering of PSM is also an important aspect which public organizations need to take into account when designing management systems and other organizational institutions. The research shows that reducing the red tape, reforms with clear goals and empowered employees might have positive effects on PSM<sup>391</sup>. Romzek and Hendricks<sup>392</sup> claim that employees are less frustrated and more committed if they feel as meaningful and contributing to organizational goals. In conclusion, Moynihan and Pandey<sup>393</sup> argue for the two things. The first is the importance of creating the atmosphere in which public employees will feel that they are contributing to the organization's valuable services and removing unnecessary control of their efforts. And second, the importance of the employees to the institution and their contribution to society should be clearly communicated to public servants.

The discussion of PSM literature in this section provided the framework which will create the basis for the possible implementation of the concept in another field which is discussed in this thesis. The PSM discussion is dominantly provided within the framework of capitalist societies and its implication into socialist and transitional countries will be provided in the next section. Before entering further discussion two main points, from the presented literature, should be kept in mind. First, PSM as intrinsic motivation, depends on the socio-historical context of a particular state and its institutions, and second it is also influenced by the organization of the public institution in which an individual works.

#### 2.4.3. *PSM in socialism and transition*

The Public Service Motivation discussion appears an important issue for the analysis of public administration. In the spotlight of this thesis is administrative corruption in transitional countries. Therefore two aspects in this context are important to be presented: administration and corruption. Regarding the history of the institutions in countries in transition and the final goal of reducing corruption in them, PSM literature might serve as one of the links in the anti-corruption combat chain. However, according to the knowledge of the author of this thesis, PSM is until now dominantly used in the analysis of capitalist societies while socialist or transitional countries appear briefly in a couple of analyses which will be provided further. In order to introduce it here it is necessary, first, to recall some characteristics of social systems in socialism and transition, as well as public administration organization in both types of countries. After connecting these descriptions with PSM the possible relationship with

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<sup>388</sup>Crewson, E. P. (1997): "Public-Service Motivation: Building Empirical Evidence of Incidence and Effect", *Journal of Public Administration Research and Theory* 7 (4): 499 – 518

<sup>389</sup>Wright, B. E. (2003): "Toward Understanding Task, Mission, and Public Service Motivation: A Conceptual and Empirical Synthesis of Goal Theory and Public Service Motivation", Paper presented at the 7<sup>th</sup> National Public Management Research Conference, Georgetown Public Policy Institute, Washington, DC, October 9 – 11

<sup>390</sup>Naff, C. K. and Crum, J. (1999): "Working for America: Does Public Service Motivation Make a Difference?", *Review of Public Personnel Administration* 19 (4): 5 – 16

<sup>391</sup>Moynihan, D. P. and Pandey, S. K. (2007): The role of organizations in fostering public service motivation, *Public Administration Review*, 67(1), 40–53

<sup>392</sup>Romzek, B. and Hendricks, J. S. (1982): "Organizational Commitment and Representative Bureaucracy: Can We Have It Both Ways?", *American Political Science Review*, 76 ( 1 ): pp. 75 – 82

<sup>393</sup>Moynihan, D. P. and Pandey, S. K. (2007): The role of organizations in fostering public service motivation, *Public Administration Review*, 67(1), 40–53

corruption should be analysed. Regarding the administration, the lack of the detailed PSM research in this area deprives researcher from asserting any claim regarding the matter. However, the intuition which will be presented in this section could lead to further and deeper analysis in the future. To remind the reader, in the Chapter 1, the description of the mentality of Soviet people was provided and *homo sovieticus* was introduced. According to the literature he, from the intended *Uomo Universale*, ended up as an anti-hero and negative by product of the socialist system (See the section 1.3.3.2. of the Chapter 1). Furthermore, the description of the public administration setting in socialist and transitional countries is provided in this chapter (see sections: 2.3.2. and 2.3.3.). The claims that institutions matter and that socio-historical context contributes to their better understanding and interpretation and were repeated many times throughout this research. Therefore, the starting point in the analysis would be the PSM of *homo sovieticus* in public administration of socialism and the end point PSM in transition.

Based on the literature the description of the former appears as follows: the person, who disrespects the state due to its oppression and as a result possesses developed various anti-social and anti-public behaviours, enters the public administration in which loyalty to the party and its ideology is the main guiding rule. He has no alternative of choosing the private sector since the main, and most of time the only, employer is the state. It seems that neither the social environment nor public institutions encouraged the striving towards public interests and benefits. Although not studied in details some characteristics are mentioned briefly in the literature as an intuitive example. For instance Frey<sup>394</sup> describes the situation in which people are forced to work under the threat of punishment and claims that intrinsic motivation is, in these cases, crowded out. This is due to the fact that people are left with fewer choices which produce low work morale and initiative. Furthermore this will affect citizens' civic virtue which will become low and as a result they will develop a cynical attitude towards the state and society. Frey claims that the experiences of Soviet-type command economies are the best example. Citing authors who studied the socialist system he writes that people in the Soviet economic system were lazy and immoral, apathetic cynics prone to pessimism. Consequently, the destruction of intrinsic motivation was inevitable and was expressed in the form of "low work morale, civic virtue, social capital and trust".<sup>395</sup> However, it would be wrong to assume that noble sentiments, such as altruism and commitment to common good were absent and that all people became *homo sovieticus*. The point is that although prosocial behaviour was present among people, it was not supported by formal state institutions which dictated desirable behaviour. With the collapse of socialism, new formal rules were introduced, mainly transplanted from capitalist societies. However, regarding this transition the claim of Kornai<sup>396</sup>, should be kept in mind. According to him, in the process of transition the dual value system will be in place for a while and it will be the source of many kinds of conflicts. Although confronted by the values of the new system and disillusioned with the socialist regime, "great

<sup>394</sup>Frey, B. S. (2000): "Motivation and Human behavior", in Taylor-Gooby, P. (ed.): *Risk, trust and welfare*, New York: St. Martin's Press, pp. 31–50

<sup>395</sup>Ibid, p. 39

<sup>396</sup>Kornai, J. (1992): *The Socialist System: The Political Economy of Socialism*, Princeton University Press, pp.579-580



masses of people” will continue to adhere to the old values. This is mainly confirmed by the description of the administration in transitional countries (see section 2.3.3. of this chapter). The administration reform, according to the literature, is described as unsatisfying in achieving the standards of Western, capitalist, societies. Since, some of the reasons for the underachievement were presented earlier, here only the possible influence of PSM issues will be addressed. Shamir<sup>397</sup> claims that PSM might be “highly influential in situations where behavioural rules compete, are weak, or where one’s self concept is tested”. Therefore, in transitional countries the formal rules which govern public administration have changed, but their strength depends on correct understanding and interpretation. If the majority of people is facing a new system and new logic of functioning how is it likely that they will change their value system overnight. This analysis leads to the conclusion that people will interpret the new institutions in the old manner which in a way explains the poor results of the administration reform. To support these claims some data on transitional countries could be found as part of the wider analysis of international patterns in PSM. Vandenabeele and Van de Walle<sup>398</sup> used data from the 2004 International Social Survey Program (ISSP)<sup>399</sup> which was particularly interesting due to its focus on “citizenship” with questions related to the relationship between citizens and the state, characteristics of a good citizen, trust, public service, etc. Authors analysed the data for 38 countries to measure public service motivation of which eight were transitional: Hungary, the Czech Republic, Slovenia, Poland, Bulgaria, the Russian Federation, Latvia and Slovak Republic. Of the ten lowest-scoring countries, nine are European of which six are in Central and Eastern Europe (see *Appendix 2.4*).

Dur and Zoutenbier<sup>400</sup> claim that learning about PSM is important because it contributes to a “better understanding of organizational performance in the public sector”. Performance is important due to its linkage to the motivation of the work force and public sector organizations usually make little use of extrinsic work incentives. Since pay for performance and steep wage-tenure profiles are not at the basis of the incentive system, intrinsic motivations appears even more important compared to the private sector. Furthermore, Dur and Zoutenbier explain that intrinsic motivation is important from the prospective of policy makers for effective human resource policy designing. For instance, organizations, instead of using self-selection of workers, may employ selection tools, such as personal tests, in order to select desirable candidates. So if we take into account these claims and put them into the context of corruption in the administration, the straightforward intuition will tell that ***PSM in transitional countries is strongly negatively correlated to corruption***. However, the literature on this topic is rather scarce. Cowley and Smith<sup>401</sup> discussing the “mission

<sup>397</sup>Shamir, B. (1991): “Meaning, self and motivation in organizations”, *Organization Studies*, 112, pp. 405-424

<sup>398</sup>Vandenabeele, W. and Van de Walle, S. (2008): “International Differences in Public Service Motivation: Comparing Regions Across the World” in Perry, J. L. and Hondeghem, A. (eds.): *Motivation in Public Management: The Call of Public Service*, Oxford University Press, 2008

<sup>399</sup> See more about ISSP on: <http://www.issp.org/>

<sup>400</sup>Dur, R. and Zoutenbier, R. (2014): “Working for a Good Cause”, *Public Administration Review*, March/April 2014, Vol. 47. Iss. 2, pp. 144-155

<sup>401</sup>Cowley, E. and Smith, S. (2013): “Motivation and mission in the public sector: evidence from the World Values Survey”, *Theory*, Dec. (2014), pp. 76:241–263, DOI 10.1007/s11238-013-9371-6, Springer Science+Business Media New York 2013

alignment” run the analysis in a cross-country regression framework which included 51 country and more than 30,000 workers. They show that the more corrupt the administration is the more it attracts people with lower public service motivation. In a cross-country level “corruption has a negative effect on the (average) proportion of motivated workers” compared to the private sector. In an individual level the authors show that “intrinsically motivated workers are less likely to work in the public sector when levels of corruption are higher”. Reflecting upon the literature which discusses higher wages as anti-corruption strategies<sup>402</sup>, Cowley and Smith<sup>403</sup> state that if implemented it will attract extrinsically instead of intrinsically motivated people. This is true because “corruption reduces the mission alignment between intrinsically motivated workers and the public sector”. The research has two important implications. The first provides the evidence for the importance of the mission definition in attracting intrinsically motivated workers and it can help governments in its effective development. Second, “they highlight a potential mechanism through which corrupt institutions may lead to worse public service outcomes”. In general, Dur and Zoutenbier<sup>404</sup> claim that recent economic research on PSM finds that “some workers...intrinsically care about serving the public interest” and this usually comes from altruism.<sup>405</sup> They summarize the literature by saying its common finding is that in order to promote “self-selection of altruistic workers” organizations in the public sector set relatively low wages.

## 2.5. Conclusion

This chapter aimed to provide a response to the sub-research question presented in its introduction: *What is the optimal structure of public administration in transitional countries for improving corruption combat?* To answer it, the analysis covered various relevant aspects. The structure of this chapter is presented in Figure 2.1.

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Available at: [http://download.springer.com/static/pdf/471/art%253A10.1007%252Fs11238-013-9371-6.pdf?auth66=1402044129\\_c7e6aad01fb6635a3bf4aa5acde2c73a&ext=.pdf](http://download.springer.com/static/pdf/471/art%253A10.1007%252Fs11238-013-9371-6.pdf?auth66=1402044129_c7e6aad01fb6635a3bf4aa5acde2c73a&ext=.pdf)

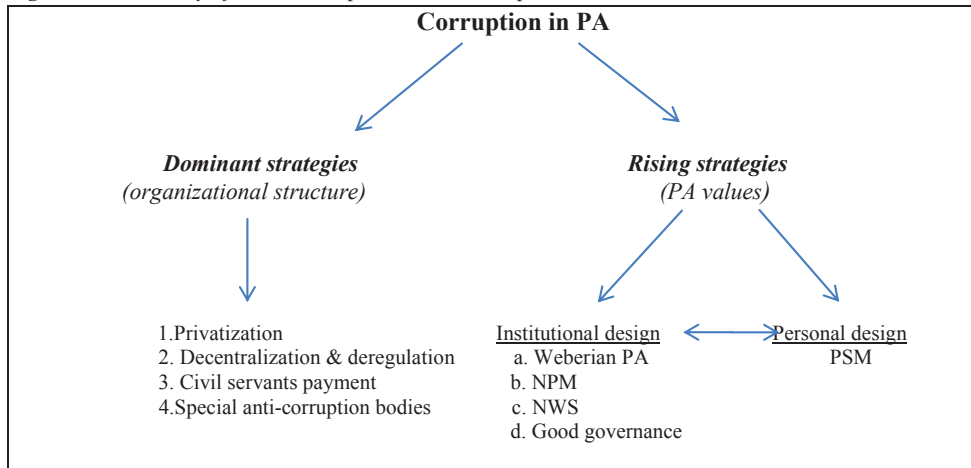
<sup>402</sup>See for instance: Van Rijckeghem, C., and Weber, B. (2001): “Bureaucratic corruption and the rate of temptation: Do wages in the civil service affect corruption, and by how much?”, *Journal of Development Economics*, 65, pp. 307–331

<sup>403</sup>Cowley, E. and Smith, S. (2013): “Motivation and mission in the public sector: evidence from the World Values Survey”, *Theory*, Dec. (2014), pp. 76:241–263, DOI 10.1007/s11238-013-9371-6, Springer Science+Business Media New York 2013,

<sup>404</sup>Dur, R. and Zoutenbier, R. (2014): “Working for a Good Cause”, *Public Administration Review*, March/April 2014, Vol. 47. Iss. 2, pp. 144-155

<sup>405</sup>For more insights see: Besley, T. and Ghatak, M. (2005): “Competition and Incentives with Motivated Agents”, *American Economic Review*, 95(3), pp. 616-636; Buurman, M. and Dur, R. (2012): “Incentives and the Sorting of Altruistic Agents into Street-Level Bureaucracies”, *Scandinavian Journal of Economics*, Vol. 114, Iss. 4, pp.1318-1354, December 2012; Delfgaauw, J. and Dur, R. (2008): “Incentives and Workers Motivation in the Public Sector”, *Economic Journal*, 118, pp. 171-191; Francois, P. (2000): “Public Service Motivation as an Argument for Government Provision”, *Journal of Public Economics*, 78(3), pp. 275-299; Ghatak, M. and Mueller, H. (2011): “Thanks for Nothing? Not-for-profits and Motivated Agents”, *Journal of Public Economics*, 95(1-2), pp. 94-10; Glazer, A. (2004): “Motivating Devoted Workers”, *International Journal of Industrial Organization*, 22(3), pp. 427-440; Nyborg, K. and Brekke, K. A. (2010): “Selfish Bakers, Caring Nurses? A Model of Work Motivation”, *Journal of Economic Behaviour & Organization*, 75(3), pp. 377-394; and Prendergast, C. (2007): “The Motivation and Bias of Bureaucrats”, *American Economic Review*, 97(1), pp. 180-196

Figure 2.1: Summary of the ideas expressed in the chapter



Corruption in public administration produced a significant amount of the literature which targets different aspects aiming to suggest a solution which will contribute to the improvement of corruption combat. The law and economics literature mainly suggest strategies such as: privatization, deregulation, decentralization, increased wages, etc. which are pulled out whenever somebody mentions research on corruption. However, the results of these approaches are not straightforward and always need to be understood as context dependent. They are not a panacea for corruption in all countries around the globe. Another strategy, which belongs to the list of dominant approaches, and which is usually introduced by the international pressure, assumes the establishment of an anti-corruption body. Successes in Singapore and Hong Kong made the international law makers think that this approach might help in overcoming the shortages of current corruption combat approaches. However, the achievements of this move appear to be disappointing.

The search for better approaches which could address corruption more effectively introduced to the literature some aspects which target institutional and personal values of the civil service and its employees. Regarding institutional values, the discussion targets various types of public administration, such as Weberian, New Public Management and Neo Weberian State (NWS). The studies on this matter are rare and so far they show that merit based recruitment, which is one of the core characteristics of Weberian and NWS approach, curbs corruption. Another aspect, also considered relevant for the research topic in this thesis, relates to Public Service Motivation. This approach focuses on intrinsic motives for people who work in public administration. Its relation to corruption is, however, still in its infancy.

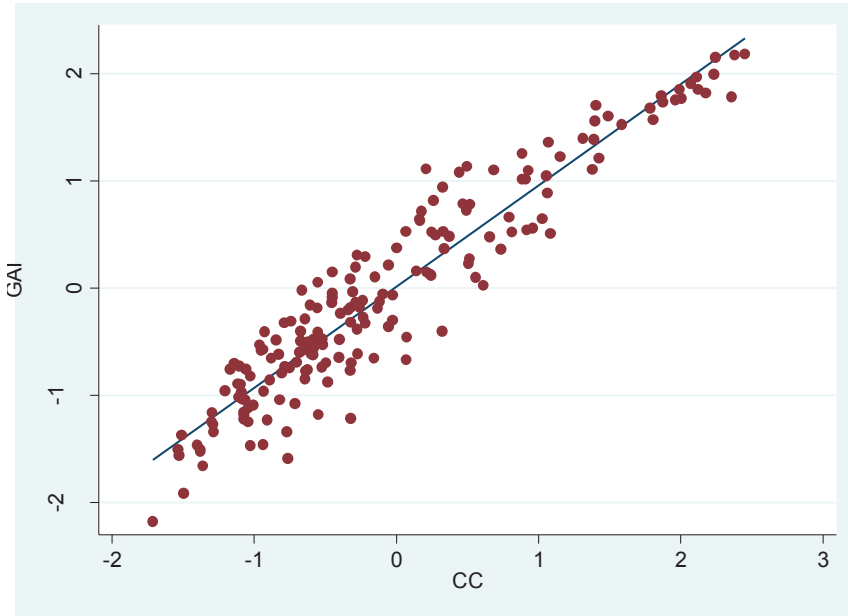
Last but not least, regarding the main topic of this thesis, transitional countries, couple of conclusions should be made. When the socialist system collapsed it produced demand for the new systems and rules. The logical step was their import from capitalist countries since capitalism was the intended final destination. Mainly due to economic reasons, transitional countries adopted almost all rules and regulations required by the international community. They also followed dominant trends advocated regarding anti-corruption strategies which include privatization, deregulation, decentralisation and establishment of anti-corruption

bodies. The results of the implementations of these rules are discussed at length in this chapter and they come as no surprise if one recalls the characteristics of starting points of transitional countries based on socialism. In the past administration, was heavily dominated by the Socialist/communist Party in all its aspects and as such as a main actor had *homo sovieticus*. When time came for change these countries took various paths which were offered by the international community. The trend of introducing New Public Management, advocated along with the Big Bang strategy, did not provide the expected results. Therefore, the literature which discusses the public administration reform process in transitional countries strongly argues for the implementation of the either the Weberian, or Neo Weberian State approach. They claim that these countries first need to internalise the basic values of the civil service operation before they apply institutions suggested by developed countries. Based on the characteristics of each administration type, intuition indicates that the Neo Weberian State reform approach would be the first best option, since besides the traditional values it includes the active interaction with clients as an external control. The second best solution for an effective corruption combat would be the implementation of the Weberian, traditional administration. NPM, as already discussed, will not have any effect in this case.

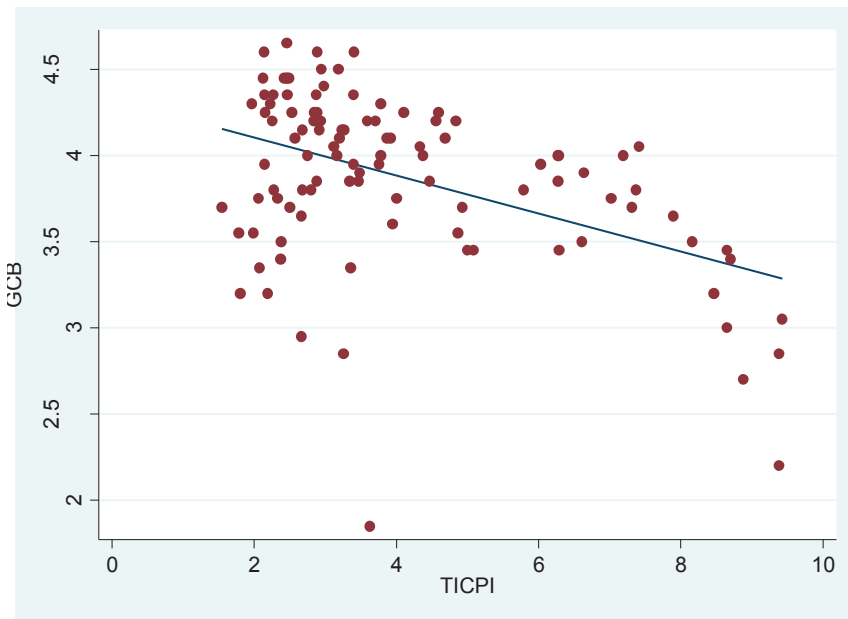
The claims made earlier in this thesis that the historical and cultural context are important factors for understanding a particular institutional setting and they include analysis of not only formal but also informal institutions as well. This chapter looked mainly at the formal structure of public administration and its human capital. However, following the claim of institutionalist informal institutions are those who sometimes even count more for the successfulness of an enforcement of certain policy. The next chapter looks into the informal institutions in order to observe their role in corruption combat in post-socialist countries.

### Appendix 2.1

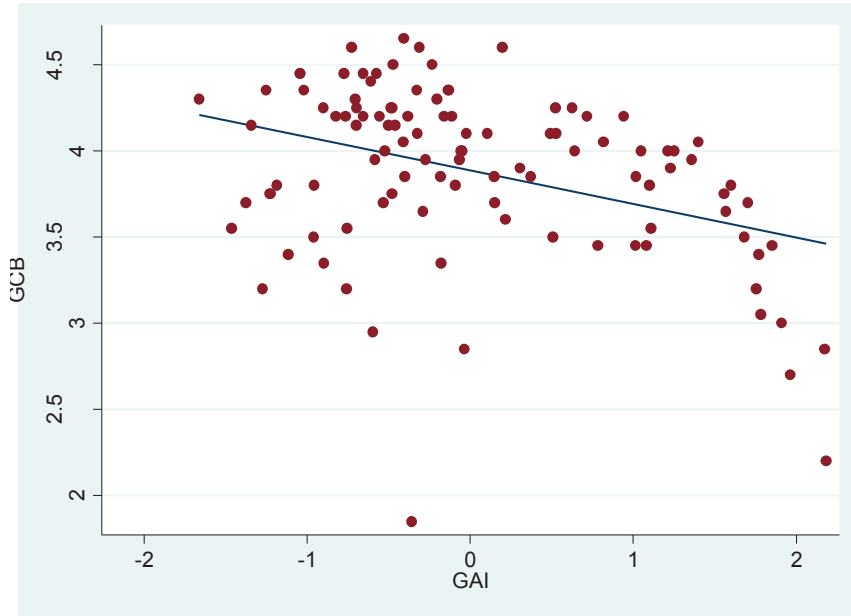
Graph 2.2: Correlation between GAI and CC for 185 countries



Graph 2.4: Correlation between GCB and TICPI for 185 countries



Graph2.5: Correlation between GCB and GAI for 185 countries

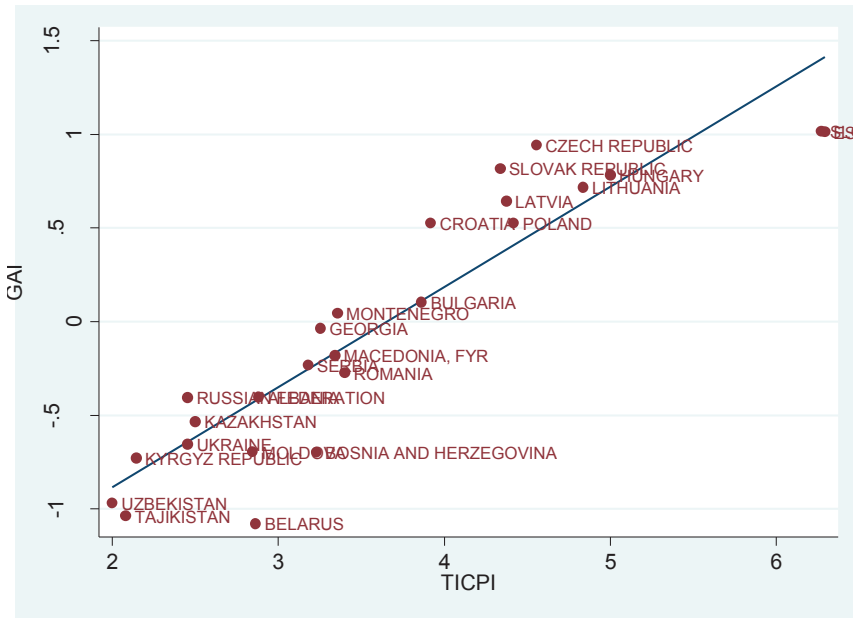


*Appendix2.2*

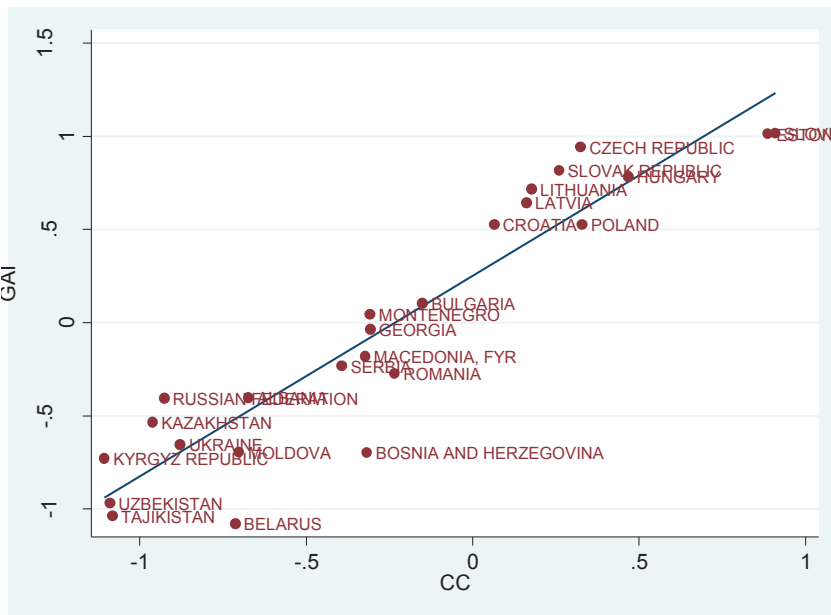
Table: Correlation matrix of four indexes for 25 transitional countries

	gaiavg	ticpiavg	gcbavg	ccavg
gaiavg	1.0000			
ticpiavg	0.9184*	1.0000		
gcbavg	-0.2803	-0.4129	1.0000	
ccavg	0.9317*	0.9777*	-0.3309	1.0000

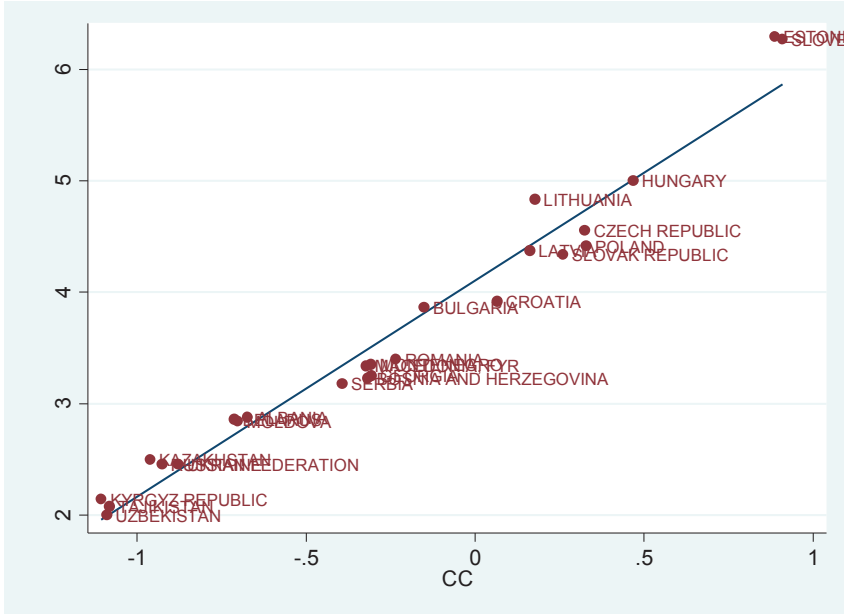
Graph 2.6: Correlation between GAI and TICPI for 25 transitional countries



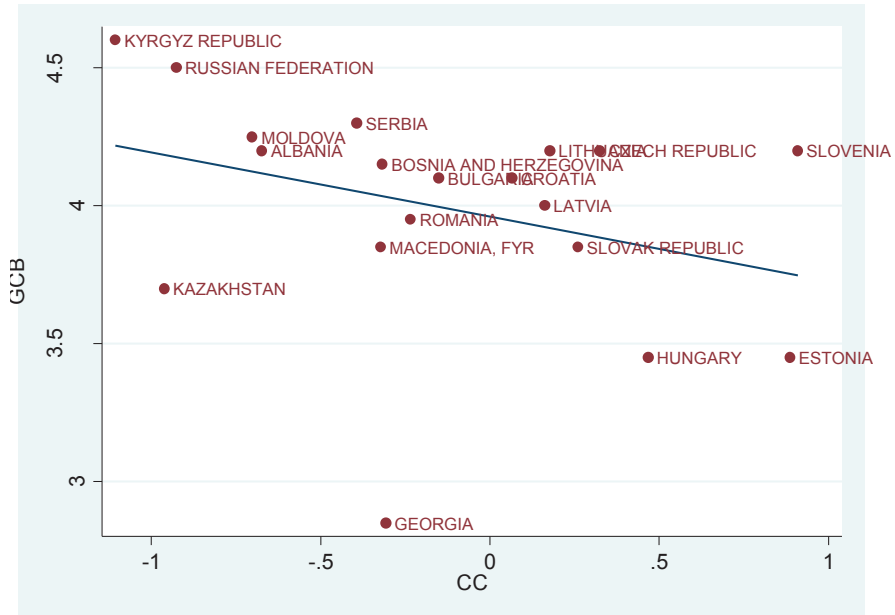
Graph 2.7: Correlation between GAI and CC for 25 transitional countries



Graph 2.8: Correlation between TICPI and CC for 25 transitional countries

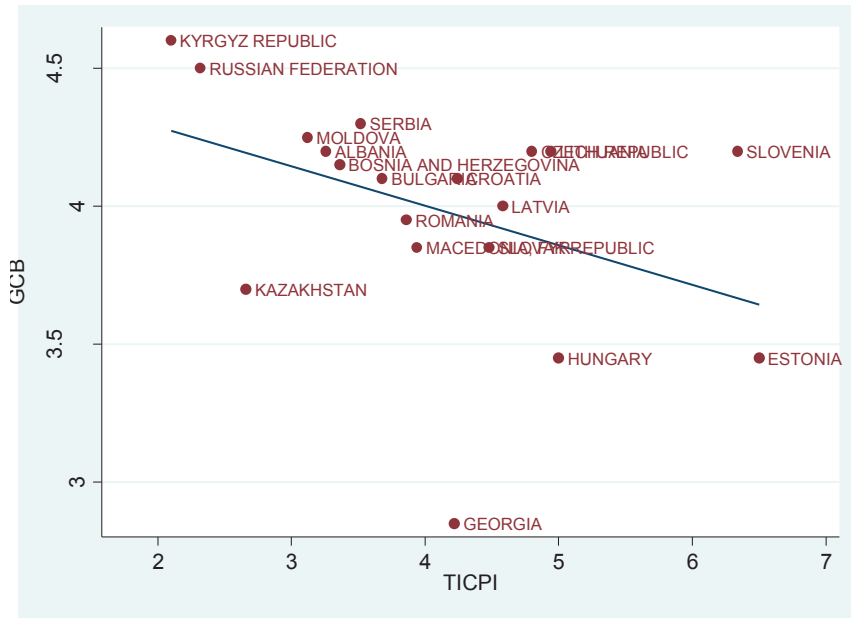


Graph 2.9: Correlation between GCB and CC for 25 transitional countries

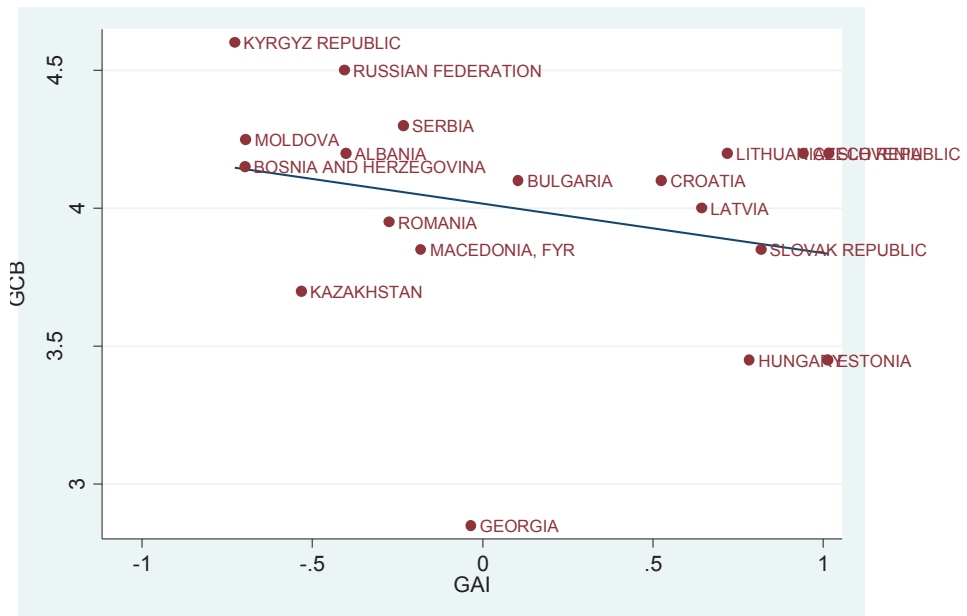




Graph 2.10: Correlation between GCB and TICPI for 25 transitional countries



Graph 2.11: Correlation between GCB and GAI for 25 transitional countries



### Appendix 2.3

Table 2.6: Characteristics of the civil service in socialist countries

Country	Description of the civil service systems
<b>Russia</b>	<ul style="list-style-type: none"> <li>- Servants were selected according to the criteria of origin and ideological fidelity with questionable professional competences and performances</li> <li>- The bureaucratic system was rigid, inward-looking administrative apparatus, which performed strictly controlled functions with limited capacity for decision making</li> <li>- The whole civil service structure was responsible to the Communist Party</li> <li>- Membership of the Party was a minimum requirement for promotion</li> <li>- Party "functionaries" were present in every large office with the main task of controlling the activities of employees and compliance of the management to the Party's directives</li> </ul>
<b>Bulgaria</b>	<ul style="list-style-type: none"> <li>- Followed Soviet civil service model</li> <li>- System of "parallel bureaucracy": the administrative structures existed together with the Communist Party bureaucracy</li> <li>- General labour laws applied to civil servants</li> <li>- The main basis for recruitment and promotion was "nomenklatura" system</li> <li>- Party membership was condition for most of the middle and higher ranks in the state administration</li> <li>- Discharging happened only in case of gross misconduct</li> <li>- The principle of the loyalty to the political leadership was the crucial operation principle</li> </ul>
<b>Hungary</b>	<ul style="list-style-type: none"> <li>- Followed Soviet civil service model</li> <li>- Political loyalty and reliability were the main criteria for filing the civil service positions</li> <li>- Civil servants were mainly Party members</li> <li>- General labour laws applied to civil servants</li> </ul>
<b>Poland</b>	<ul style="list-style-type: none"> <li>- Followed Soviet civil service model</li> <li>- Public administration was fully subordinated to the Communist Party</li> <li>- Civil servants loyal and faithful to the political communist programme, unresponsive to the needs of the public</li> <li>- Communist party had its own administration and all public policy decisions were taken there, sometimes even executed</li> </ul>
<b>Slovak Republic</b>	<ul style="list-style-type: none"> <li>- Followed Soviet civil service model</li> <li>- Civil service system was the servant of the Communist Party</li> <li>- Civil servants were fully dependent on political masters</li> <li>- The system of "nomenklatura" and "party cells" guaranteed that each civil servant and institution will follow the directives of the Communist Party</li> <li>- Civil servants had to be loyal to the political regime</li> </ul>
<b>Estonia</b>	<ul style="list-style-type: none"> <li>- Followed Soviet civil service model</li> <li>- Civil servants did not serve the citizens but ran the state according to the plans and instructions of the Communist Party</li> <li>- For the success and career of a clerk his personal loyalty to superior was even more important than the loyalty to the regime</li> <li>- There was no civil servant status and no social guarantees</li> <li>- Superiors opinion was more important than legal provisions</li> <li>- Selective implementation of legislation which depended on "whose interests were involved" and what are the instructions "from above"</li> <li>- In order to be discharged civil official had to be engaged in serious dead; the low performance was not one of the reasons for it.</li> </ul>
<b>Latvia</b>	<ul style="list-style-type: none"> <li>- Followed Soviet civil service model</li> <li>- Orders were coming "from above"</li> <li>- Principle of "double subordination": governmental organizations received orders from a central administrative institutions (vertical subordination) and a local party institution (horizontal subordination)</li> <li>- Special civil service "nomenklatura" casts were created</li> <li>- civil servant were expected to unconditionally obey to a higher rank and to the Communist Party but at the same time they showed and arrogant attitude towards lower-level employees and customers</li> <li>- Adequate and reliable information was not available to all civil servants or to the general public</li> </ul>
<b>Lithuania</b>	<ul style="list-style-type: none"> <li>- Followed Soviet civil service model</li> <li>- 'nomenklatura' system was applied</li> <li>- Fusion between politics and administration by employing party-approved officials who pursued goals of the Communist Party</li> <li>- Civil servants had to obey to the Party instructions and that was the key factor for the service</li> </ul>
<b>Yugoslavia</b>	<ul style="list-style-type: none"> <li>- In 1948 it developed own type of socialism</li> <li>- Since then civil service was fairly centralised but executive branch was made more dependent on parliament</li> <li>- Civil servants were a special group of employed workers until 1970</li> <li>- However, even after that a civil service career was regarded as privileged, especially for those who worked in the federal administration</li> <li>- It was difficult to distinguish between the state and party apparatus until 1950s when worker's self-management concept was introduced; however, the two structures merged on the top</li> </ul>

## Appendix 2.4

Table: Average countries scores for PSM

No.	Country	Coefficient	No.	Country	Coefficient
1.	Portugal	5.63	20.	Netherlands	4.94
2.	Philippines	5.56	21.	South Korea	4.93
3.	South Africa	5.51	22.	Denmark	4.90
4.	Mexico	5.50	23.	France	4.84
5.	Brazil	5.49	24.	Norway	4.83
6.	Venezuela	5.44	25.	<i>Slovenia</i>	<i>4.83</i>
7.	Uruguay	5.42	26.	Sweden	4.77
8.	Spain	5.40	27.	Japan	4.74
9.	Chile	5.33	28.	Germany	4.72
10.	Canada	5.31	29.	New Zealand	4.56
11.	USA	5.29	30.	<i>Slovakia</i>	<i>4.59</i>
12.	Ireland	5.28	31.	UK	4.58
13.	Australia	5.25	32.	<i>Russia</i>	<i>4.57</i>
14.	Austria	5.16	33.	Flanders	4.40
15.	Israel	5.10	34.	<i>Latvia</i>	<i>4.13</i>
16.	Cyprus	5.09	35.	Finland	4.22
17.	<i>Poland</i>	<i>5.033</i>	36.	<i>Bulgaria</i>	<i>4.17</i>
18.	Taiwan	5.00	37.	<i>Hungary</i>	<i>4.13</i>
19.	Switzerland	4.98	38.	<i>Czech Republic</i>	<i>3.97</i>

Source: Vandenabeele and Van de Walle: "International Differences in Public Service Motivation: Comparing Regions Across the World", pp.238

## ***Chapter 3: Designing of optimal anti-corruption policies in transitional countries: incentives in a complex environment***

*The radical novelty of modern science lies precisely in the rejection of the belief that the forces which move the stars and atoms are contingent upon the preferences of the human heart.*

Richard Adams

### **3.1 Introduction**

The previous chapters described the corruption problem and consequences that it induces, the public choice theory framework for the analysis of corruption, as well as initiatives and measures taken by the international institutions and their member countries to improve corruption combat. However, despite the efforts made, recent researches revealed non impressive results in achieving this goal. In particular in transitional countries, the weak rule enforcement is recognized as one of the main problems for this underperformance. This implies that the “one size fit all” anti-corruption framework does not provide desired outcomes. The main claim of this research is that the dominant framework for corruption combat and its institutions are not suited well to transitional countries and as such should be redesigned taking into account their specificities. Consequently, this and the next chapter aim to target the second issue in the *structure-conduct-performance paradigm*, human conduct in order to provide possible solutions for optimal anti-corruption strategies design for post-socialist (transitional) countries. Human conduct is here analysed through the incentive mechanisms, expressed preferences and behaviour in the case of imposed constraints. This chapter will particularly target preferences and their coordination. Therefore, the main sub-research question in this chapter is: ***How the preferences of civil servants should be targeted/coordinated in order to achieve the optimal level of corruption combat in public administration of post-socialist countries.*** In order to answer the question this chapter takes a broad economic approach which is still based on individual preferences and constraints but in a much more complex environment than the one used in the traditional neoclassical models. Earlier in this thesis the description of a specific mental model of (post)socialist people was provided. To stress its importance, the work of Denzau and North<sup>406</sup> is recalled. They claim that *mental models* are present among the individuals with a common cultural background and shared experiences. According to this view, these individuals “share reasonably convergent mental models, ideologies and institutions”. If individuals are coming from different backgrounds they will have different theories to interpret a certain environment. Denzau and North explain that “the mental models that the mind creates and the institutions that individuals create are both essential to the way human beings structure their environment in their interactions with it”. Therefore the *Shared Mental Models – SMM* provide to the individuals from the same environment a sense of its intellectual understanding together with a common set of concepts and language which make their communication easier. They further explain that the evolution of mental models is achievable through better communication links by which individuals who

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<sup>406</sup>See Supra note 101, p.44

share them learn from the world. The link between mental models on one side and ideologies and institutions on the other depends “on the product and processes of representational redescription”. Finally, the understanding of a society’s performance could be achieved by the understanding of the way in which ideas evolve and are communicated.

After the fall of socialism and its ideas, post-socialist countries were in need of a new system which can “fix” the problems of the old one and repair society after the collapse. However, this change cannot occur over night. For a while, according to Kornai<sup>407</sup>, the dual system, especially regarding the system of moral values, will be the source of many kinds of conflict. Although disillusioned with the socialist system, great masses of people continue to adhere to its values. This causes confusion because they are drawn toward moral values that contrast with those instilled over a long period<sup>408</sup>. Boettke<sup>409</sup> explains that when facing the reforming government, citizens do not know with whom are they playing because the only knowledge that they have about it is the “old way” of doing things and signals that this way should be abandoned might not receive support and trust. Therefore the participation of the citizens is crucial to any reform. For instance, Czarczynska<sup>410</sup> says that public administration should advocate for effectiveness and productivity in public service and therefore lack of quality in the domain of public sector produces costs for the whole society. Change of the scheme which will encourage administrative staff to improve will improve the administrative service as a result. Therefore, this chapter discusses the regulation of human behaviour, culture and transparency and accountability as important aspects of corruption combat.

### 3.2 Regulating behaviour and enforcement pyramid

#### 3.2.1 *Ways of regulating human behaviour*

As mentioned earlier the dominant framework for corruption combat targets three main areas: repression, prevention, and transparency. A repression component includes demand for increased criminalization. Following these patterns in suppressing harmful corrupt behaviour many countries reach for **deterrence-based approach**. This approach coerces compliance by sanctioning the violator through a “confrontational enforcement style”.<sup>411</sup> Its foundation is set

<sup>407</sup>Kornai, J. (1992): *The Socialist System: The Political Economy of Socialism*, Princeton University Press, pp.579-580

<sup>408</sup>Buyandelgeriyn, M. (2008): “Post-Post-Transition Theories: Walking on Multiple Paths”, *The Annual Review of Anthropology*, Vol. 37, pp. 235-250; Anthropologists, who analysed the behaviour of people in transitional countries, concluded that people possess cunning strategies to survive without transforming themselves and without changing their previously developed values and ways of life. Therefore, the post-socialist moral and value systems, when merged with Western ideas, create unpredictable outcomes; and neoliberal principles do not suit the population’s moral landscape

<sup>409</sup>Boettke, J. P. (1993): *Why Perestroika Failed: The Politics and Economics of Socialist Transformation*, Routledge 11 New Fetter Lane, London EC4P 4EE, p. 9

<sup>410</sup>Czarczynska, A. (2011): “Towards better public governance. The importance of proinnovative public administration”, Cambridge Business and Economic Conference

<sup>411</sup>Oded, S. (2013): *Corporate compliance: new approaches to regulatory enforcement*, Edward Elgar publishing, pp. 15-46

by Becker<sup>412</sup> who applied traditional economic tools in the analysis of the behaviour of criminals explaining that rationality plays an important role in deciding whether to obey the law or not. This view pictures criminals under the veil of *Rational Choice Theory* and explains that before making any decision criminals, like all other rational persons, calculate the costs and benefits of any action in order to maximize their objectives-utility. As a result, the deterrence mechanism, when aiming to decrease crime rates, should take into account severity of punishment and probability of being caught for the act committed. Becker's analytical framework became a basis for law and economics scholars who have relied on the *Deterrence theory* in explaining the social goal of enforcement policies.<sup>413</sup> Hough et al.<sup>414</sup> define the key assumptions of penal and criminal policy expressed in the simple 'crime control' models: (1) people are rational-they apply economic calculations in deciding whether to break the law; (2) the main weapon of criminal justice is deterrent threat; (3) offenders and crime rates are responsive to the risk of punishment, which vary on dimensions of certainty, severity and celerity; (4) sensible responses to crime are expressed in increasing the severity of sentencing, and extending the reach of enforcement strategies and (5) offender rights are seen as a constraint on effective crime control. This view implies approaches to crime control that are designed to secure *instrumental compliance* – where people's reasons for law-breaking are based on self-interested calculation. This approach is elaborated on in more detail in the next chapter.

On the other hand, more refined models of crime control recognise formal criminal justice as one of the many systems of social control, most of which have a significant normative dimension. A deterrence based approach puts too much attention on questions regarding why people break the law instead of trying to answer the opposite one why people comply with the law. The questions about compliance recognise the difference between formal and informal systems of social control, more precisely the normative dimensions in people's orientation towards the law. As Hough et al.<sup>415</sup> explained, *normative compliance* with the law "occurs when people feel a moral or ethical obligation or commitment to do so". Therefore, the shortcomings of the deterrence based approach lead to the development of the ***cooperative enforcement approach***. This approach argues that regulatees are concerned to do what is right, and to be faithful to their sense of responsibility. The explanation for this behaviour lies in the fact that most regulatees have a law abiding nature which motivates them to obey the law even when the threat of punishment is absent. Oded<sup>416</sup> says that in order to support this approach the theory refers to the well-established *Procedural Justice Theory*. This theory represents one of the ways of thinking about how public could be stimulated to commit to the rule of law.

<sup>412</sup>Becker, G. S. (1968): "Crime and Punishment: An Economic Approach", *Journal of Political Economy* Vol. 76, No. 2 (Mar. - Apr., 1968), pp. 169-217

<sup>413</sup>Oded, S. (2013): *Corporate compliance: new approaches to regulatory enforcement*, Edward Elgar publishing, pp. 15-46

<sup>414</sup>Hough, M., Jackson, J., Bradford, B., Myhill, A. and Quinton, P. (2010): "Procedural Justice, Trust, and Institutional Legitimacy", *Policing: A Journal of Policy and Practice*, pp. 203-210; p.203

<sup>415</sup>Ibid, p.204

<sup>416</sup>Oded, S. (2013): *Corporate compliance: new approaches to regulatory enforcement*, Edward Elgar publishing, pp. 48-70

Focusing on people's compliance with institutional authority, Hough et al.<sup>417</sup> claim that in the essence of this approach are specific relationships between: (1) the treatment which people receive from the police and justice officials; (2) the resultant trust which people have in institutions of justice; (3) the legitimacy which people confer, as a consequence of this trust, on institutions of justice; (4) the authority which institutions exercise when regarded as legitimate; and, (5) people's consequent readiness to "obey the police, comply with the law and cooperate with justice".

Tyler and Mentovich<sup>418</sup> explain that procedural justice studies people's subjective evaluations of the justice of procedures. For instance: are they fair or unfair, ethical or unethical, or if they are otherwise in accordance with people's standards of fair processes for social interaction and decision-making. According to them the two key dimensions of procedural fairness judgments are: *fairness of decision making* (voice, neutrality) and *fairness of interpersonal treatment* (trust, respect). Procedural justice is particularly important in studies of decision acceptance and rule following, which are core areas of legal regulation. According to Tyler and Mentovich, the central claim of this approach is that "people are responsive to evaluations of the fairness of procedures, even if authorities do not provide the outcomes people hoped for". Reflecting upon deterrence based approach they further argue that from motivational perspective it is not self-sustaining because it requires "the maintenance of institutions" and authorities which are able to keep the probability of detection of the wrongdoers at a "sufficiently high level" in order to motivate the public to comply with the laws through external means. However, Tyler and Mentovich explain that if citizens fail to obey legal constraints in sufficient level, legal authorities will react to achieve the desired level of compliance which will result in continued surveillance and attempts to improve enforcement which is sometimes feasible. Nevertheless, these strategies might show limitations in the cases such as hidden behaviours which are difficult to detect, like corruption, or when resources for the achieving sufficiently high deterrence are lacking even though we know how to monitor.

Therefore, the authors stress that self-regulation offers an alternative to the deterrence model. In this model "people are seen as motivated to follow rules because their own values suggest to them that doing so is the appropriate action to take". Behaviour which is motivated by an individual's values and attitudes is superior to coerced behaviour but the problem lies in motivating people to everyday compliance to the rules or self-regulation. Tyler and Mentovich further explain that if people identify with the authorities and perceive them as legitimate, they will "voluntarily abide by laws". Recent studies show that the manner of exercising the authority shapes the people's feelings of their self-esteem and self-worth.

This approach, explains Oded<sup>419</sup>, served as an ideological ground for the development of several enforcement regimes which embrace the idea of regulatory cooperation. One of these approaches is the *Responsive Regulation approach* which will be described in the next section. In between two opposed approaches – deterrence based and procedural justice – there are

<sup>417</sup>Hough, M., Jackson, J., Bradford, B., Myhill, A. and Quinton, P. (2010): "Procedural Justice, Trust, and Institutional Legitimacy", *Policing: A Journal of Policy and Practice*, pp. 203-210, p.204

<sup>418</sup>Tyler, T. R. and Mentovich, A. (2011): "Mechanisms of Legal Effect: Theories of Procedural Justice", *Public Health Law Research: Making the Case for Laws that Improve Health*. p. 2

<sup>419</sup>Oded, S. (2013): *Corporate compliance: new approaches to regulatory enforcement*, Edward Elgar publishing, p.71-103

authors who argue that a *combination of two* would be the best solution. Oded claims that an “inclusive enforcement approach can maximise the welfare”.<sup>420</sup> As Braithwaite and Ayres<sup>421</sup> argued “the trick of successful regulation is to establish a synergy between punishment and persuasion”. The core of this approach is based on the Prisoner’s Dilemma game<sup>422</sup> and applied Tit-for-Tat strategy on that ground. In essence the Prisoner’s Dilemma game involves two players, and each of them has a choice either to cooperate or to defect. Decisions are made simultaneously and the parties cannot coordinate their choices. If both players choose cooperation, both gain the maximal payoff; if only one chooses to cooperate, the other one, who opts for defection, gains more; finally, if both choose defection, both gain very little, but still more than the co-operator who was defected by his counter party.<sup>423</sup> *Table 3.1* describes the standard prisoner’s dilemma payoffs.

*Table 3.1: Prisoner’s Dilemma Game payoffs*

		Player A	
		Cooperate	Defect
Player B	Cooperate	(150,150)	(40,250)
	Defect	(250, 40)	(100, 100)

*Source: Oded, “Corporate compliance: new approaches to regulatory enforcement”*

In the one-shot game the dominant strategy of the players is defect/defect. However, when the game is played repeatedly, the outcome of the game is different which is shown by Axelrod<sup>424</sup>. He explains that if the game is played a known finite number of times, the players still lack the incentive to cooperate, especially on the last move because of no future to influence. However, with an indefinite number of interactions cooperation can emerge. According to Axelrod, the best strategy to play this game in this case is through “*Tit-for-Tat*” (*TFT*) strategy which is based on reciprocity. Sustainable cooperation could be reached if one player starts by cooperating and continues to cooperate, unless provoked by the counterpart’s decision to defect. If provoked, the player retaliates in the next round of the game by doing the same as his counterpart, defecting. Axelrod describes *TFT* as “nice, retaliatory, forgiving and clear”, explaining that its niceness prevents parties from getting into unnecessary trouble; its retaliation discourages the other side from persisting whenever defection is tried; its forgiveness helps restore mutual cooperation; finally, its clarity makes it intelligible to the other player, thereby eliciting long-term cooperation.<sup>425</sup>

<sup>420</sup>Ibid

<sup>421</sup>Braithwaite, J. and Ayres, I. (1992): *Responsive Regulation: Transcending the Deregulation Debate*, Oxford: Oxford University Press, 1992, p.25

<sup>422</sup>This game was originally framed by Merrill Flood and Melvin Dresher, and further analysed by William Poundstone in *Prisoner’s dilemma*, New York: Doubleday 1992

<sup>423</sup>Oded, S. (2013): *Corporate compliance: new approaches to regulatory enforcement*, Edward Elgar publishing, pp. 71-103

<sup>424</sup>Axelrod, R. (1984): *The Evolution of Cooperation*, New York: Basic Books, 1984, p.10-54

<sup>425</sup>Ibid, p.54, See also: Axelrod, R. (1980): “Effective Choice in the Prisoner’s Dilemma”, *The Journal of conflict Resolution*, Vol.24, No.1 (Mar.,1980), pp.3-25



The logic of the Prisoner's Dilemma game and TFT strategy is further used in the literature in regulatory context. Scholz<sup>426</sup> argues that the voluntary compliance outcome provides both sides (e.g. governmental agency and firm) with "the mutual rewards of flexible compliance combined with flexible enforcement". He further argues that if enforcement and compliance costs could be minimized through the party's cooperation net social benefits would be higher and the enforcement strategy which has TFT characteristics is the most likely candidate for establishing "socially beneficial cooperation".<sup>427</sup> Policy implications from this view are the following: enforcement authorities should set a minimal level of compliance and those who meet this criterion become a subject of cooperative response by the authority while those who do not meet the required level "face a rigorous, deterrence based enforcement response".<sup>428</sup> The TFT strategy has been applied to various structures of enforcement regimes and they are all known as *State-Dependent Enforcement*. The model of state-dependent enforcement has been made by Landsberger and Meilijson<sup>429</sup>. They introduced an incentive system which, in case generated externalities by repetitive actions, proves instrumental and argue that penalty system should be state dependent. This further implies that states are those in charge of the classification of individuals in terms of their recent activity regarding the rule compliance. In conclusion, mixed regimes – deterrence based and cooperative enforcement – follow an inclusive approach which addresses all types of regulatees while adjusting enforcement responses to the particular circumstances at hand. However, these regimes show significant pitfalls, namely *information asymmetry* (e.g. taking into account only detected violations) and *arbitrariness*, (e.g. granting an enforcement authority wide discretion). This requires further improvement of mixed regimes in order to overcome these pitfalls.<sup>430</sup>

### 3.2.2 Responsive Regulation approach: Enforcement pyramid and Pyramid of regulatory strategies

Responsive regulation approach was developed by Braithwaite and Ayres<sup>431</sup> and it promotes the use of persuasion and advisory measures by the authorities before use of more invasive measures. Regulators will be more able to speak softly when they carry big sticks together with a hierarchy of lesser sanctions. The bigger and the more varied the sticks, the greater success regulators will achieve by speaking softly. More precisely the more sanctions can be kept in the background, the more regulation can be transacted through moral persuasion, and the more effective the regulation will be. They claim that instead of choosing punishment as first choice, compliance sounds like way better solution because it is "affordable, workable

<sup>426</sup>Scholz, J. T. (1991): "Regulatory Enforcement and the Politics of Administrative Effectiveness", *The American Political Science Review*, Vol.85, No.1 (Mar., 1991), pp. 115-136, p. 118

<sup>427</sup>Scholz, J. T. (1984): "Voluntary Compliance and Regulatory Enforcement", *Law and Policy*, Volume 6, Issue 4, pp. 385-404, October 1984, pp.385-386

<sup>428</sup>Ibid, p.393

<sup>429</sup>Landsberger, M. and Meilijson, I. (1982): "Incentive Generating Sate Dependent Penalty System: The case of Income Tax evasion", *Journal of Public Economics* 19 (1982), pp.333-352

<sup>430</sup>Oded, S. (2013): *Corporate compliance: new approaches to regulatory enforcement*, Edward Elgar publishing pp. 71-103

<sup>431</sup>Braithwaite, J. and Ayres, I. (1992): *Responsive Regulation: Transcending the Deregulation Debate*, Oxford: Oxford University Press, 1992, p.19

and productive in stimulating the good will of those who have to comply”. The central issue of this approach are two pyramids, *enforcement pyramid* and *pyramid of regulatory strategies* which depicts the idea of regulatory agencies seen as “benign big guns” which “speak softly while carrying very big sticks” and having enormous powers. The pyramid of enforcement idea suggests that the greater the heights of punitiveness to which an agency punishment can escalate, the greater its capacity to push regulation down to the cooperative base of the pyramid. Or as Braithwaite and Ayres say “graduated response up to draconian final solutions can make passive deterrence formidable and can give active deterrence room to manoeuvre”.<sup>432</sup> Regarding their *enforcement pyramid, Pyramid 3.1*, compliance is most likely when an agency displays an explicit enforcement pyramid which targets a single regulate firm. Most regulatory action occurs at the base of the pyramid where attempts are initially made to obtain compliance by persuasion. The next phase of enforcement escalation is a warning letter. However, if this fails to secure compliance, imposition of civil monetary penalties steps in. The next step is a criminal prosecution. Before the final step, a plant might be shut down or temporary suspension of a license to operate can take place. If, however, this fails to produce the expected outcome, permanent revocation of license is applied.<sup>433</sup>

*Pyramid 3.1: Enforcement pyramid*



*Source: Braithwaite and Ayres, “Responsive Regulation: Transcending the Deregulation Debate”*

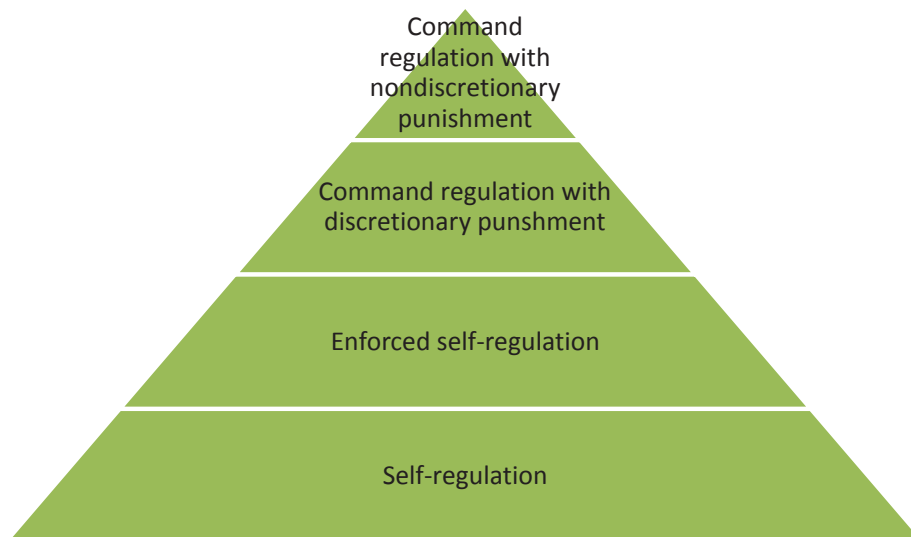
The *pyramid of regulatory strategies, Pyramid 3.2*, is designed for the entire industry. Governments are most likely to achieve their goals by communicating to an industry that the referred strategy is industry self-regulation. When self-regulation functions well, it is the least burdensome approach from the point of view of both taxpayers and the regulated industry. The

<sup>432</sup>Ibid, p.40

<sup>433</sup>Ibid, pp.35-36

pyramid starts from self-regulation, and then moves to enforced self-regulation. If this fails to provide the desired outcome it includes command regulation with discretionary punishment and finally command regulation with nondiscretionary punishment. Braithwaite and Ayres claim that “regulatory cultures can be transformed by clever signalling by regulatory agencies, public interest groups, and political leaders that an escalation of the interventionism of regulatory strategy may be in the offing”. Since the higher costs and “more unfathomable probabilities are involved in such treats”, the chances of bluffing are higher. Therefore the industry association might be very often involved in “disciplining and bluffing firms that free ride on the regulatory future of the industry”<sup>434</sup> Analysing this approach Kim<sup>435</sup> claims that Braithwaite places high importance on “the moral educative effects of punishment” and on the “role of punishment in constituting an image of invincibility within a regulatory culture”.

*Pyramid 3.2: Pyramid of regulatory strategies*



*Source: Braithwaite and Ayres, “Responsive Regulation: Transcending the Deregulation Debate”*

### 3.2.3 *Anti-corruption pyramid*

Discussion in the previous chapters provided the insights into the corruption problem and the results achieved so far in post-socialist countries regarding combat against it. In order to decrease corruption, countries in general reach for the dominant international anti-corruption framework. Although, these mechanisms for fighting corruption are employed by the majority of countries around the world, the results of their implementation do not show the equal success in reducing corruption. The transitional countries, which are the subject of this

<sup>434</sup>Ibid, pp.38-40

<sup>435</sup>Ibid, p.51

research, besides their formal readiness to adopt the suggested framework, show very modest result in the domain of corruption combat. One of the explanations for this underachievement could be found in the idiosyncrasies of these countries, regarding specific historical, economic and cultural factors. Braithwaite and Ayres<sup>436</sup> claim that socialist countries had strong coercive power but “in commanding voluntary consent from its citizens they were weaker than the democracies”. This was the result of lacking a respect for law because it was perceived as “the extension of the power of party functionaries”. For instance, corrupt and inefficient firms were kept alive since no market mechanisms such as competitors, criticism from the opposite parties or free press were in the place to put them out of business. This legacy has been already discussed earlier with the implication that it might be one of the main reasons for underachievement of transitional countries regarding corruption combat. Before offering a possible solution a few important facts should be kept in mind. This thesis analyses corruption of public administration and it is described as *abuse of public office for private gain*. In that sense, the nature of the corrupt act is, in most of the cases, in the essence contract, agreement between two parties for interchange of benefits. As Macrae<sup>437</sup> says, “it is an agreement, private exchange, between two parties – the “demander” and “supplier” – which has an influence on the allocation of resources, either immediately or in the future and involves the use or abuse of public or collective responsibility for private ends”. The main characteristics of this agreement is its secrecy and therefore problematic for discovering. Therefore, Lambsdorff and Nell<sup>438</sup> suggest that corruption combat improvement should employ the reform measures which should promote betrayal among corrupt parties in order to break the secrecy. Furthermore, corruption could be seen as victimless crime, since a direct victim is missing, although whole society is indirectly affected by it. Hence, the necessity of raising the awareness of people to this fact is crucial. It is also important to recall important features of the public choice theory for the analysis of corruption: the agency structure, which arises when two individuals enter a non-market relationship in which one individual relies on another to carry out certain actions on his behalf. The actions of the agent affect principal’s payoff particularly in the case of conflict of interest or in the situations not regulated by the contract. Regarding this relationship, the agent is usually better informed than the principal. Having in mind the asymmetry of information problem, the principal tries to put in an incentive scheme in order to induce the optimal action by the agent. This scheme can also include another agent- supervisor, who should monitor the performance of the first agent.

Taking into account corruption characteristics mentioned above and using the theoretical models of responsive regulation, particularly pyramid of regulatory strategies and principal-supervisor-agent model, it is possible to create an *anti-corruption pyramid*, Pyramid 3.3, as a potential solution for corruption combat improvement in post-socialist countries. Pyramid combines compliance and deterrence approach targeting with each specific areas of individual and social behaviour. It also uses the dominant international anti-corruption

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<sup>436</sup>Ibid, p.13

<sup>437</sup>Macrae, J. (1982): “Underdevelopment and the Economics of Corruption: A Game Theory Approach”, *World Development*, Vol. 10, No. 8, pp. 677-687

<sup>438</sup>Lambsdorff, J. G. and Nell, M. (2006): “Corruption: Where We Stand and Where To Go,” in *The Corruption Monster: Ethik, Politik und Korruption*, Kreutner, M. (ed.), 2006.

structure prevention – transparency – deterrence as a basis, but the elements are differently organized. Prevention part regarding culture and education is located in the bottom of the pyramid, followed with transparency and accountability and finally punishment on two levels: administrative and criminal. Its main idea is to target administration – civil service (agents), who are supervised by government, responsible to citizens (principals) for developing trustful relations among people, in order to foster economic development and growth of transitional countries. Supervisors are here considered as benevolent, due to the commitment of post-socialist governments to reform the country, e.g. by joining the EU. This pyramid aims, as well, to break the secrecy of the agreement, and therefore the asymmetry of information between officials and bureaucracy in discovering it, by targeting the improvement of the quality of administration and trust in it as well as the recovery of respect for state institutions. If administration is not asking and accepting bribe, then the other side in a corrupt agreement will not have the possibility of giving it.

As described in previous section on responsive regulations, the design of the anti-corruption pyramid uses persuasion and advisory measures by the authorities before use of more intrusive ones. Therefore, in order to improve the behaviour and quality of administration (civil service), government should start to act first on the level of culture and transparency, before employing deterrence mechanisms. The layers of the anti-corruption pyramid correspond to the layers of the pyramid of regulatory strategies (*Pyramid 3.2*). In latter, first level includes self-enforcement which in anti-corruption pyramid equals to culture and intrinsic values of people, in this case civil servants. Culture governs our life and explains our intrinsic values and motives of our acts. This thesis claims that some cultural characteristics are important in order to approach corruption combat effectively and efficiently and it will be analysed in more detail in this chapter.

The second layer addresses enforced self-regulation, which in anti-corruption sense calls for transparency and accountability of civil servants as a corrective tool for desired self-regulation. If intrinsic motivation fails, than external motivation and institutional setting should serve as a “corrector” of unwilling behaviour. The third layer, command regulation with discretionary punishment, corresponds to administrative sanctions conducted by superiors if corrupt behaviour passes through the first two layers. In previous chapter it was explained that corruption has many classification and for this layer important distinction is one in which bureaucrats are bribed to speed up the process in providing the service for the clients who are entitled to it and bribes paid to them for the services which are not available to the clients, more precisely illegal ones. The third layer should be applied in the case when “oiling the wheel” is in place, since parties already have certain rights. Finally, command regulation with nondiscretionary punishment, corresponds to heavy weapon of criminal sanctions for corrupt behaviour. This layer includes the most severe sanctions which are usually most costly for the society and therefore, according to the regulatory strategy approach, should be used as a final solution. Corrupt acts that fall into this category are all those which are illegal, more precisely in which public officials provide services which parties are not entitled to.

Pyramid 3.3: Anti-corruption pyramid



The design of the pyramid targets two components of human behaviour in one policy. It coordinates the preferences and puts constraints on the socially undesirable behaviour. Putting constraints on in order to create a socially desirable outcome is in the literature of law and economics undisputable but coordinating preferences is the subject of debate. In the next paragraphs of this section, the theoretical background for these claims will be provided while constraints will be elaborated on in the next chapter.

#### 3.2.3.1 Targeting/coordinating preferences

In one of the previous sections of this chapter it was explained that the analysis of individual preferences and constraints are put here in the broader economic model which includes much more complex environment than the one used in the traditional neoclassical models. When discussing people's choices, traditional economists have different opinions about the possible influence of the law on them. On one side, there is the claim that personal preferences are outside the scope of the law, while on the other, there are arguments that law creates focal points which stimulates people to create equilibrium accordingly. Michael and Becker<sup>439</sup> claim that "for economists to rest a large part of their theory of choice on differences in tastes is disturbing since they admittedly have no useful theory of the formation of tastes, nor can they rely on a well-developed theory of tastes from any other discipline in the social science, since none exists". Put differently, the theory used by an empirical researcher is unable to assist him to choose the "appropriate taste proxies on a prior ground" or in the formulation

<sup>439</sup>Michael, R. T. and Becker, G. S. (1973): "On the New Theory of Consumer Behaviour", *The Swedish Journal of Economics*, Vol.75, No. 4, Dec., 1973, pp. 378-396

of predictions regarding their effects on people's behaviour. In line with this approach is the view of Stigler and Becker<sup>440</sup>, who explain that the biggest advantage "of relying only on changes in the argument entering household production function" is that any change in behaviour is "explained by changes in prices and incomes", variables which organize and give the power to economic analysis.

However, if the incentives are put in the social context different from the one in capitalism, the social environment might appear highly influential on them. For instance the change of the social system in transition from a socialist to a capitalist society, caused to a certain extent the loss of an orientation among the people about what is right and wrong. In that case the norms of the new system should promote and express new values which in the future would govern human behaviour. Cooter<sup>441</sup> talks about *expressive law* explaining that law can create a "focal point by expressing values" and this focal point can shift the system from an old to a new equilibrium. With this characteristic "law can change the individual values of rational people" by internalizing a social norm which is a moral commitment that "attaches a psychological penalty to a forbidden act". Cooter further explains that "a rational person internalizes a norm when commitment conveys an advantage relative to the original preferences and the changed preferences". This change is called "Pareto self-improvement". If law creates the opportunities for Pareto self-improvements, it induces rational people to coordinate their preferences. Therefore, there are two use of expressive law: creating focal points and changing individual values. Cooter<sup>442</sup>, stresses that law and economics scholars typically put the "rational bad man" into the decision-maker shoes in their models and "for the bad man, law is a constraint and not a guide". However, real life includes bad and good people, together with those undecided, in between. Therefore, the laws should not be made only for bad people, because "the response of good people also determines the law's effect". Sceptical claims that "internalized values do not matter", are, according to Cooter, reduced to the "false claims that costs alone determine the equilibrium". For sceptics, law has no impact on the values which citizens internalise. Taking this argument into account it could be said that people change the preference in order to increase their opportunities and they "internalize morality to improve their opportunities for cooperating with others". Therefore, Cooter concludes, state has to "align law with social norms" and should enlist "pre-existing morality in the service of that state" in order to solve agency problems "that plague government". In line with the previous view is Bar-Gill and Fershtman's<sup>443</sup> opinion. They claim that, although the law and economics approach consider legal rules as incentive mechanisms, "legal system does more than provide incentives". It affects the dynamic formation of preferences and norms which change people. Bar-Gill and Fershtman point out that although "preference formation will likely remain a controversial subject", one cannot ignore their interdependence with prevailing legal rules.

<sup>440</sup>Stigler, G. J. and Becker, G. S. (1977): "De Gustibus Non Est Disputandum", *The American Economic Review*, Vol. 67, No. 2, Mar., 1977, pp. 76-90,

<sup>441</sup>Cooter, R. D. (1998): "Expressive Law and Economics", *Journal of Legal Studies*, pp. 584-608,

<sup>442</sup>Cooter, R. D. (2000): "Do Good Laws Make Good Citizens? An Economic Analysis of Internalized Norms", Berkeley Law Scholarship Repository, pp. 1591-1601,

<sup>443</sup>Bar-Gill, O. and Fershtman, C. (2004): "Law and Preferences", *Harvard Law School John M. Olin Centre for Law, Economics and Business Discussion Paper Series*, Paper 457, pp. 1-25,

From the arguments described above it is clear that this view stands at the opposite end to the typical economic analysis because it stresses the “expressive function of law”. As already explained this approach identifies the law as a mean for expressing social values and encourages social norms to move to certain direction. According to Sunstein<sup>444</sup>, “many laws have an expressive function” because “they are designed to change existing norms and to influence behaviour in that fashion”. More precisely, their design promotes a way in which certain goods should be evaluated. They claim that the impact which law has on human behaviour is important aspect which lawmakers should understand because of its connection to social norms. This understanding should help in illuminating “effective regulatory policy”.

Having argued that law has the ability to influence people’s behaviour, some suggestions on how to achieve that the best way could be found in the literature. Regarding the relationship of social vs. legal norms Kahan<sup>445</sup> discuss the “sticky norms” problem which occurs when “the prevalence of social norm makes decision makers reluctant to carry out a law intended to change that norm”. The “norms stick” if lawmakers attempt to change them with “hard shoves”, however if they apply “gentle nudges” the norms yield. If the policy maker tries to “break the grip of the contested norm” and condemns certain behaviour too severely, most likely it will end up like “dead letter and could even backfire”. On the other hand if citizens are “gently nudged” towards the desired behaviour and therefore for breaking the law are condemned “more mildly”, this will lead to an “eradication of the contested norms and associated types of behaviour”. This mechanism is especially effective in the situation when society is divided regarding the support for the introduced norm, some support, some oppose and the rest is ambivalent towards it. As an example, Kahan describes shaming penalties which are “enjoying a renaissance in American law” in the form of “stigmatizing publicity and more ritualized degradation ceremonies”. These sanctions are applied to nonviolent and white-collar crimes. Corruption could be classified in these categories. The crucial advantage of this approach is that, on one hand “shame costs less than imprisonment” and on the other “is more expressive of condemnation than are fines and community service”.

Targeting preferences is also important in the case of transparency. Stiglitz<sup>446</sup> argues that in general “incentives for secrecy are great” as well as “the opportunities for evading of any disclosure regulations”. Since legalistic approaches have limitations, the dominant strategy should be creation of “culture of openness” with the presumption and public should be informed about all collective decisions and should participate in them. It essential for society, argues Stiglitz, to create a “mind-set of openness” which means that people believe that the public is the owner of information in possession of public officials and any use of them for private purposes “is theft of public property”. Although legal framework committed to openness has an essential role it is not sufficient because other institutions, such as “free, competitive and critical media”, play a significant role.

<sup>444</sup>Sunstein, C. R. (1996): “Social norms and social roles”, *Columbia Law Review*, Vol. 96, No. 4 (May, 1996), pp. 903-968

<sup>445</sup>Kahan, D. M. (2000): “Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem”, *Faculty Scholarship Series*, Paper 108, pp.607-625

<sup>446</sup>Stiglitz, J. (2002): “Transparency in Government” in *The right to tell: The Role of Mass Media in Economic Development*, The International Bank for Reconstruction and Development/The World Bank, 2002, pp. 42-43

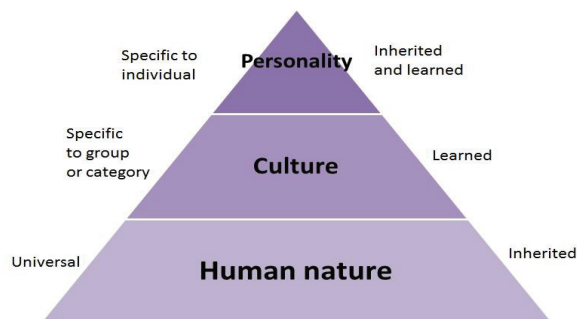


This section presented different approaches and opinions in the literature of law and economics and provided arguments for targeting culture and transparency as first layers of the anti-corruption pyramid. The claim of this research is that the state's first approach should be on the basis of persuasion and education in order to improve corruption combat. The propensity for corruption will be depicted in the next section through the various cultural aspects: universalism and particularism, collectivism and individualism, power distance and certainty avoidance.

### 3.3 Propensity to corruption – Culture

The word culture is rooted in the Latin word *cultura* which literally means cultivation. Culture nowadays has different meanings. In social anthropology, according to Hofstede<sup>447</sup>, culture refers to all patterns of thinking, feeling and acting of a certain group of people. This is “way of collective programming of the mind which distinguishes the members of one group or category of people from another”. Patterns of thinking, learning and acting for each person have been acquired in early childhood and these he calls *mental programs* or “*software of the mind*”. The programming starts first within the family, continues in neighbourhood, at school, in youth groups, at work place and the living community. Culture is learned and not inherited and therefore Hofstede claims that it should be distinguished from two other important categories: human nature and personality (see *Figure 3.1*)

*Figure 3.1: Three levels of uniqueness in human mental programming*



Source: Hofstede, “*Cultures and organizations: Software of the mind*”, p.6

According to Hofstede, *human nature* encompasses universal characteristics of all human beings and it is inherited with one's genes. It includes human ability to feel anger, fear, love, sadness, the need to associate with others and etc. However, expressing these feelings is shaped by *culture*. Finally, *personality* represents set of unique characteristics which a person

<sup>447</sup>Hofstede, G. (1991): *Cultures and organizations, Software of the Mind*, McGraw-Hill International (UK) Limited, pp.4,5

does not share with any other human being. It consists of two traits, partly inherited through an individual set of genes and partly learned through culture and unique personal experience. Focusing on the culture Hofstede<sup>448</sup> further explains that since almost everyone belongs at the same time to various different groups and categories of people, it is possible to identify six basic levels of culture: (1) national level according to one's country; (2) regional/ethnic/religious/linguistic level; (3) gender level; (4) generation level; (5) social class level; finally (6) organizational/corporate level. Analysing national cultures using survey which was distributed through the multi-national corporation IBM, Hofstede defined four fundamental cultural dimensions relevant for resolving common problems recognized by surveyed employees: *power distance* (from small to large), *collectivism vs. individualism*, *uncertainty avoidance* and *femininity vs. masculinity*.<sup>449</sup> For each of the dimensions he calculated indexes which provide the information regarding cultural aspects for a certain number of countries.

Although Hofstede's model is widely used in the literature it is not without critique. Some authors, such as McSweeney<sup>450</sup>, Smith<sup>451</sup>, Triandis<sup>452</sup>, Earley<sup>453</sup> and Kirkman et al.<sup>454</sup>, direct the debate to the various aspects of the model which among the others include: data collection methods and sites, number of cultural dimensions, and particularly, the concept of national culture as a homogeneous construct. However, Greckhamer<sup>455</sup> claims that studies which replicated Hofstede's model support "the relative stability of its cultural values over time"<sup>456</sup>. Williamson<sup>457</sup> claims are in line with this view because he says that total rejection of

<sup>448</sup>Ibid, p.10

<sup>449</sup>Ibid, pp.13-15

<sup>450</sup>McSweeney, B. (2002): "Hofstede's model of national cultural differences and their consequences: A triumph of faith – a failure of analysis", *Human Relations* 55: pp. 89–118, and McSweeney, B. (2009): "Dynamic diversity: Variety and variation within countries", *Organization Studies* 30: pp. 933–957. For instance, in the article from 2002, McSweeney states that "Hofstede's claims are excessive and unbalanced". They are excessive because they "claim far more in terms of identifiable characteristics and consequences than is justified". They are unbalanced because of the presence of "too great desire to prove his prior convictions rather than evaluate the adequacy of his findings". The essence of McSweeney's critics is that Hofstede's work is limited to the territory of states, and "its methodological flaws mean that it is a restricter not an enhancer of understanding particularities".

<sup>451</sup>Smith, P. (2002): "Culture's consequences: Something old and something new", *Human Relations* 55: pp. 119–135.

<sup>452</sup>Triandis, H. (1995): *Individualism and collectivism*, Boulder: Westview Press and Triandis, H. (2004): "Dimensions of culture beyond Hofstede" in Vinken, H., Soeters J. and Ester, P. (eds.): *Comparing cultures: Dimensions of culture in a comparative perspective*, Leiden: Brill, pp. 28–42

<sup>453</sup>Earley, C. (2006): "Leading cultural research in the future: A matter of paradigms and taste", *Journal of International Business Studies* 37: pp. 922–931.

<sup>454</sup>Kirkman, B., Lowe, K., and Gibson, C. (2006): "A quarter century of culture's consequences: A review of empirical research incorporating Hofstede's cultural values framework", *Journal of International Business Studies* 37: pp.285–320. They claim that their study shows that various studies conducted in Hofstede's framework show broad and impactful results. However, some questions about cultural differences remain. They explain that "in many areas, Hofstede-inspired research is fragmented, redundant, and overly reliant on certain levels of analysis and direction of effects". The comprehensive review made by authors suggests that "so much more remains to be done".

<sup>455</sup>Greckhamer, T. (2011): "Cross-cultural Differences in Compensation Level and Inequality across Occupations: A Set-theoretic Analysis", *Organization Studies*, 32(1): pp. 85-115

<sup>456</sup>For more insights see: Hofstede, G. (2001): *Culture's consequences: Comparing values, behaviours, institutions, and organizations across nations* (2nd edn), Thousand Oaks: Sage and Søndergaard, M. (1994): "Research note: Hofstede's consequences: A study of reviews, citations, and replications", *Organization Studies*

Hofstede's model without developing a satisfactory one would mean throwing away of valuable insights because "quantification of national culture opens up what is otherwise a black box of cultural factors". The attributes of national culture provided by Hofstede could be used to describe social phenomenon or could provide "a comparative yardstick for other cultural attributes". His model also provides a valuable framework for cross-cultural research. Discussing the concrete application of Hofstede's cultural model Taras et al.<sup>458</sup> claim that "as assessment of national cultural values would be an effective tool for selecting employees with the set of values that best fit the existing organizational structure or job design". However, culture is not the only factor which affects the workplace. Therefore, it should be used "only in conjunction with other selection tools", more precisely those which test skills and knowledge related to a specific job for which one applies. However, Taras et al. suggest that if resources are limited, "culture may be a better choice than other commonly considered selection indicators" because cultural values could provide significant contribution for the personnel selection system and they should be consistent with research on person-job and person-organization fit. This research finds that the better the fit the better are the outcomes in the workplace such as "productivity, job satisfaction and organization commitment".

Regarding the relationship between culture and corruption Lambsdorff<sup>459</sup> claims that the link between the two is strong with the main assumption that "causality runs from culture to corruption and not the other way around" and cultural aspects could be addressed only in a long-term reform strategy. It is also important to keep in mind that culture presents "only a fraction of the variance of levels of corruption", which means that it leaves the floor for other contributions in countries with law favourable cultural preconditions. Husted<sup>460</sup> argues that policy makers should take into account cultural feature if they aim to design "a policy instruments that will encourage integrity". Encouraging integrity is particularly important in post socialist countries. Sandholtz and Taagepera<sup>461</sup> in their study analyse the influence of socialism on corruption level in the countries by linking it to culture and to the structure of opportunities available to officials. They claim that socialist states created "structural incentives" for corruption and it became "a pervasive and enduring fact of life in these societies". More precisely, corruption became "an aspect of culture", embedded in social norms and practices. Therefore, the process of transition could not remove these legacies over time

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15: pp. 447–456. In analysis of the replications Søndergaard claims that they showed that the "differences predicted by Hofstede's dimensions were largely confirmed" and there are "remarkably few non-confirmations".

<sup>457</sup> Williamson, D. (2002). "Forward from a critique of Hofstede's model of national culture", *Human Relations* 55: pp. 1373–1395. Although support Hofstede's model in general, Williamson reflects upon McSweeney's critique by saying that it raises important warnings which fall in three areas. First, the danger exists if a culture is perceived as uniform and therefore all members of a certain culture assume to carry the same cultural attributes. Second, expectations that individuals are "cultural dopes", whose values or behaviour are wholly determined by their cultural background. Third, confusing cultural scores with their constructs for which the former are only approximate measures.

<sup>458</sup> Taras, V., Steel, P. and Kirkman, B. L. (2011): "Three decades of research on national culture in the workplace: Do the differences still make a difference?", *Organizational Dynamics* 40, pp. 189-198

<sup>459</sup> Lambsdorff, J. G. (2007): *Institutional Economics of corruption and reform*, Cambridge University Press, pp. 27-48

<sup>460</sup> Husted, B. (1999): "Wealth, Culture, and Corruption", *Journal of International Business Studies*, Vol. 30 (2): pp. 339–60.

<sup>461</sup> Sandholtz, W. and Taagepera, R. (2005): "Corruption, Culture, and Communism", *International Review of Sociology - Revue Internationale de Sociologie*, Vol. 15, No. 1, March 2005, pp. 109 -131

because “cultural orientations change slowly” and most of the time lag behind even the most comprehensive society’s institutional change. In addition, removing of regulatory forces, especially in the process of privatization, provided variety of opportunities for corruption especially due to the fact that previous regime and its officials were in charged for these processes. Sandholtz and Taagepera analysis shows that due to the explained reasons, transitional countries have higher levels of corruption compared to similar countries. It also suggests that corruption “is not just the product of immediate material incentives” but result of cultural characteristics “acquired through socialisation in a society’s historical heritage”. In this case, they argue, socialism created a culture of corruption which made it part of everyday life and it is not realistic to expect that these practices could be changed overnight together with the collapse of the old system. For post-socialist countries it is highly important to reduce corruption since it affects market economy development by undermining trust in public institutions. However, the authors point out that “where cultural orientations are concerned, there are no quick fixes”. Following that statement their prediction is that post-socialist countries “will probably be wrestling with...high levels of corruption for decades” and therefore the creation of a proper incentive scheme is essential. Finally, maybe even more important is to create citizens who will be “socialized into norms and expectations that reject and stigmatize corruption”.

Following this conclusion and goals of this thesis the next section analyses cultural aspects which are considered connected to the previously described homo sovieticus mentality. Since this mentality, according to the author’s knowledge, was not accessed in the literature for any kind of measurement, here for its description some other cultural aspects will be used which correspond to its essence. The next section includes the cultural aspect of universalism and particularism as well as two dimensions of Hofstede cultural classification: individualism and collectivism and power distance. Each of the cultural aspect will be elaborated through its value system, organizational structure in the application and its relationship to corruption.

### 3.3.1 *Particularism and universalism*

#### 3.3.1.1 Value system

Trompenaars<sup>462</sup> claims that each culture is differentiated from the others by the specific solutions which it applies in resolving particular problems. These problems may arise within three categories: one represents our relationship with other people; another comes “from the passage of time”; and finally, the one related to the environment. Under the first category, which focuses on the relationships among people, lies the division on particularistic and universalistic culture. Trompenaars defines *particularism* as an ethical system in which the highest norm is to help your friends and relatives. On the other hand, *universalism* is a system with the highest norm of truthfulness and fairness toward all people, regardless of their personal relationship to people. Different countries have different culture in this sense.

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<sup>462</sup>Trompenaars, F. (1993): *Riding the Waves of Culture: Understanding Cultural Diversity in Business*, Economist Books London, 1993, pp.8-46

According to the results of the study conducted by Trompenaars, Russia, South Korea and China have a largely particularistic culture, while United States, Switzerland, England, Scandinavia and Germany have universalistic. Having in mind these cultural differences he defines advices for managing and being managed if one operates in of the two environments. The characteristics are shown in *Table 3.2*.

*Table 3.2: Difference between Universalism & Particularism*

<i>Universalists</i>	<i>Particularists</i>
1. Strive for consistency and uniform procedures	1. Build informal networks and create private understandings
2. Institute formal ways of changing the way business is conducted	2. Try to alter informally accustomed patterns of activity
3. Modify the system so that the system will modify you	3. Modify relations with you, so that you will modify the system
4. Signal changes publicly	4. Pull levers privately
5. Seek fairness by treating all like cases in the same way	5. Seek fairness by treating all cases on their special merits

Source: Trompenaars, "Riding the Waves of Culture: Understanding Cultural Diversity in Business", p. 46

From the state's point of view, as Mungiu-Pippidi et al.<sup>463</sup> define universalism as system in which every citizen is treated equally by the state and all public resources are distributed impartially. This system is, at least formally, established in the majority of countries around the world. However, the authors claim that "particularism exist by default" due to the scarcity of resources available and in distributing them people tend to share them with people who are close to them leaving all the others out. Modern states base their organisation on universalism, promoting it as the highest value. However, Mungiu-Pippidi et al. claim that very few of them succeeded in achieving this goal.

### 3.3.1.2 Administration/organizational structure

Applying the Trompenaars theory of universalism and particularism and theory of legal origins, De Geest<sup>464</sup> concludes that cultural differences may explain the differences in legal systems of various countries. For instance, on one side are the countries of civil law tradition such as France and Germany, and on the other countries with common law tradition, United Kingdom and the USA. He claims that in countries with particularistic culture and specific historical context, "individual citizens or local judges cannot be trusted" since they would rather help people close to them than taking care of the interests of the society. De Geest further connects this view with the organisation of the legal systems explaining that bottom-up approach in common law countries, which he sees as universalistic, functions well because "those at the bottom can be trusted" since they will rather "do what is fair" than favouring their

<sup>463</sup>Mungiu-Pippidi, A., Loncaric, M., Vaz Mundo, B., Sponza Braga, A. C., Weinhardt, M., Pulido Soares, A., Skardziute, A., Martini, M., Agbele, F., Jensen, M. F., von Soest, C. and Gbedava, M. (2011): "Contextual Choices in Fighting Corruption: Lessons Learned", *NORAD Evaluation studies 4/2011* European Research Centre for Anti-Corruption and State-Building, Working Paper No. 30, July 2011.

<sup>464</sup>De Geest, G. (2012): "Understanding French, German and Civil Law More Generally", pp.3-15 in Bouckaert, B.: *Liber Amicorum*, 2012, Die Keure, pp.6-7

friends. On the other hand, France as a particularistic country applies a top-down law system. Since French people trust “whatever is higher in the hierarchy” the approach leads to the concentration of powers which has an important consequence: a very formalistic system with extensive administrative law and separate administrative courts. De Geest, sees this situation as a sign that the top of an organization does not trust the bottom. On the other hand this system is confronted by the informal system of common law countries which shows full trust. This analysis provides valuable indicators in the form of branched administration and complex decision making process which might be useful in assessing the public administration culture of particular country. In this context they could reveal the information necessary for the structure improvement and for a better understanding of people’s conducts.

Putting universalism and particularism in the context of post-socialist societies, Mungiu-Pippidi<sup>465</sup> states that the institutional structure of socialism created “politocracies” because the political power rooted in the party membership was influential on social status and allocation of social rewards. This practice is in conflict with the leading universalistic ideas for running modern societies according to which each individual should be treated equally and fairly regardless of the person or organization that he belongs to. In process of transition, sometimes called Europeanization, these countries were pushed to modernization with the expectation to create modern state administration. However, the achievement of full impartiality, impersonality and fairness has proven a non-simple task to achieve.

### 3.3.1.3 Relation with corruption

The division on universalism and particularism has an important effect regarding corruption fighting. According to Mungiu-Pippidi et al.<sup>466</sup>, existing definitions of corruption mainly assume all states operate “under the norm of ethical universalism” according to which the dominant public behaviour is equal and fair treatment of all citizens while favouritism and corruption happens occasionally. This approach is accepted by different international institutions which fight corruption in global arena. Previous chapters of this research presented the results in corruption combat based on international conventions and tools which show little progress regarding transitional countries. In searching for the roots of this failure one should look in the findings of social psychology. Tajfel<sup>467</sup> claims that considerable evidence exist that human nature is “sectarian” and as a result social identity is created by inter-group comparison and selfish behaviour. He explains that it is naturally for people favour their family, clan, race or ethnic group. For treating the others fairly society need a certain level of evolution and resources. Mungiu-Pippidi et al.<sup>468</sup> say that the latter type of society is rather exception that the

<sup>465</sup>Mungiu-Pippidi, A. (2005): “Deconstructing Balkan Particularism: The Ambiguous Social Capital of South-eastern Europe”, *Southeast European and Black Sea Studies*, Vol. 5, No. 1, January 2005, pp.49-68

<sup>466</sup>Mungiu-Pippidi, A., Loncaric, M., Vaz Mundo, B., Sponza Braga, A. C., Weinhardt, M., Pulido Solares, A., Skardziute, A., Martini, M., Agbele, F., Jensen, M. F., von Soest, C. and Gabedava, M. (2011): “Contextual Choices in Fighting Corruption: Lessons Learned”, *Norwegian Agency for Development Cooperation NORAD Evaluation studies* 4/2011

<sup>467</sup>Tajfel, H. (2004): “The social identity theory of intergroup behaviour”, *Psychology Press*

<sup>468</sup>Mungiu-Pippidi, A., Loncaric, M., Vaz Mundo, B., Sponza Braga, A. C., Weinhardt, M., Pulido Solares, A., Skardziute, A., Martini, M., Agbele, F., Jensen, M. F., von Soest, C. and Gabedava, M. (2011): “Contextual

rule and they represent product of long historical evolution. Therefore, their critic targets the principal-agent model, the dominant approach for corruption analysis, because it suggests that “fight against corruption in fact is a collective action problem”. More precisely, corruption is the result of an agent’s behaviour and it is an exception from a general rule. This view further argues that societies reach “a sub-optimal equilibrium of poor governance” which means that domestic agency is not sufficient and therefore not able to push for change. They further explain that this approach had a significant impact on international policy makers because the majority of international anti-corruption tools are based on the norm-infringing context of developed countries which actually should be norm-building for developing context.

However, concept of governance, although normative, according to Mungiu-Pippidi et al. has its advantages because it shows the way the state treats its citizens. Stoker<sup>469</sup> argues that government should be observed in a broader context consisting not only of state but the society as well and their interdependence. In analysing societies, North, Wallis and Weingast<sup>470</sup> claim that, societies through history has been organized in three social orders. The first social order is *hunter-gatherer society* which is considered primitive. The second, *limited access orders*, which dominated in past ten thousand years, solve the problem of containing violence by political manipulation of an economic system in order to generate rents by limiting entry. Finally, the third open *access social order*, developed in the last 500 years, aims to sustain social order through political and economic competition and not rent seeking. They argue that about twenty countries have developed this order and they are all both economically and politically developed. On the other hand, Weber<sup>471</sup> contrast *patrimonialism*, which is based on arbitrary personalistic relations between rulers and ruled, with the impersonal and functional relationships of the modern, ideal type of state which is based on abstract, impersonal and written rules. He also develops a *concept of status societies* which are dominated by certain groups and governed by convention rather than law. In these societies particularism is the rule of the game and individuals get treatment based on their status. Weber’ patrimonialism is in modern times discussed as *neo-patrimonialism*. Erdmann and Engel<sup>472</sup> describe it as regime which formally complies with the characteristics of modern state organization while in reality informal institutions in the form of patrimonialism dominate. O’Donnell<sup>473</sup> claims that many new democracies, which in the past had a ruler who treated the state as their own patrimony, replaced these rulers with political parties but the non-universal allocation approach has not changed.

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Choices in Fighting Corruption: Lessons Learned”, *Norwegian Agency for Development Cooperation NORAD Evaluation studies* 4/2011

<sup>469</sup>Stoker, G. (1998): “Governance as Theory: five propositions”, *International Socialist Science Journal*. 50:17-28

<sup>470</sup>North, D.C., Wallis, J. J. and Weingast, B. R. (2009): *Violence and social orders: A Conceptual Framework for Interpreting Recorded Human History*, New York, Cambridge University Press

<sup>471</sup>Weber, M. (1978): *Economy and Society. An Outline of Interpretive Sociology*, Roth, G. and Wittich, C. (eds.), New York: Bedminster Press

<sup>472</sup>Erdmann, G. and Engel, U. (2007): “Neopatrimonialism Reconsidered: Critical Review and Elaboration of an Elusive Concept”, *Commonwealth & Comparative Politics*, 45:1, 95-119

<sup>473</sup>O’Donnell, G. (1997): “Illusions about Consolidation”, *Journal of Democracy*, vol.7, no2, pp.34-51

Summarizing all views Mungiu-Pippidi et al.<sup>474</sup> created a typology of governance regimes, shown in the *Table 3.3*. The main division is on open access order and limited access order. The former one is individualistic, with political equality, high personal autonomy and civic participation. States of this type are independent from private interest and the allocation and policy formulation is based on ethical universalism and transparency. In this type of state the contradiction between formal and informal institutions is very small and corruption, when it occurs, is a deviation from the norm of ethical universalism and impartiality. On the other hand are the countries which belong to the category of limited access order. Although the majority of countries belong to this group, they, however, are not the same. Therefore three additional sub-categories are introduced: 1) *patrimonial type*, described by Weber, where power is monopoly; 2) *competitive particularism* in which classified states are grouped that managed to introduce some forms of pluralism with the institution of regular elections, which represents one step forward from patrimonial regimes. However, allocation is still particular and unfair, rent-seeking almost dominant rule, rule of law is poor and the state is perceived as an “instrument of spoliation of the many and enrichment of the few”, which greatly subverts its legitimacy and capacity. People in these types of countries have no expectations of being treated fairly by the state but according to the status; therefore their main goal is to become a part of the privileged group rather than to challenge the rules of the game; finally 3) the *border line category* is not a type in itself but a transitional regime which have fulfilled some basic and necessary conditions of progress to open access order and the two normative orders coexist confrontationally without one managing to become dominant. According to the authors’ analysis, most patrimonial regimes that have democratized remain in the realm of competitive particularism, with a couple of South-East Asian and more East European evolving to borderline situations.

*Table 3.3: Governance regimes and their main features*

<b>Governance regimes</b>	<b>Limited access order</b>			<b>Open access order</b>
	<b>(Neo) Patrimonialism</b>	<b>Competitive particularism</b>	<b>Borderline</b>	
<b>Power distribution</b>	Hierarchical with monopoly of central power	Stratified with power disputed competitively	Competitive with less stratification	Citizenship, Equality
<b>State autonomy</b>	State captured by ruler	State captured in turn by winners of elections	Archipelago of autonomy and captured “islands”	State autonomous from private interest (legal lobby, etc.)
<b>Public allocation (services, goods)</b>	Particular and predictable	Particular but unpredictable	Particular and universal	Ethical Universalism
<b>Separation private-public</b>	No	No	Poor	Sharp
<b>Relation formal/informal institutions</b>	Informal institutions substitutive of formal ones	Informal institutions substitutive of formal ones	Competitive and substitutive	Complementary
<b>Mentality</b>	Collectivistic	Collectivistic	Mixed	Individualistic

<sup>474</sup>Mungiu-Pippidi, A., Loncaric, M., Vaz Mundo, B., Sponza Braga, A. C., Weinhardt, M., Pulido Soares, A., Skardziute, A., Martini, M., Agbele, F., Jensen, M., F., von Soest, C. and Gabedava, M. (2011): “Contextual Choices in Fighting Corruption: Lessons Learned”, *Norwegian Agency for Development Cooperation NORAD Evaluation studies* 4/2011



<b>Government accountability</b>	No	Only when no longer in power	Occasional	Permanent
<b>Rule of law</b>	No; sometimes "thin"	No	Elites only	General; "thick"

Source: Mungiu-Pippidi, et al.: "Contextual Choices in Fighting Corruption: Lessons Learned", p. 12

### 3.3.2 Individualism and collectivism

#### 3.3.2.1 Value system

Another cultural aspect which could be considered important in corruption combat is individualistic and collectivistic dimension of culture. Trompenaars<sup>475</sup> defines *individualism* as a "prime orientation to the self" and *collectivism* as a "prime orientation to common goals and objectives". According to him individualism is seen as characteristic of a modern society, while collectivism belongs to traditional societies and to the failure of the socialist experiment. Hofstede<sup>476</sup> explains individualism as the "emotional independence from groups, organizations or other collectivity" while in collectivism people are part of extended families or kinship which protects them in exchange for loyalty. Triandis<sup>477</sup> lists several attributes of individualism and collectivism. According to him characteristics of individualism have "greater emphasis on internal process, more emphasis on consistency and more self-enhancement" and people with this description "tend to shape the social environment to fit their personalities". Collectivism is, on the other hand, "characterised by more focus on context, less concern for consistency and less self-enhancement" and the personality of the people classified as collectivistic is flexible with no clear traits. Hofstede<sup>478</sup> lists some key differences between two societies and they are presented in the *Table 3.4*.

Table 3.4: Key differences between collectivistic and individualistic societies

<b>Collectivistic</b>	<b>Individualistic</b>
People are born into extended families or other ingroups which continue to protect them in exchanging for loyalty	Everyone grows up to look after him and his nuclear family only
Identity is based in the social network to which one belongs	Identity is based in the individual
Children learn to think in terms of "we"	Children learn to think in terms of "I"
Harmony should always be maintained and direct confrontation avoided	Speaking one's mind is a characteristic of an honest person
High context communication	Low-context communication
Trespassing leads to shame and loss of face for self and group	Trespassing leads to guilt and loss of self-respect
Purpose of education is learning how to do	Purpose of education is learning how to learn
Diplomas provide entry to higher status groups	Diplomas increase economic worth and /or self-respect
Relationship employer-employee is perceived in moral terms, like a family link	Relationship employer-employee is a contract supposed to be based on mutual advantage
Hiring and promotion decisions take employees' ingroup into account	Hiring and promotion decisions are supposed to be based on skills and rules only

<sup>475</sup>Trompenaars, F. (1993): *Riding the Waves of Culture: Understanding Cultural Diversity in Business*, Economist Books London, 1993, pp. 47- 62

<sup>476</sup>Hofstede, G. (1980): *Culture's consequences: International differences in work-relates values*, Beverly Hills, CA: Sage p. 221

<sup>477</sup>Triandis, H. C. (2001): "Individualism-Collectivism and Personality", *Journal of Personality* 69:6, pp. 907-924

<sup>478</sup>Hofstede, G. (1991): *Cultures and organizations, Software of the Mind*, McGraw-Hill International (UK) Limited, p.67

Management is management of groups	Management is management of individuals
Relationship prevails over task	Task prevails over relationship

Source: Hofstede, "Cultures and organizations: Software of the mind", p.67

Singelis, et al.<sup>479</sup> make distinction between vertical and horizontal individualism and collectivism and this division provides information on the way in which individuals and societies perceive and accept inequality between people. In *horizontal collectivism* (HC) individual perceive himself as "an aspect of an in-group" with all members equal in their status. In *vertical collectivism* (VC) individual is part of a group but members in the group do not have equal status within it which is accepted by all. *Horizontal individualism* (HI) is characterised by "autonomous individual" which is more or less equal in status to others while in *vertical individualism* (VI) individuals see each other as different and inequality is expected. This further means, as Triandis and Gelfand<sup>480</sup> explain, in HI, people want to be unique and distinct from groups but they are not especially interested in becoming distinguished or having high status. In VI, people often want to become distinguished and acquire status and they achieve it thorough competition with others. In HC people see themselves as being similar to others but they do not submit easily to authority, while in VC people emphasize the integrity of the in-group and are willing to sacrifice their personal goals for the sake of the group. Following this division Rokeach<sup>481</sup> in his book *The Nature of Human Values*, identifies four types of political systems that reflected the relative importance of two values: equality and freedom. In communism equality was high and freedom low; in fascism both, equality and freedom, are low; in liberal democracy freedom is high and equity low; finally, in social democracy, both, equality and freedom are high. Thus, claiming that this typology can be linked to the above described one, Singelis et al.<sup>482</sup> make the following comparisons. Regarding HC its extreme version is found in a pattern of theoretical communism while moderate one is present in an Israeli kibbutz. Extreme VC is the case of Nazi Germany, while the moderate version is present in traditional villages. HI is the pattern of Australia or Sweden and VI is present in the West, e.g. United States and France. However, they point out that "cultures are not pure" and individuals exhibit each of these patterns at different times or in different situations. These differences regarding value system have important influence regarding organization structure and human behaviour.

Hofstede<sup>483</sup> points out that division on collectivism vs. individualism express some differences which could be noticed in the family, school and workplace, important places for cultural programing. For instance, in collectivistic family the highest value is harmony while in the individualistic, telling the truth about how one feels it is the characteristic which denotes a

<sup>479</sup>Singelis, T. M., Triandis, H. C., Bhawuk D. P. S., and Gelfand, M. J. (1995): "Horizontal and Vertical Dimensions of Individualism and Collectivism: A Theoretical and Measurement Refinement", *Cross-Cultural research*, Vol. 29, No.3, August 1995, pp. 240-275

<sup>480</sup>Triandis, H. C. and Gelfand, M. J. (1998): "Converging Measurement of Horizontal and Vertical Individualism and Collectivism", *Journal of Personal and Social Psychology*, Vol. 74, No. 1, pp. 118-128

<sup>481</sup>Rokeach, M. (1973): *The Nature of Human Values*, The Free Press, New York 1973, pp. 189-211

<sup>482</sup>Singelis, T. M., Triandis, H. C., Bhawuk, D. P. S., and Gelfand, M. J. (1995): "Horizontal and Vertical Dimensions of Individualism and Collectivism: A Theoretical and Measurement Refinement", *Cross-Cultural research*, Vol. 29, No.3, August 1995, pp. 240-275

<sup>483</sup>Hofstede, G. (1991): *Cultures and organizations, Software of the Mind*, McGraw-Hill International (UK) Limited, pp.57-63

sincere and honest person. Education is in collectivistic cultures teacher-centred, with little two-way communication and “students do not speak up even when question is put to the class”. Learning is seen as one time process, exclusively designed for young people with the purpose of learning “*how to do things*” in order to fit in the society. Final results, diploma, is perceived as an honour and ticket for higher status groups. On the contrary, in individualistic societies students are at the centre of the educational system and they expect to be treated impartially and as individuals. The purpose of learning is to know “*how to learn*” since the whole process is perceived as lifelong learning. The diploma is in these societies seen as personal achievement and success.

### 3.3.2.2 Administration/organizational structure

Trompenaars<sup>484</sup> argues that individualistic culture organisations are instruments because “they have been assembled and contrived in order to serve individual needs”. An individual enters into the relationship with the organisation because it is in his interest to do so and his ties with it are abstract, legal ones, regulated by contract. However, collectivistic culture organisations are not the instruments of its founders but rather “a social context which all members share and which gives them meaning and purpose”. Organisation usually is a part of a larger community which develops and cares about its members. Furthermore, according to Trompenaars, collectivist culture prefers plural representation, while individualist a single representative voting on his private conscience. Therefore collectivist decision-making typically takes much longer and there are sustained efforts to win over everyone to achieve consensus. On the other hand in individualistic culture voting down the dissenters is not acceptable. There will usually be detailed consultations in order to agree collective goals and consensus will be achieved. Since those consulted will usually have to implement what they agreed upon, the phase of implementation typically proceeds smoothly and easily. Following the differences, Trompenaars gives advice on how to manage and to be managed in individualistic and collectivistic culture which are presented in the *Table 3.5*.

*Table 3.5: Difference between Individualism & Collectivism*

<i>Individualists</i>	<i>Collectivists</i>
Try to adjust individual needs to organisational needs	Seek to integrate personality with authority within the group
Introduce methods of individual incentives like pay-for performance, individual assessment, etc.	Give attention to <i>esprit de corps</i> , morale and cohesiveness
Expect job turnover and mobility to be high	Have low job turnover and mobility
Seek out high performers, heroes and champions for special praise	Extol the whole group and avoid showing favouritism
Give people the freedom to take individual initiatives	Hold up superordinate goals for all to meet

Source: Trompenaars, “*Riding the Waves of Culture: Understanding Cultural Diversity in Business*”, p.62

<sup>484</sup>Trompenaars, F. (1993): *Riding the Waves of Culture: Understanding Cultural Diversity in Business*, Economist Books London, p. 60

Hofstede<sup>485</sup> claims that management techniques and training packages employed in running organizations have been developed in individualistic countries and basis for their definition are assumptions which “may not hold in collectivistic cultures”. For instance, in collectivistic cultures, opposite from individualistic, employer never hires just an individual but a person who belongs to a certain group (e.g. relatives). As a result performance and skills are not relevant in terms of keeping the job. Management is not management of individuals but groups and the level of emotional integration in a work group is relevant to good management. This view is supported by House et al.<sup>486</sup>, who claim that human resource management (HRM) has different practices, regarding selection, performance appraisal, job design and termination processes, in organizations with different cultural setting. HRM practices in individualistic cultures are based on the assumption that systems promote rational exchange between the organisation and its members. In collectivistic cultures this assumption does not apply. An important constituent of this system is accountability, which in collectivistic societies rests with groups while in individualistic rests with specific individuals for both organizational successes and failures.

### 3.3.2.3 Relation with corruption

Mazar and Aggarwal<sup>487</sup> argue that one of the prominent dimensions of a national culture is its degree of collectivism or the extent to which individuals in it see themselves as interdependent and part of a larger group or society. To support argument they start with claims of Hui<sup>488</sup> that people in collectivistic cultures tend to hold more “favourable attitudes” towards sharing responsibilities. Furthermore, Hsee and Weber<sup>489</sup> claim that risky actions are less risky because individuals see their group or society as providing a “cushion” that would protect them from harm while Triandis<sup>490</sup> states that individuals in this type of countries make situational rather than dispositional attributions and have a weaker sense that they themselves determine who they are. This made Mazar and Aggarwal conclude that these characteristics make it easier for individuals to selectively deactivate regulatory self-sanctions from harmful conduct through “diffusion or displacement of responsibility”. This further increases the likelihood of engaging in detrimental conducts without violating their own moral standards. As a result they hypothesized two things: one that individuals in collectivistic culture would show a higher propensity to bribe abroad than those in individualistic cultures and the other that this effect would be mediated by collectivists’ lower perceived responsibility for their actions. They run two studies in order to prove the hypotheses. In the first one they used three independent

<sup>485</sup>Hofstede, G. (1991): *Cultures and organizations, Software of the Mind*, McGraw-Hill International (UK) Limited, pp. 63-68

<sup>486</sup>House, R., Hanges, P. J., Javidan, M., Dorfman, P. W. and Gupta, V. (2004): *Culture, leadership and organizations: The GLOBE study of 62 cultures*, Thousand Oaks, CA: Sage pp. 453-458

<sup>487</sup>Mazar, N. and Aggarwal, P. (2011): “Greasing the Palm: Can Collectivism Promote Bribery?”, *Psychological Science* 22(7) pp. 843-848

<sup>488</sup>Hui, C. H. (1988): “Measurement of individualism-collectivism”, *Journal of Research in Personality*, 22, 17-36

<sup>489</sup>Hsee, C. K. and Weber, E. U. (1999): “Cross-National Differences in Risk Preference and Lay Predictions”, *Journal of Behavioural Decision Making*, 12, pp. 165-179

<sup>490</sup>Triandis, H. C. (2001): “Individualism-Collectivism and Personality”, *Journal of Personality* 69:6, pp. 907-924

measures: Transparency International's 2008 BPI scores (see: Riano and Hodess<sup>491</sup>); the In-Group Collectivism Practices scores from Global Leadership and Organizational Behaviour Effectiveness (GLOBE) study (see: House et al.<sup>492</sup>) and countries' per capita GDP adjusted by purchasing power parity. This study yielded initial evidence of a strong relationship between collectivism and bribery, the results were purely correlational. In order to find out whether a causal relationship actually exist between these two and if so, what kind of relationship, Mazzar and Aggarwal conducted the second study, a laboratory experiment. Their results provide evidence that the degree of collectivism versus individualism present in a national culture plays a significant role and is proof of the causal relationship between collectivism and bribery. They also suggest that collectivism promotes bribery by mitigating individual's perceived responsibility for their action.

Following previously described analysis the idea of comparing the values of the Hofstede's individualism index<sup>493</sup> with Transparency International Corruption Perception Index (CPI) appeared interesting for the purpose of this research. The individualism index (IDV) is based on the survey questions which belong to a set of "fourteen work goals". Dimensions relevant to these goals are for the individualistic pole: personal time, freedom and challenge and for the collectivistic: training, physical conditions and use of skills. The comparison revealed very interesting results. *Graph 3.1* shows the significant correlation between collectivism and individualism on one side and corruption on the other. This correlation exists for 80 countries listed in the *Appendix 3.1 and 3.2* of this chapter. Here the results are shown for some of the transitional countries. The reason for non-including all transitional countries is the lack of values for cultural index.<sup>494</sup> However, for the existing pool of transitional countries the relation is not shown significant anymore, although the trend of correlation follows the bigger pool analysis. The explanation for this difference could be found in the size of the examined sample of transitional countries. The fact which should be kept in mind is that the correlation presented here requires further research and testing, although some studies already exist although in not large numbers. Both indicators taken here into account are not without critics, and they are already mentioned in this research. However, what should be kept in mind is that both of them have a difficult task to perform, since corruption and culture appear difficult to catch.

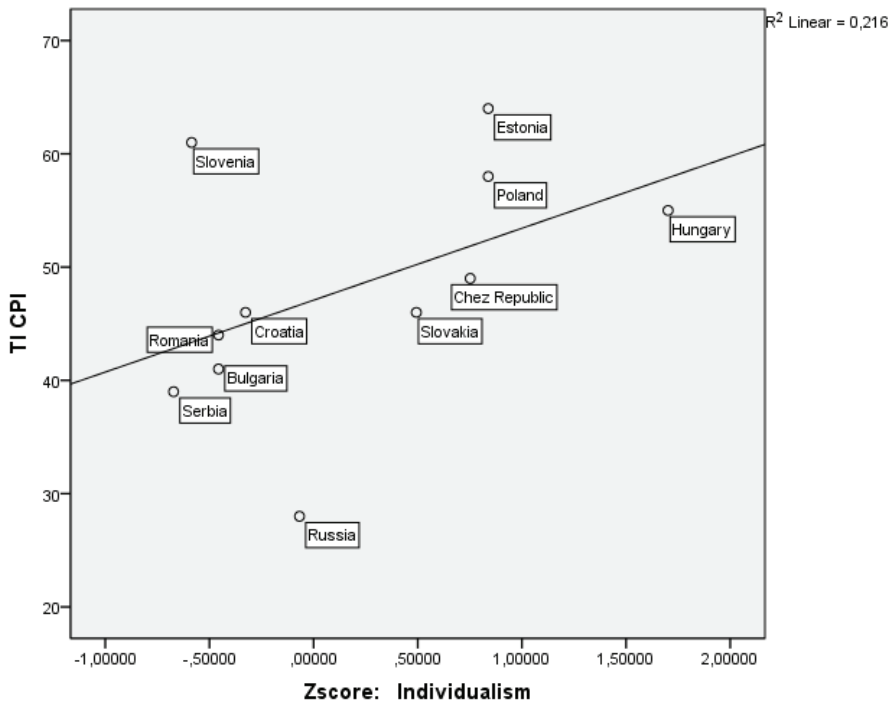
<sup>491</sup>Riano, J. and Hodess, R. (2008): "Bribe Payers Index 2008", Berlin, Germany: Transparency International

<sup>492</sup>House, R., Hanges, P. J., Javidan, M., Dorfman, P. W. and Gupta, V. (2004): *Culture, leadership and organizations: The GLOBE study of 62 cultures*, Thousand Oaks, CA: Sage

<sup>493</sup>For detailed explanation see: Hofstede, G. (1980): *Culture's consequences: International differences in work-relates values*, Beverly Hills, CA: Sage and Hofstede, G. (1991): *Cultures and organizations, Software of the Mind*, McGraw-Hill International (UK) Limited, pp.51-54. The scale of index is going from 0-100 where 0 refers to highly collectivistic culture and 100 to highly individualistic. The border line is 50. Available at: <http://geert-hofstede.com/countries.html>

<sup>494</sup>Among the missing countries are: Belarus, Bosnia and Herzegovina, FYR Macedonia, Montenegro, Belarus, and majority of countries of ex SSSR.

Graph 3.1: Correlation for transitional countries

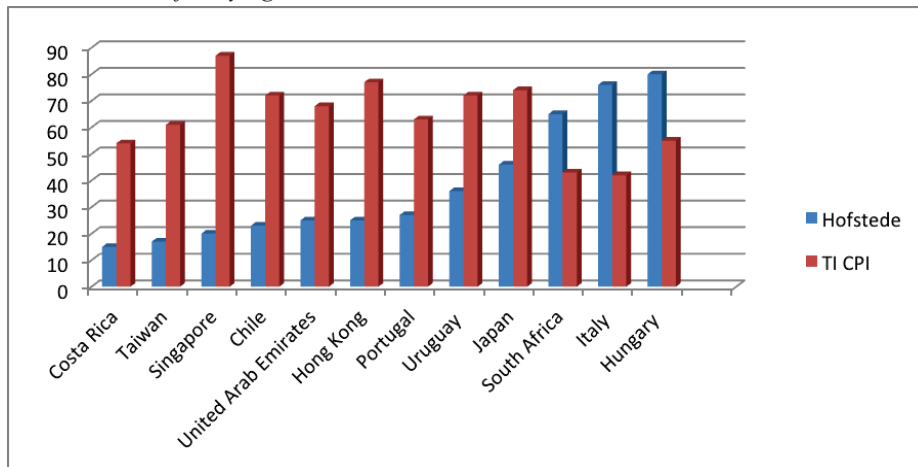


Nevertheless, regarding the current results it seems that cultural aspects of individualism and collectivism play important role for some of the transitional countries but not for all and therefore this element could be considered as optional for the anti-corruption policy design. What also appeared interesting in this analysis are the countries with a very high level of collectivism but considered “very clean” which are shown in the *Chart 3.1*, together with the countries with high level of individualism but corrupt. This implies that some of the anti-corruption mechanisms from countries that show good results in fighting corruption should be observed closely in the discussion on the design of optimal anti-corruption framework. This actually happened in the case of Hong Kong and Singapore. For instance, McCusker<sup>495</sup> explains that independent anti-corruption body in Hong Kong, with investigation, prevention and public support showed to be successful in fighting corruption. Similar steps were taken in strengthening of law enforcement agencies in Singapore. The civil servants’ pay increased substantially relative to the private sector and public officials were routinely rotated to make it harder for corrupt officials to develop strong ties to certain clients. Rewards were given to those who refused bribes and turned in a client. However, not all of the steps replicated from these two experiences were successful. The questionable impact of the established agencies worldwide was already discussed. Here attention should be paid to the

<sup>495</sup>McCusker, R. (2006): *Review of anti-corruption strategies*, Australian Institute of Criminology, April 2006, pp. 18-19 available at: <http://www.aic.gov.au/publications/current%20series/tbp/21-40/tbp023.aspx>

cultural aspects which affect corruption. The case of a Singapore agency with rotation and reward systems might be taken into account in shaping the institutional culture.

Chart 3.1: List of outlying countries



### 3.3.3 Power distance

#### 3.3.3.1 Value system

Power distance is broadly defined as the extent to which a community accepts power differences, authority and privileges. According to House et al.<sup>496</sup> acceptance of a certain level of power in a society is rooted in four fundamental phenomena: religion or philosophy, democratic tradition, strong middle class and proportion of immigrants in a society's population. For instance societies with dominant Roman Catholic religion tend to be high in power distance while Protestant societies prefer lower level of power distance. Furthermore, they claim that in societies with long democratic tradition power distance is low as well as in societies with a largely established middle class. This is also true for countries with a large proportion of immigrants. However, not all of these factors are equally important. According to authors "regardless of the religion, any society that has neither a democratic tradition nor an established middle class will have a relatively high level of power distance".<sup>497</sup>

According to House et al.<sup>498</sup>, one of the major research projects on power distance was conducted by Hofstede<sup>499</sup> who computed the power distance index, which is discussed in more

<sup>496</sup>House, R. J., Hanges, P. J., Javidan, M., Dorfman, P., and Gupta, V. (2004): *Culture, Leadership and organizations – The GLOBE study of 62 societies*, SAGE Publications, pp.518-526

<sup>497</sup>Ibid, p.526

<sup>498</sup>Ibid, pp. 528-530

<sup>499</sup>For detailed explanation see: Hofstede, G. (1980): *Culture's consequences: International differences in work-relates values*, Beverly Hills, CA: Sage and Hofstede, G. (1991): *Cultures and organizations, Software of the Mind*, McGraw-Hill International (UK) Limited, pp.51-54. The scale of index is going from 0-100 where 0 refers

detail later. This index “has been established to a fairly high degree by independent replication in several studies”<sup>500</sup>. Power distance is one of the cultural dimensions that Hofstede considers important for a society. He analyses this dimension through all important social institutions in one society such as family, school, workplace, state and ideas. GLOBE study<sup>501</sup> suggests that power distance as cultural dimension is equally relevant for all types of societies (e.g. Eastern and Western) only the expectations of power are different and these expectations are historically derived. However, House et al. claim that “the enhanced use of technology is likely to reduce the arbitrary use of authority and expedite the spread of democratic values...”. In study of Smith, Dugan and Trompenaars<sup>502</sup> the conclusion is that the power distance is one of the important indicators whether a society is collectivistic or individualistic. When compared to Hofstede’s individualism and power distance measures they show strong relationship. Thus, high power distance is associated with collectivistic societies.

### 3.3.3.2 Administration/organizational structure

Difference in power distance is also reflected on social institutions such as family, school and workplace. Hofstede<sup>503</sup> claims that in the *family* with high power distance children are expected to respect elders, independent behaviour is not encouraged but dependence on seniors. On the other hand in the small power distance family children are treated as equal to seniors, encouraged to take control of their own lives and personal independence is highly appreciated. These values are carried forward to *education* system and work place. Hofstede explains that in large power distance societies, teachers are treated with respect; the educational process is highly personalized, especially at the university level, meaning that knowledge transferred is not seen as impersonal “truth” but rather personal wisdom of the teacher. This further causes the dependence of the one’s learning quality on the excellence of a teacher. In small power distance environment, according to Hofstede, the teachers should treat the students as equals; students argue with teachers and express disagreement and criticisms which as a result put the emphasis on the excellence of students for the quality of learning. Regarding the *workplace* Hofstede claims that in large power distance situation superiors and subordinates are unequal and subordinates are expected to be told what to do. In the eyes of subordinates the superior is a “good father” and even faced with the “bad father” they will comply with the orders even if they ideologically reject them. Since workers are relatively uneducated manual work is less appreciated than office work. Hofstede further explains that in small power distance environment subordinates and superiors are considered existentially equal and

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to highly collectivistic culture and 100 to highly individualistic. The border line is 50. Available at: <http://geert-hofstede.com/countries.html>

<sup>500</sup>House, R. J., Hanges, P. J., Javidan, M., Dorfman, P., and Gupta, V. (2004): *Culture, Leadership and organizations – The GLOBE study of 62 societies*, SAGE Publications, pp.528-530

<sup>501</sup>Ibid, p.559

<sup>502</sup>Smith, P. B., Dugan, S. and Trompenaars, F. (1996): “National culture and the values of organizational employees: A dimensional analysis across 43 nations” *Journal of Cross-Cultural Psychology*, 27(2), 231-264

<sup>503</sup>Hofstede, G. (1991): *Cultures and organizations, Software of the Mind*, McGraw-Hill International (UK) Limited, pp.33-38



hierarchy among them is only established for convenience. This is expressed through salary difference, privileges in using facilities and skills. The ideal boss is a “resourceful democrat”.

### 3.3.3.3 Relation with corruption

In an analysis conducted in 1980 Hofstede computed the power distance index from IBM survey data. Power distance index (PDI) is a composite measure computed using the responses to three questions: 1) How frequently, in your experience, are employees afraid to express disagreement with their managers? 2) How would you describe the actual decision-making style of your boss? and 3) What decision-making style would you prefer your boss to have? Countries with lower scores on the index have “limited dependence of subordinates on superiors and a preference for consultation”. In contrast, countries with high index show significant dependence of the subordinates on bosses.<sup>504</sup> Hofstede points out that if one looks at the questions closely one could notice that first two indicate “the way the respondents perceive their daily work environment” while the third question indicates “what the respondents express as their preferences: how they would like their work environment to be”.<sup>505</sup>

House et al.<sup>506</sup> claim that Hofstede conducted another analysis which results suggested that power distance is present in all countries but in societies with higher educated people the ability of reducing power distance is higher. In his study in 2001 Hofstede<sup>507</sup> correlated the power distance index with several items from Inglehart’s World Values Survey<sup>508</sup>. The results have shown that “Hofstede’s power distance index does not reflect power distance values, but instead power distance practices....looking more precisely to the questions used to compose the PDI it could be notice that two of three items – “employees afraid” and “perceived managerial behaviour” – reflect perception, which are likely guided more by situational factors than by personal dispositions or cultural values”. However, the third question - “decision making style” – indicates that respondents express their preference: how they would like their work environment to be.<sup>509</sup>

Here as well the idea of comparing PDI with Transparency International CPI yielded some interesting results. Using the same pool of 80 countries the two indexes showed significant correlation in the sense that less power distance countries has less corruption and the opposite (*Appendix 3.3*). Unlike the situation of individualism index when analyses of the

<sup>504</sup>Hofstede, G. (1980): *Culture’s consequences: International differences in work related values*, Newbury Park, CA: Sage

<sup>505</sup>Hofstede, G. (1991): *Cultures and organizations: Software of the Mind*, McGraw-Hill International (UK) Limited

<sup>506</sup> House, R., Hanges, P. J., Javidan, M., Dorfman, P. W. and Gupta, V. (2004): *Culture, leadership and organizations: The GLOBE study of 62 cultures*, Thousand Oaks, CA: Sage, p.530

<sup>507</sup>Hofstede, G. (2001): *Culture’s consequences: Comparing values, behaviours, institutions and organizations across nations* (2<sup>nd</sup> ed.), Thousand Oaks, CA: Sage

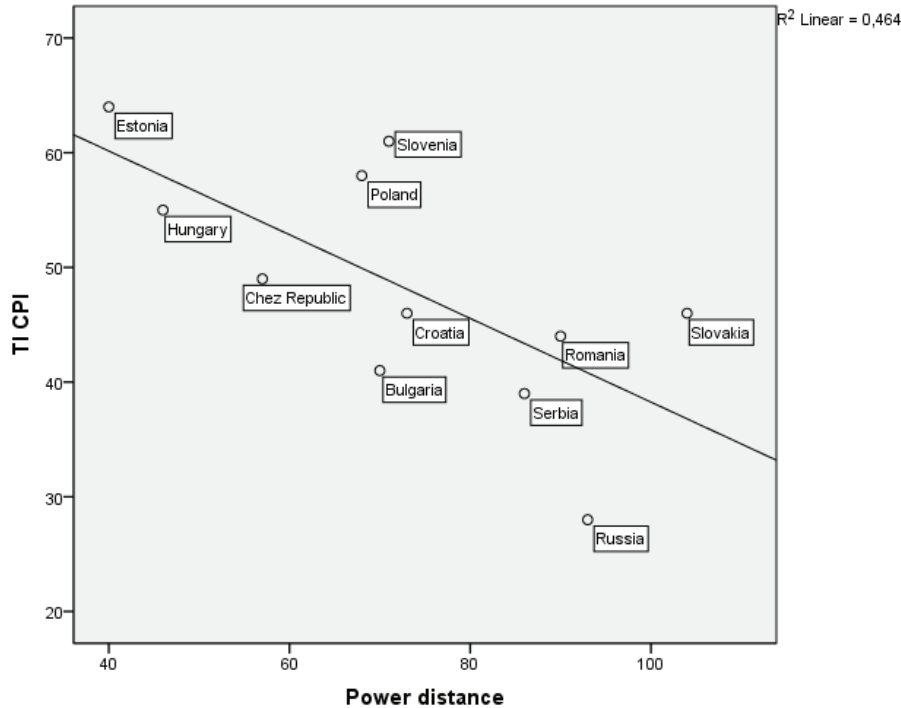
<sup>508</sup>Values change the world, World Value Survey:

[http://www.worldvaluessurvey.org/wvs/articles/folder\\_published/article\\_base\\_110/files/WVSbrochure6-2008\\_11.pdf](http://www.worldvaluessurvey.org/wvs/articles/folder_published/article_base_110/files/WVSbrochure6-2008_11.pdf)

<sup>509</sup>Hofstede, G. (1991): *Cultures and organizations, Software of the Mind*, McGraw-Hill International (UK) Limited, p. 27. See also: Hofstede, G. (2001): *Culture’s consequences: Comparing values, behaviours, institutions and organizations across nations* (2<sup>nd</sup> ed.), Thousand Oaks, CA: Sage

pool of transitional countries did not show correlation, here two indexes show the significant correlation. The results are presented below in *Graph 3.2*. However, like in the previous case, this result presents more the pointing arrow towards further research which might take place in the future than the strong causal statement.

*Graph 3.2: Correlation between individualism & collectivism and corruption for TC*



Husted<sup>510</sup> connects the dependence of subordinates to their superiors to paternalism, in which “superiors provide favours to subordinates in return for their loyalty”. He claims that in this system decisions are not merit-based but rather on “a balance of favours and loyalty” which opens the floor for corruption, more precisely favouritism and nepotism. Husted further points to the study of Cohen, Pant and Sharp<sup>511</sup> which shows that suspicious business practice would be seen differently by people living in the two types of societies. While people with high-power distance culture would see it ethical, people with low-power distance values will disapprove it. Following these lines of arguments Lambsdorff<sup>512</sup> claim that countries, in which hierarchy is accepted, should be treated differently regarding corruption combat. He suggests

<sup>510</sup>Husted, B. (1999): “Wealth, Culture, and Corruption”, *Journal of International Business Studies*, Vol. 30 (2): pp. 339–60.

<sup>511</sup>Cohen, J. R., Pant, L. W. and Sharp, D. J. (1996): “A methodological note on cross-cultural accounting ethics research”, *International Journal of Accounting*, 31(1), pp. 55-66.

<sup>512</sup>Lambsdorff, J. G. (2007): *The Institutional Economics of Corruption and Reform: Theory, Evidence and Policy*, Cambridge University Press, p. 29

that this type of countries should employ “a top-down approach” which might give better results compared to “grassroots movement”.

### 3.3.4 *The main points of the discussion*

This section analysed the first layer of the anti-corruption pyramid: propensity to corruption described by different types of culture. The *homo sovieticus mentality* described in this thesis is here considered as cultural aspect. However, according to researcher’s knowledge, this phenomenon has not been the subject of any measurement and broad discussion regarding corruption. Therefore, the cultural aspects analysed in the literature which in a way correlate to his description are elaborated upon. For instance, particularism, collectivism and high power distance could be related, to homo sovieticus’s amoral familism or learned helplessness. Amoral familism means favouritism of family and friends over the “others” while learned helplessness, gives the power and responsibility for almost everything to “those above”.

Therefore, the first cultural aspect considered relevant in the case of creating optimal anti-corruption framework for transitional countries is aspect of *universalistic and particularistic culture*. Regarding differences between the two types and discussion in the literature provided above, Mungiu-Pippidi et al.<sup>513</sup> offer the detailed diagnostic tool for particularism and the level of its tightness. This quantitative toll is presented in the table which can be found in the *Appendix 3.4* of this chapter. Basically, it provides diagnosis questions and sources of information/indicators for analysis of six elements: power distribution, state autonomy, public allocation (services, goods), separation private–public, relation formal/informal institutions and accountability. This tool can assist in detecting the real situation on the field and designing of an anti-corruption strategy accordingly. Mungiu-Pippidi<sup>514</sup> further explains that in general, socialism made achievement in “building bureaucracies and delivering some goods” but universalistic ideas are not possible to survive if the uneven distribution of power such was the one in socialist countries. This further means that societies that still did not finish the modernization process and overcoming the past in which “the state has always been in the private property of certain privileged groups”, should approach corruption differently. Corruption is commonly defined as “the use of a public position to seek personal gain” but this definition assumes the existence of the well operating public sector in a fair, non-discriminatory manner, which in many countries is not the case.

The two other cultural aspects were taken from the Hofstede’s model: individualism and collectivism and power distance. The rest of Hofstede’s cultural dimensions were not taken into account because when tested they did not show correlation with Transparency International Corruption Perception Index in cross country analysis. Therefore, the second cultural aspect of individualism and collectivism brought some interesting conclusions to the

<sup>513</sup>Mungiu-Pippidi, A., Loncaric, M., Vaz Mundo, B., Sponza Braga, A. C., Weinhardt, M., Pulido Soares, A., Skardziute, A., Martini, M., Agbele, F., Jensen, M. F., von Soest, C. and Gatedava, M. (2011): “Contextual Choices in Fighting Corruption: Lessons Learned”, *Norwegian Agency for Development Cooperation NORAD Evaluation studies* 4/2011

<sup>514</sup>Mungiu-Pippidi, A. (2005): “Deconstructing Balkan Particularism: The Ambiguous Social Capital of South-eastern Europe”, *Southeast European and Black Sea Studies*, Vol. 5, No. 1, January 2005, pp.49-68

table. Hofstede<sup>515</sup> says that Mao Tse Tung blamed on individualism and liberalism as responsible for selfishness and aversion to discipline, which make them evil and bad for the society. However, comparison of IDV and CPI indexes, conducted in other and also in this research, showed the correlation in which collectivistic societies are more corrupt than individualistic ones. These results in the terms of corruption combat prove Mao Tse Tung wrong. Having in mind said, steps towards building individualistic culture should be made in order to improve corruption combat.

The third cultural aspect which appeared to be related to corruption is power distance. Hofstede<sup>516</sup> explains that Marx never questioned that exercise of power could be transferred from people to a system, “he never asked himself if the new system would create a new class of powerless people”. Hofstede explains that this was due to Marx’s “mental software” which he received in Germany, a small power distance country. The main problem is therefore that his ideas were implemented into the countries with large power distance and “without assumption that power should yield the law”. The analysis of PDI and CPI shows strong correlation in which large power distance countries are more corrupt than low power distance ones. Lambsdorff’s conclusion that these countries in corruption combat should apply top-down measures instead of grass-rooted might not have the predicted outcome having in mind specific institutional setting of authoritarian socialism. The policies and decisions of the party were mainly implemented by a top-down mechanism which by that time caused a lack of trust and respect for the state institutions. Therefore, high power-distance should be approached in this case from the grass roots by educating people about the values and norms that should transmit them from the ugly and difficult past to a better society because without their participation any attempt in doing so is condemned to failure.

To conclude, universalistic, individualist and low power distance cultures tend to have less corruption, while particularistic, collectivist and high power distance are prone to the opposite. The purpose of this section was to support the claims that beliefs and culture in the combat against corruption, matter, and that government, taking this into account, can influence the citizens in order to achieve the socially desired outcome of reducing corruption. The next section deals with the issues important for the second layer of the anti-corruption pyramid: transparency and accountability.

### 3.4 Transparency and accountability

Transparency is one of the main requirements of democratic societies. On the contrary, in authoritarian regimes the access to information for citizens is restricted. Lorentzen et al.<sup>517</sup> explain that the main reason for this approach lies in the attempt to “conceal catastrophic failures”. However they make “secrecy the default” rule even when the information asked may

<sup>515</sup>Hofstede, G. (1991): *Cultures and organizations, Software of the Mind*, McGraw-Hill International (UK) Limited, pp.71-74

<sup>516</sup>Ibid, pp.40-42

<sup>517</sup>Lorentzen, P. L., Landry, P. F. and Yasuda, J. K. (2010): "Transparent Authoritarianism? An Analysis of Political and Economic Barriers to Greater Government Transparency in China", *University of California, Center for Effective Global Action* available at: [http://cega.berkeley.edu/assets/cega\\_events/25/3A\\_Corruption\\_and\\_Transparency.pdf](http://cega.berkeley.edu/assets/cega_events/25/3A_Corruption_and_Transparency.pdf)

be harmless or even beneficial to revile. Socialist countries were authoritarian countries and the statement made above applies to their way of state operating. After a couple of decades of application the default rule of nontransparency seems to have a significant impact regarding corruption combat. This section will first discuss transparency and accountability in general and then the specific legacy of post-socialist countries.

### 3.4.1 *Transparency and accountability*

#### 3.4.1.1 General discussion

##### *Transparency*

Transparency in a social context more generally implies openness, integrity, communication, and accountability. Piotrowski and Van Ryzin<sup>518</sup> explain that it operates in a way which is easy for others to see what actions are performed. According to them, “access to information is a central component of governmental transparency and governmental transparency is one tool to achieve accountability”. They define government transparency as “the ability to find out what is going on inside a public sector organization”. This could be achieved by various means such as open meetings, access to records, the proactive posting of information on web sites, whistle-blower protections, and even illegally leaked information. Transparency serves several purposes. Liem<sup>519</sup> claims that, among others, it provides the public with the information and control, it is congruent to legal certainty and if present raises the credibility of public administration. Principle of legality includes legal certainty and equal protection in front of the law, which accompanied by transparency provides an individual with anticipating power for administrative action. By lowering uncertainty by disclosing the risk, transparency helps in adjusting expectations and provides the basis for decision making. Liem further explains that the administration’s legitimacy is indirect, which it derives from the parliament and principle of legality. Therefore, transparency could be seen as additional source for its legitimacy which should compensate for the lack of democratic election.

Armstrong<sup>520</sup> describes the chain which transparent public service creates. She claims that if public service is fair and reliable its decision-making process is predictable which as a consequence has high public trust which further creates good incentives for business and contributes to well-functioning markets and economic growth. Public trust, which is a “keystone of good governance”, is founded on integrity, transparency and accountability. In contrast, if governance is weak, corruption and maladministration are result of systemic failure.

<sup>518</sup>Piotrowski, S. J. and Van Ryzin, G. G. (2007): “Citizen Attitudes Toward Transparency in Local Government”, *The American Review of Public Administration* 2007 37:306-323,

<sup>519</sup>Liem, S. I. (2007): *Constituents of Transparency in Public Administration, With Reference to Empirical Findings from Estonia*. St. Gallen: Univ., Hochschule für Wirtschafts-, Rechts- und Sozialwiss. (HSG), 2007

<sup>520</sup>Armstrong, E. (2005): “Integrity, Transparency and Accountability in Public Administration: Recent Trends, Regional and International Developments and Emerging Issues”, *United Nations: Economic and Social Affairs* 2005, pp. 2-3

Available at: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan020955.pdf>

Stiglitz<sup>521</sup> claims that “democratic societies have a strong presumption in favour of transparency and openness in government” although governments and their leaders have no incentives to do so. In general “information is a public good” and as such closely related to government and its provision. If kept secretly information provides to government exclusive control over specific knowledge and as such increases its power. This description was, according to Stiglitz, a “hallmark of the totalitarian states that marred the 20<sup>th</sup> century”. The secrecy is corrosive for various reasons. It undermines democratic processes because it is in antagonism with democratic values and discourages participation in it. It not only induces lack of trust between the citizens and government but also exacerbates it. It further creates “fertile ground for special interests”, which affects the effectiveness of the press in checking the government’s abuses. Stiglitz describes secrecy as “the bedrock of persistent corruption” which undermines the trust in governments and describes it within the market framework. When information is not available or lacking, it is artificially made scarce which in the next step opens the opportunity for rent-seeking behaviour. This further induces a vicious circle in which public officials are incentivised to create secrets and extract rents. Therefore openness of processes represents a warrantee that public decisions are not a result of particular interests, and a summary of discussion provides arguments for the public that all aspects are taking into account before the decision was made. This is important, claims Stiglitz, because “public has paid for the gathering of government information; it is the public that owns the information”. Transparency is also cure in the cases of low direct accountability of government. More precisely, the less is the direct accountability the importance of the openness and transparency is higher.<sup>522</sup> Furthermore, Lambsdorff<sup>523</sup> claims that transparency is also important for the information asymmetry problem resolution in the principal-agent model. He claims that in the relationship between the two parties the limited transparency is usually present because the information about agent’s performance and quality are usually unavailable. Since this further increases agent’s discretion, the principal’s ability to control the agent depends on transparency.

The above presented arguments show that transparency is seen as one of the highest goals which should be achieved for the successful fight against corruption. However, Etzioni<sup>524</sup> points out to the different direction by claiming that the academic work of economists “provide a major modification to the theory of transparency with the introduction of transaction costs, including the costs of collecting and processing information”. This further means that processing of all disclosed information might be costly. He explains that requests for using modern tools to achieve higher transparency, such as intermediaries, experts and technology for processing the information, is not a guarantee that the substantial information will be revealed. Analysing the existing empirical literature on transparency, Etzioni says that a fair amount of the literature supports the “strong transparency thesis”, but “it does so in a much

<sup>521</sup>Stiglitz, J. (2002): “Transparency in Government” in *The right to tell: The Role of Mass Media in Economic Development*, The International Bank for Reconstruction and Development/The World Bank, 2002, pp.28-35

<sup>522</sup>Ibid, pp. 39-42

<sup>523</sup>Lambsdorff, J. G. (2007): “Invisible Feet and Grabbing Hands: The Political Economy of Corruption and Welfare” in Breton, A., Galleoti, G., Salmon, P. and Wintorbe, R. (2007): *The Economics of Transparency in Politics*, Ashgate Publishing Company. p.126

<sup>524</sup>Etzioni, A. (2010): “Is transparency the best disinfectant?”, *The Journal of Political Philosophy*, pp. 1-16

more qualified way than as seen in transparency's ideological usages".<sup>525</sup> Therefore he stresses that "strong transparency cannot work". Another critique of transparency comes from the perspective of the collective action theory. Ostrom<sup>526</sup> claims that increased transparency might risk the further increase of corruption since people will become more aware of it and as such would think that all other citizens are corrupt which could make them to take part in it. However, regarding the last critic, transparency is here understood not only in terms of reporting corrupt act but as a manner in which public administration should operate. More precisely the information on files should be available to other civil servants and to the clients as well.

The discussion provided above had the main result of supporting the claim that transparency is one of the crucial elements of the anti-corruption pyramid designed for post-socialist countries in order to successfully combat corruption. However its usage should be well structured in order to achieve the highest level of usefulness to a society. Closely related to transparency is accountability as a result of mal-performance of an individual.

### *Accountability*

Accountability in general means, according to Cardona<sup>527</sup>, that "one person or authority has to explain and justify its actions to another". Bovens<sup>528</sup> describes two concepts of accountability: *accountability as a virtue* and *accountability as a mechanism*. The first concept is seen as characteristic which officials and government institutions should possess. Bovens explain that in this meaning accountability is used "as a normative concept, as a set of standards for the behaviour of actors, or as a desirable state of affairs". This further implies that accountability in this case means "being accountable", and represents a virtue of a particular actor, an organisation or official. Understood in this sense it is close to "responsiveness" and "a sense of responsibility" which further implies a "willingness to act in a transparent, fair and accountable way". He takes as an example of a successful attempt to "operationalise accountability as virtue", the Global Accountability Framework which defines standards of behaviour for its actors. Bovens says that the second, narrower sense refers to a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his conduct. The forum is entitled to ask the questions and pass judgements and the actor might face the consequences. From this definition, according to Bovens, variety "accountability relations" arise: (1) based on the type of the forum: the first question is *to whom* is the actor accountable and here distinction is made between political, legal, administrative and social accountability; (2) based on the actor required to appear before the forum: the second question is *who* should be accountable and the answers point to corporate or organizational, hierarchical and collective accountability; (3) finally based on the nature of the relationship between actor

<sup>525</sup>For further discussion about the limitations of transparency see: "Disclosure as a legislative device", *Harvard Law Review*, 76, 1963, pp. 1273-1293

<sup>526</sup>Ostrom, E. (1998): "A Behavioural Approach to the Rational Choice Theory of Collective Action", *American Political Science Review* 92 (1), pp. 1-22

<sup>527</sup>Cardona, F. (1998): "European Principles for Public Administration", SIGMA Paper no. 27, Paris: OECD, p.12

<sup>528</sup>Bovens, M. (2010): "Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism", *West European Politics*, 33:5, pp. 946-967

and the form: the third question is *why* the actor feels compelled to render account, and the answer lies in the nature of the obligation which could be vertical, horizontal or diagonal. As an example for this type of accountability the author gives the Utrecht School of Governance which in conducting research analyses three sets of questions related to the evaluation of accountability mechanism. Regarding corruption Bovens claim that accountability to legal and administrative forums, for instance courts, ombudsman, etc., could be effective mechanisms for preventing and detecting corruption, as well as social forms of accountability which create check and balances.<sup>529</sup>

The purposes of the accountability are, according to Aucoin and Heintzman<sup>530</sup>, threefold: first, it should prevent “the abuse and misuse of public authority”; second, it should assure citizens that public resources and “adherence to the law and public service values” is secured; and third, it should support continuous “improvement in governance and public management”. One of the central features regarding accountability is managing outcomes which is seen as “central feature of New Public Management. However, Aucoin and Heintzman disagree and argue that this system is able to function only if supported by other kinds of constraints such as...” comprehensive systems of administrative law, backed by judicial or administrative review, strong legislative oversight, or the disciplines of the market or professional codes”. They further explain that putting accountability and performance in competing position is not constructive approach because the improvement of accountability does not necessarily bring the performance improvement. However, performance cannot be improved without improved accountability.

Transparency plays an important role for accountability. For example, Liem<sup>531</sup> “output orientation” sets the requirements for clear and measurable objectives which could be controlled and for their fulfilment people could be held accountable. In this sense lack of transparency creates a problem of connecting results with persons which in the efforts to fight corruption could be essential. Apart from improving performance, according to Liem, public accountability also functions “to enhance the integrity of public governance” and as a safeguard against corruption. In the context of corruption combat in developing and transitional countries, transparency and accountability are seen in the synergy. The understanding of transparency and accountability in socialist countries was according to the institutional setting of authoritarian regime. Since the post-socialist countries have these perceptions as a starting point on their journey towards democracy, their essential features will be discussed in the next section.

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<sup>529</sup>Ibid, pp.950-955

<sup>530</sup>Aucoin, P. and Heintzman, R. (2000): “The Dialectics of Accountability for Performance in Public Management Reform”, *International Review of Administrative Sciences* 66, pp. 45–55.

<sup>531</sup>Liem, S. I. (2007): *Constituents of Transparency in Public Administration, With Reference to Empirical Findings from Estonia*. St. Gallen: Univ., Hochschule für Wirtschafts-, Rechts- und Sozialwiss. (HSG), 2007.



### 3.4.1.2 Transparency and accountability in socialism

The father of the theory of bureaucracy, Weber<sup>532</sup> claims the bureaucracy always attempts to hide its knowledge and exclude the public from its activities. The concept of the “office secret” is bureaucracy invention which it defends it strongly although “outside specific areas, such as military administration, cannot be justified with purely functional arguments”. This immanency of each bureaucracy had specific context in socialist societies. According to Liam<sup>533</sup>, “there was no independent public administration in communism”. This proves Kornai<sup>534</sup> whose claimed that the socialist state based its functioning and power on a “highly centralised and strictly hierarchical organisation” with the ruling party at the top of decision making chain. “Bureaucratic coordination”, was the dominant coordination mechanism. Managing of public sector in practice meant that plan which was decided centrally had to be implemented. Kornai states that implementation of plans down to the local level was “a basically downward flow of information... which lower level officials receives from a higher as a command, not a recommendation”.<sup>535</sup> As previously explained in *Chapter 1* when characteristics of the socialist system were discussed, constitutions of socialist countries had formally separation of powers, but in practice this division was not respected and that had consequences to the rule of law. To summarize the previous claims, in the socialist system, the members of the legislature were not elected by the people but nominated by the bureaucracy and therefore had no control over it; moreover it was the part of bureaucracy itself. This had a significant impact on the legality of the administrative decisions because orders and regulations did not always have a legislative basis, and administrative action was not always based on formally enacted laws. However, if it was deemed necessary a party could always induce the creation of a legislative basis. Even an infringement of a law could be given legal foundation. Furthermore, since the courts were not independent, they neither protected the individual nor exerted control on the bureaucracy. Legal protection was not guaranteed and individuals could not rely on rights granted by law. There was no legal certainty; administrative action was inconsistent, and decisions were incalculable and arbitrary. Similarly, since laws were interpreted differently depending on the case in hand, equal protection was not respected, either. As Kornai<sup>536</sup> explains the bureaucratic apparatus was “not subordinate to any stable legal system but on the contrary the formal system of law is subordinate to the current endeavours of the bureaucracy”. The description above leads to the conclusion that under these circumstances, even if it was implemented, transparency could neither enhance legal certainty nor equal legal protection. If the rules could be arbitrarily changed or interpreted, designing of clear and understandable laws and regulation do not appear effective. The non-application of the rule of law makes transparency irrelevant in the context of public administration operating.

<sup>532</sup>Weber, M. (1978): *Economy and Society. An Outline of Interpretive Sociology*, Roth, G. and Wittich, C. (eds.), New York: Bedminster Press, p.992

<sup>533</sup>Liam, S. I. (2007): *Constituents of Transparency in Public Administration, With Reference to Empirical Findings from Estonia*, St. Gallen: Univ., Hochschule für Wirtschafts-, Rechts- und Sozialwiss. (HSG), 2007

<sup>534</sup>Kornai, J. (1992): *The Socialist System: The Political Economy of Socialism*, Princeton University Press, pp.97, 363

<sup>535</sup>Ibid, p.113

<sup>536</sup>Ibid, pp.47,48

As described above, transparent administration is more accountable towards the citizens and provides them with control. Transparency can be considered a counterweight to administrative power and may reduce the risk of arbitrary action by the administration. If administrative performance becomes more transparent, it also can be evaluated better.

However, regarding accountability Kornai<sup>537</sup> explains that in socialist system, party had concentrated control which was exercised through “supervision, repression and intimidation”. These methods dominated through the whole system because “an exit option was virtually absent” because “resigning from party membership or applying for emigration was dangerous”. Beside party control no other mechanisms were in place. Kornai says that parliamentary control did not exist and any opposition to the party was “systematically eliminated”. Regarding civil society control, he claims that at that time it was “unthinkable” and contrary to the interest of the authorities and therefore all civic activity was channelled through formally autonomous organizations, again controlled by the state. In this context, administration subordinated to the direct control of the party was not able to disclose any information without the approval. Information was “strictly censored” and used to influence people not to inform them. The only available information was those in line with the official ideology.<sup>538</sup>

The description of the socialist system provided above is closely related to the understanding and attitudes towards transparency and accountability in post-socialist countries. As Stiglitz<sup>539</sup> said, “it is important to create the culture of openness and responsibility which requires the change of mind setting and it is commonly agreed that this action requires certain period of time”. The claim of this thesis is that the designing of a responsive anti-corruption framework, taking into account specificity of the countries in transition, could possibly speed up the process and effectively help these countries in the fight against corruption.

### 3.4.2 *The main points of the discussion*

This section on transparency and accountability described the importance of these elements and necessity for inclusion in the anti-corruption pyramid. Transparency is essential for well-functioning of democratic society in many ways. It allows citizens to observe the processes which are going on inside the public institutions and provide them with control and trust that decisions are made according to the rule of law principle and equality of all. Transparency assures that public interests are pursued instead of private, particular once and as such minimises the raising of opportunities in that sense. However, it should be also kept in mind that providing transparency is not costless and sound policy should find the optimal level of costs and benefits for the information disclosure. This is particularly important in the case of transitional countries whose resources are usually limited.

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<sup>537</sup>Ibid, p.100

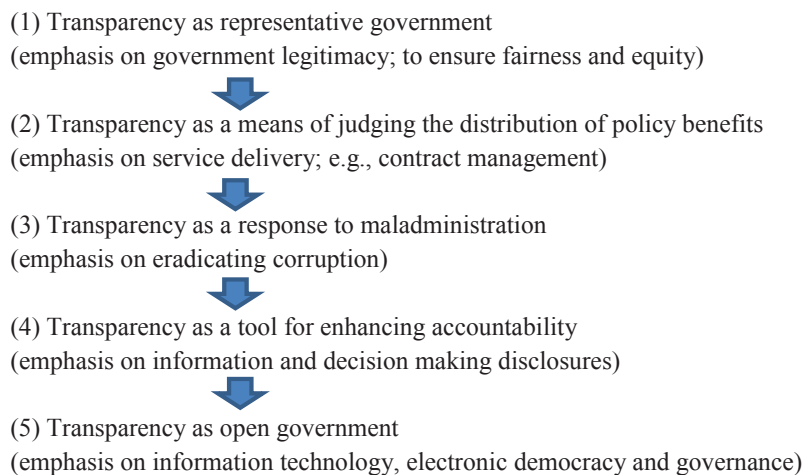
<sup>538</sup>Ibid, p.45

<sup>539</sup>Stiglitz, J. (2002): “Transparency in Government” in *The right to tell: The Role of Mass Media in Economic Development*, The International Bank for Reconstruction and Development/The World Bank, 2002, pp.28-35

<sup>539</sup>Ibid, pp. 39-42

Some interesting observations regarding transparency are made by Otenyo and Lind<sup>540</sup>. According to them, depending on the level of development, the meaning of transparency varies. Whereas “in the more advanced countries, the current usage of the concept is closely related to expanding democracy in decision-making”, transparency reforms in developing countries are “likely to be associated with combating corruption”. Since they consider transparency as being “associated with broad reforms in public administration”, the “faces of transparency roughly mirror definable phases of global and national administrative reforms”. The *Figure 3.2* below represents their view of changing faces and phases of transparency reforms in government depending on the development stage.

*Figure 3.2: Change of faces and phases of transparency reform in government*



*Source: Otenyo and Lind, Faces and Phases of Transparency Reform in Local Government p. 292*

Authors claim that the region of Central and Eastern Europe, in this figure, is seen at the same level as most parts of the developing world<sup>541</sup> but Liem<sup>542</sup> questions these views claiming that it is probably influenced by (debatable) inclusion of former Soviet republics in this category. Leaving debate aside, transparency and accountability in this research are used as means for corruption combat and improvement the achievement of transitional countries regarding this matter.

<sup>540</sup>Otenyo, E. E. and Lind, N. S. (2004): “Faces and Phases of Transparency Reform in Local Government”, *International Journal of Public Administration*, 27 (5), pp.278-307; pp.303, 291

<sup>541</sup>Ibid, p.295

<sup>542</sup>Liem, S. I. (2007): *Constituents of Transparency in Public Administration, With Reference to Empirical Findings from Estonia*. St. Gallen: Univ., Hochschule für Wirtschafts-, Rechts- und Sozialwiss. (HSG), 2007.

### 3.5 Conclusion

The research question of this chapter, which in the paradigm *structure-conduct-performance* discusses the second aspect, asked ***how the preferences of civil servants should be targeted/coordinated in order to achieve the optimal level of corruption combat in public administration of post-socialist countries.*** The answer to it lies in the *anti-corruption pyramid*, designed in this thesis according to one of the original pyramids described in the responsive regulation literature. This literature states that before using “heavy legal guns”, the enforcement agency should apply gentle means and provide people with the opportunity to voluntarily comply with the laws and regulations. This view is founded on the procedural justice theory which explains that people are ready to comply with any public decision if they perceive it as justified. This approach is considered more suitable for transitional countries since the dominant strategies adopted, influenced by international anti-corruption regulation, according to the literature did not provide expected outcome. The claim of this thesis is that due to idiosyncrasies of post-socialist countries which are rooted in their past, the “one size fit all” international anti-corruption strategies for their purpose should be modified. As previously explained the dominant approach is described as repression-prevention-transparency model. Here the claim is that these elements do not have the same rank and importance. In pyramid their ranking goes from prevention to transparency and finally repression. This model is adjusted to the specific characteristics which post-socialist countries have to overcome.

The specific problems of transitional countries lie in the mentality of people, embodied in *homo sovieticus* model, and lack of trust in public institutions which authoritarian regime produced over decades. The two characteristics might be seen as two sides of the coin and the strategy to approach them should resolve the issues of changing mentality and increasing the trust. Regarding the most suitable approach in rising trust, Mulder et al.<sup>543</sup> claim that although a sanctioning system might increase trust and make people cooperate, it does that by imposing it externally while it fails to do the same internally. This is true because system of sanctions sends the information that “fellow group members are self-interested and trust in others being internally motivated to cooperate is undermined”. Since high level trust represents one of the important aspects for the corruption combat it might be essential to be internally motivated, especially in the case of transitional countries.

Kaptein<sup>544</sup> provides the overview of various empirical research projects which show that people’s behaviour could be expressed in various ways based on different regulatory policy. In his book *Why good people sometimes do bad things* he claims that what one expects is what one gets. This practically means that if you expect more (effort) from people you will get more (effort) from them and this situation he calls “Pygmalion effect”. On the other hand if you expect less (effort) from people you will get less which is described as “Golem effect”. Second claim is that organization should not put too much emphasis on preventing people from

<sup>543</sup>Mulder, L. B., Van Dijk, E., De Cremer, D. and Wilke, H. A. M. (2006): “Undermining trust and cooperation: The paradox of sanctioning system in social dilemmas”, *Journal of Experimental Social Psychology* 42, pp.147-162

<sup>544</sup>Kaptein, M. (2012): *Why good people sometimes do bad things: 52 reflections on ethics at work*. Available at: <http://www.ethicsmanagement.info/content/Why%20good%20people%20sometimes%20do%20bad%20things.pdf>

being corrupt but rather to ensure that they flourish and bear fruit. He further states that people adopt the norms and values of those they feel connected with. This applied to the organization means that the more employee feel a bond with their organization, the more they will commit to the goals of their employer. Finally Kaptein advocates for creation within organization, the culture in which dilemmas can be discussed, different opinions can be expressed freely, and which promotes transparency by working in teams, setting matters down on paper, clearly assigning responsibilities and carrying out checks.

These insights provide an image of the way people operate which might be particularly important for the context of building new institutional system. Before the establishment of any institutions the individuals are the units relevant for its creation. Once the institution is established, the spot light shifts from the individuals to the institution. However, in the creation of new institutional settings the remains of the old system are for a certain period of time more or less present in the foundation of the new system. The approach of this chapter targets the constituents of the institutions – individuals, more precisely civil servants in the public administration of post-socialist countries. Therefore, the pyramid has following layers listed from the bottom-up: propensity to corruption-culture, transparency and accountability, deterrence mechanism for administrative sanctions and finally deterrence mechanism for criminal sanctions.

This chapter focuses on the first two layers. As previously explained, the homo sovieticus mentality is in the pyramid reflected by the comparable, already developed cultural measures and therefore the first layer of the pyramid includes: universalistic and particularistic, individualistic and collectivistic and power distance acceptance culture aspects. For each of the type, differences regarding value system, organizational structure of administration and attitude towards corruption, are discussed. According to the results homo sovieticus should be replaced by the civil servant whose cultural values are universalistic, individualistic and with low power distance. Transparency and accountability, in the second pyramid layer, are seen as corrective tools for those who fail to follow the rules of the first one. However, the benefits of their employment should be balanced with their costs in order to achieve optimal level. The more practical implications of these two layers are discussed in *Chapter 6*. In sum, the optimal solution for targeting preferences of civil servants is to provide the mechanism which will employ those who possess the above described cultural characteristic and to implement the mechanisms which will ensure transparency of their work and make them accountable for any misconduct.

To conclude, in general all behaviours which do not lead to desired outcomes should be targeted by the state in the proper manner. According to Sunstein<sup>545</sup>, government can use various means to achieve the defined goal. It may restrict itself to *education*, which represents statements of fact designed to provide “accurate beliefs”. It also may attempt to engage *persuasion*, “a self-conscious effort to alter attitudes and choices rather than simply to offer information”. This could be achieved with rhetoric and vivid images to change norms, meanings or roles attempting to persuade people to make certain choice. He further claims that

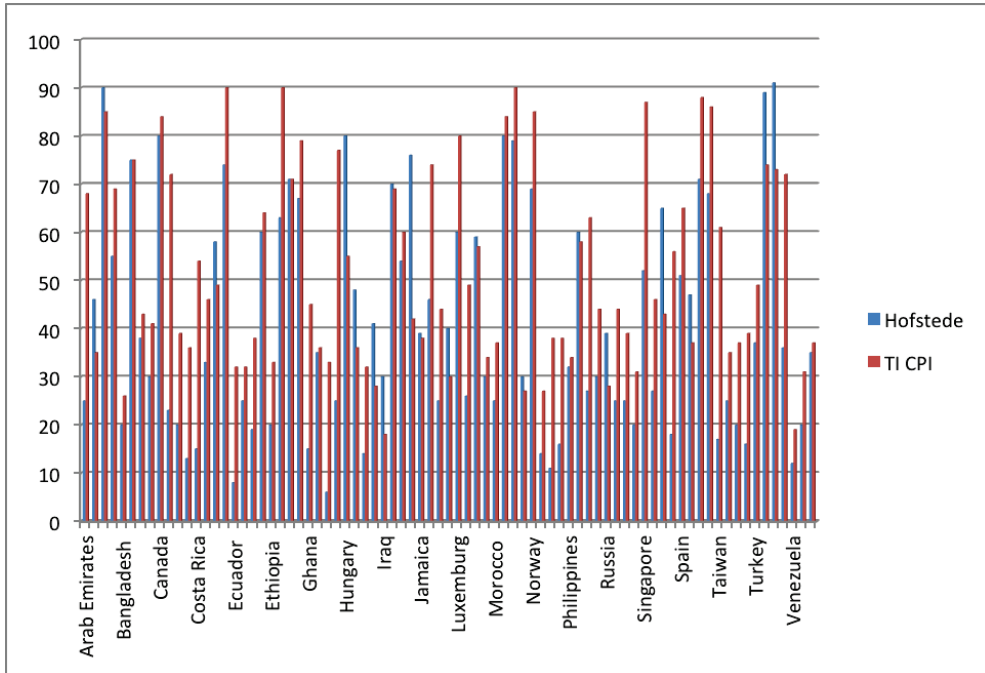
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<sup>545</sup>Sunstein, C. R. (1996): “Social norms and social roles”, *Columbia Law Review*, Vol. 96, No. 4 (May, 1996), pp. 903-968

government might also use economic instruments to *tax or subsidize* choices. It may also impose *time, place and manner restrictions* to channel the choice. The most intrusive kind of government action is of course *straightforward coercion* which means prohibition. Depending on the state context and subject of discussion the sound policy should employ those means which take into account all necessary facts related to the problem in order to make efforts made by state effective. The suggestion of an anti-corruption pyramid as a model for policy design in transitional countries regarding corruption combat is one example. This Chapter discussed its first two layers which promote education and persuasion while the next one will describe the last two layers and constraints.

### Appendix 3.1

For all countries: association between Collectivism &and Corruption



Correlations

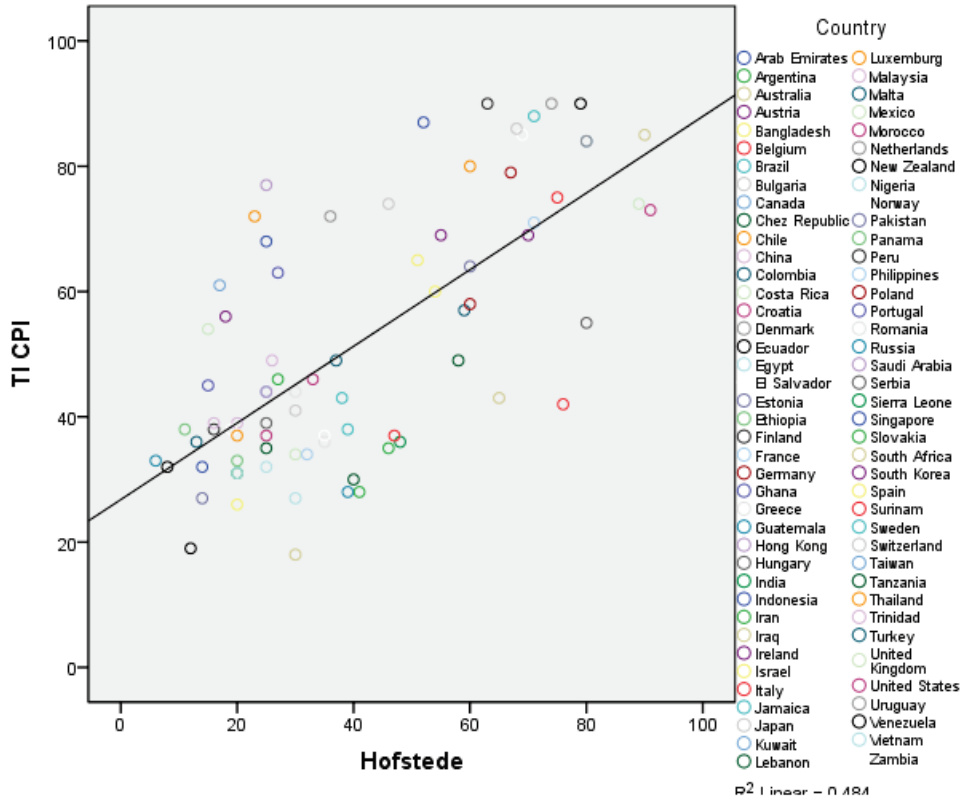
		Hofs tede	TI CPI	TIBPI
Hofs tede	Pearson	1	,69	,663**
	Correlation		6**	
	Sig. (2- tailed)		,00	,000
	N	79	79	28
TI CPI	Pearson	,696	1	,848**
	Correlation	**		
	Sig. (2- tailed)	,000		,000
	N	79	79	28
TIB PI	Pearson	,663	,84	1
	Correlation	**	8**	
	Sig. (2- tailed)	,000	,00	
	N	28	28	28

**Correlations**

		Hofs tede	TI CPI	TIBPI
Hofs tede	Pearson Correlation	1	,696**	,663**
	Sig. (2-tailed)		,000	,000
	N	79	79	28
TI CPI	Pearson Correlation	,696**	1	,848**
	Sig. (2-tailed)	,000		,000
	N	79	79	28
TIBPI	Pearson Correlation	,663**	,848**	1
	Sig. (2-tailed)	,000	,000	
	N	28	28	28

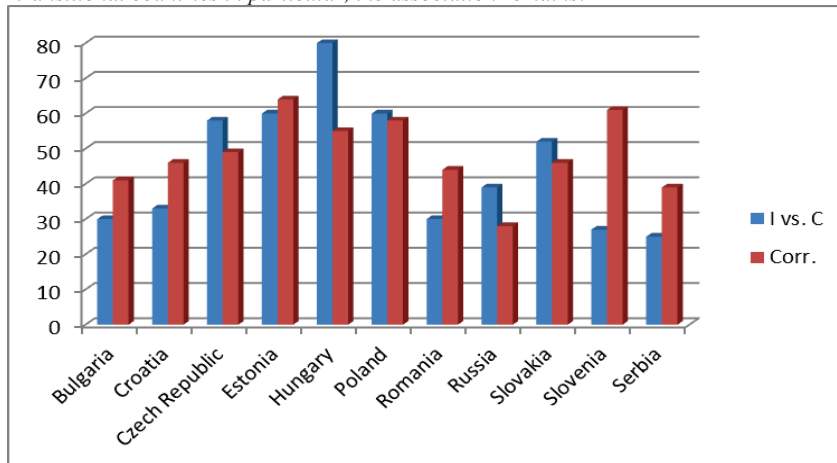
\*\* . Correlation is significant at the 0.01 level (2-tailed).





### Appendix 3.2

For transitional countries in particular, the association remains:



**Correlations**

		Hofs tede	TI CPI	TIBPI
Hofs tede	Pearson Correlation	1	,669*	. <sup>a</sup>
	Sig. (2-tailed)		,034	.
	N	10	10	1
TI CPI	Pearson Correlation	,669*	1	. <sup>a</sup>
	Sig. (2-tailed)	,034		.
	N	10	10	1
TIBPI	Pearson Correlation	. <sup>a</sup>	. <sup>a</sup>	. <sup>a</sup>
	Sig. (2-tailed)	.	.	.
	N	1	1	1

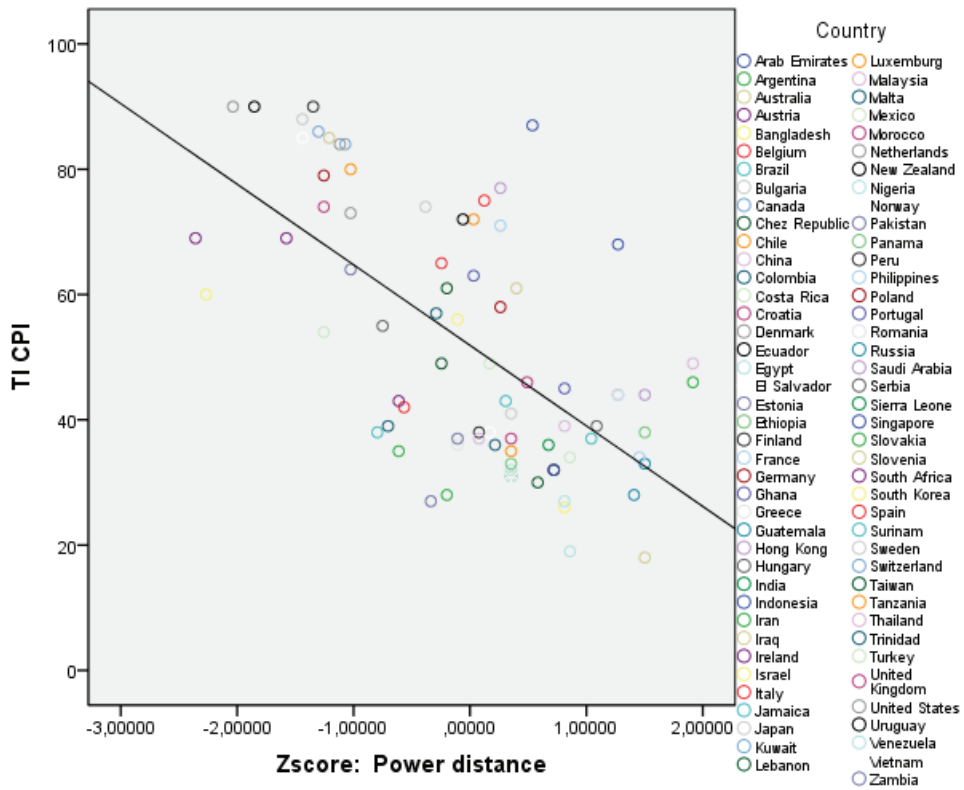
\*. Correlation is significant at the 0.05 level (2-tailed).

a. Cannot be computed because at least one of the variables is constant.

**Correlations**

		Hofs tede	TI CPI	TIBPI
Hofs tede	Pearson Correlation	1	,669*	. <sup>a</sup>
	Sig. (2-tailed)		,034	.
	N	10	10	1
TI CPI	Pearson Correlation	,669*	1	. <sup>a</sup>
	Sig. (2-tailed)	,034		.
	N	10	10	1
TIBPI	Pearson Correlation	. <sup>a</sup>	. <sup>a</sup>	. <sup>a</sup>
	Sig. (2-tailed)	.	.	.
	N	1	1	1

*Appendix 3.3*



### Appendix 3.4

Table: Diagnosing particularism; A qualitative tool

<i>Diagnosis questions</i>		<i>Sources of information/indicators</i>
<b>Power distribution</b>	Is influence distributed unevenly, resulting in constant preferential treatment of certain groups over others by the state? Is it only one group (network/estate) which enjoys privileges? Is this consistent over time or does it change according to elections? Is there one particular group that constantly loses due to power inequality? Is autonomy sufficient for a “loser” group to exercise its voice? Are there genuine drivers of change present in the broader society (media, civil society, politics)?	<p>Real influential jobs held by the same individuals or networks regardless of the outcome of elections</p> <hr/> <p>Persistence of widespread popular perceptions of government corruption despite changes in government</p> <hr/> <p>High political migration from opposition parties to the party in government search of political rents</p>
<b>State autonomy</b>	Is the state autonomous from private interest or captured by the latter? How politicized is the administration and the public sector in general? Is there a permanent bureaucracy which does not change with elections and how much influence does it have over policy formulation and implementation? Is this bureaucracy well trained and paid to fulfil its functions? Are policy formulation and public spending transparent so that media and citizens can observe it?	<p>Degree of politicization (to what level personnel reshuffling occurs at government change); to what extent rules and politicians are also successful private entrepreneurs</p> <hr/> <p>Perception of important government favouritism for certain companies despite decreasing or petty corruption</p>
<b>Public allocation (services, goods)</b>	Is the main goal of the state to cater to everyone, or to special interests or groups? What is the norm in public allocation? Does the party/clan in government distribute mostly to itself (associated local governments or regions, favourite companies)? How much of the total spending budget are rents? Does this change from one year (or government) to the next?	<p>Budgetary sector surveys</p> <hr/> <p>% allocation per political party regions/ %vote share in regional party elections</p> <hr/> <p>World Economic Forum government favouritism indicator</p>
<b>Separation private - public</b>	To what extent is the norm that a public position or advantage is passed down in a family or used for family profit? Is it customary that rulers/ officials use public funds (or administrative resources) to cover private expenses? Is there any public scrutiny and disclosure of such expenses? Is there any moral outrage at such disclosures or is the practice accepted?	<p>No of public positions occupied by kinship favouritism</p> <hr/> <p>Cases of use of administrative resources for private goals</p>
<b>Relation formal/informal institutions</b>	Is the dominant norm closer to the formal or the informal institution? Is the formal institution subverted/ competed by the informal one? Is there an effort to enforce formal (legal) norms? How long has the gap existed between formal and informal institutions?	<p>Survey of practices to establish which norm is dominant and if informal norms are just parallel/ complementary or in fact competitive/subversive of formal ones</p>
<b>Accountability</b>	Has anyone belonging to the chief status group (clan, party or family) ever been deposed from an official position or sentenced by a court? Are reports of wrongdoing by such people ever followed up with public investigations? Do people as a rule officially complain of unfair treatment? Are there any whistle-blowers? Do regular reports on government/ government agencies exist at end year/mandate? Do they include information on objectives which were not reached and measures taken to rectify them?	<p>Widespread perception in surveys that politicians are above the law, perception of political parties as top ‘status groups’ and political affiliation as indispensable for economic success</p>

Source: Mungiu-Pippidi, et al., “Contextual Choices in Fighting Corruption: Lessons Learned”, p. 16

## ***Chapter 4: Designing optimal anti-corruption policies in transitional countries: putting constraints***

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*Democracy is less a system of government than it is a system to keep government limited, unintrusive; a system of constraints on power to keep politics and government secondary to the important things in life, the true sources of value found only in.*

Ronald Regan

### **4.1. Introduction**

The last two layers of the anti-corruption pyramid present the gradation of “guns” which regulatory strategy should employ after the failure of voluntary compliance described in the first two layers. The sub-research question of this chapter is ***How constraints should be imposed in order to achieve the optimal level of corruption combat in public administration of post-socialist countries?*** Chapter 1 discussed corruption in general, mentioning some basic characteristic of the corrupt act, for instance its secrecy. Here the discussion goes into more details because penalties impose constraints on human behaviour and as such their application should be well-founded. Therefore, the first part of this chapter will be devoted to detailed analysis of the essence of corrupt act and actors, types of corruption relevant for anti-corruption pyramid and to the theoretical discussion of punishment. The second part of the chapter discusses the third layer of the pyramid, more precisely administrative sanctions, its purpose and possible use in corruption cases. Finally, the last section presents the purpose of criminal punishment, sanctions and its application in corruption combat.

### **4.2. Corrupt act**

#### *4.2.1. Characteristics of the actor(s)*

In previous chapter it was said that the definition of corruption used in this thesis is the one which describes it as *abuse of public power for private gain*. Abuse of power, as described in the *Chapter 1*, includes: bribery, nepotism, cronyism, clientelism, embezzlement, fraud and conflict of interest. While the first two layers of the anti-corruption pyramid set the foundation for fight against the broad range of abuse of public office, due to its mainly educative and preventive function, the second two layers impose penalties for engaging in corrupt acts. These penalties represent restrictions on human rights and liberty and as such should be observed carefully and closely. Nepotism, cronyism and clientelism provide in the recruitment and promotion process favouritism based on specific characteristic of persons and, as such, are in the hands of the managers in public administration and not of ordinary civil servants. These abuses of public office could be resolved by implementing the merit based criteria embedded in the NWS approach for PA institutional setting. Fraud, embezzlement and conflict of interest belong to the abuse of office but in the essence have different characteristics from the corruption in a narrow sense, more precisely bribery. Therefore, regarding constraints imposed

to human behaviour to fight corruption here will be discussed only those imposed for bribery of civil servants.

As explained earlier in the essence of a corrupt act, in this case bribery, is the agreement between two parties, public official – civil servant on one side and on the other client. Following the target of this research a closer look to the profile of civil servants is necessary. Describing servants in socialist era Kramer<sup>546</sup> claims that public officials need to have “opportunity and incentive to engage in corruption” because “the absence of either makes corruption impossible” and soviet society created conditions in which both of them “frequently exist”. The fusion of the Party and the state increased government activity and made it “the primary agent for employment, production and regulation”, which resulted in broad scope of opportunities for corruption. Perez-Lopez<sup>547</sup> explains that specific interaction between “the governmental and economic institutions, ideologies and traditional political culture” made civil servants “particularly prone to corruption”. Beside the extensive public sector and central planning, the Party was another source of corruption since the top officials were “immune to exposes and reprisal from below” and therefore able to engage in maximisation of personal wealth. This behaviour created a “new class” which Djilas<sup>548</sup> describes as the one with “special privileges and economic preferences because of the administrative monopoly they hold”. Kramer<sup>549</sup> claims that in soviet societies the detection and severe punishment of corrupt acts was very low and the benefits for public officials of these misdeeds far outweighed the costs. Furthermore, officials might not be willing to pursue cases of corruption due to the possibility of being considered responsible by higher officials for not preventing it in the first place. On the other hand, if party reveals the cases of corruption, “it may be criticized for its cadre selection policy” and therefore it prefers covering up and not “washing its dirty linen in public”. From this point, civil servants in post socialist countries had to start their journey towards the reformed and modern civil service. However, the modern civil service has no single meaning, which was already discussed in the *Chapter 2* of this thesis.

Demmke<sup>550</sup> looks at the profile of civil servants in the EU member countries and claims that diversity of public employees and the jobs they perform over the years became very distinct. However, the core of civil service in general consist educated and skilled workers. When they engage in corrupt activities they appear to receive the characteristics of *white-collar criminals* which in general distinguish them from the “street, blue” ones. This comparison is important to make because they create the arguments for the development of the specific approach to corruption regarding its consequences and punishing of wrongdoers in order to improve combat in transitional countries. Among the first one who addressed educated and

<sup>546</sup>Kramer, J. M. (1977): “Political corruption in the U.S.S.R.”, *The Western Political Quarterly*, Vol. 30, No. 2, Jun 1997, pp. 213-224

<sup>547</sup>Perez-Lopez, J. F. (1999): “Corruption and the Cuban Transition”, *Association for the Study of the Cuban Economy*, pp.453-468

Available at: <http://www.ascecuba.org/publications/proceedings/volume9/pdfs/perezlopz.pdf>

<sup>548</sup>Djilas, M. (1957): *The New Class*, New York: Praeger Publishers, pp.152

<sup>549</sup>Kramer, J. M. (1977): “Political corruption in the U.S.S.R.”, *The Western Political Quarterly*, Vol. 30, No. 2, Jun 1997, pp. 213-224

<sup>550</sup>Demmke, C. (2005): *Are civil servants different because they are civil servants?*, European Institute of Public Administration, June 2005, p.27

respected criminals was Ross<sup>551</sup>. He focuses on business people who, hiding behind the mask of respectability, engage in the activities harmful for the society. He names them as “criminaloids”. For Ross, they represent more dangerous enemies of the society compared to ordinary criminals. They “sport the livery of virtue and operate on a titanic scale.” Building on Ross work, more than 70 years ago Sutherland<sup>552</sup> further developed the concept of white collar crime using the term “*white-collar criminaloid*”. He disagrees with basic principles of criminal law and focus of the criminology on social and economic determinants as important aspects of criminal activity. He draws attention to the fact that crime could be committed by any individual regardless of their social status. Therefore, he sees white collar crime as “crime committed by a person of respectability and high social status in the course of his occupation”. Focusing on the type of white-collar criminals and complexity of criminal activity performed by them, he argues for the abolishment of presumption of innocence and *mens rea* (criminal intent) in these types of cases. Talking about the consequences of white-collar crime on society Sutherland<sup>553</sup> claims they are “diffused over a long period of time and perhaps over millions of people, with no person suffering much at a particular time”.

An important aspect regarding white-collar crime was by Clinard and Quinney<sup>554</sup>. Using Sutherland’s idea they argue that white-collar crime could be divided into two types: corporate and occupational crime. *Corporate crime* is then defined as illegal behaviour committed by employees in order to provide the benefit for their corporation. On the other hand *occupational crime* is a “violation of legal codes in the course of activity in a legitimate occupation.” According to Payne<sup>555</sup> work of Clinard and Quinney was very influential for criminologists regarding the white-collar crime. He further argues that modern concepts of white collar crime show that criminologists and sociologist provide various definitions of white collar crime and they see it as: 1) moral or ethical violations, 2) crime or social harm, 3) violations of criminal law, 4) violations of civil law, 5) violations of regulatory laws, 6) workplace deviance, 7) definitions socially constructed by businesses, 8) research definitions, 9) official government definitions, 10) violations of trust, 11) occupational crimes, 12) violations occurring in occupational systems. *Table 4.1* shows eight different concepts and definitions that criminologists have used to describe these behaviours. However, each of the concepts provided in the Table has its imperfections.

<sup>551</sup>Ross, E. A. (1907): *Sin and Society: An Analysis of Latter-Day Iniquity*, Boston: Houghton Mifflin Company, p. 48

<sup>552</sup>Sutherland, E. H. (1983): *White Collar Crime: The Uncut Version* (New Haven and London: Yale University Press, 1983, pp. 280.

<sup>553</sup>Sutherland, E. H. (1954): “Is “White collar crime” Crime?, *American Sociological review*, Vol. 10, No. 2, 1944 Annual Meeting Papers (Apr., 1954), pp. 132-139

<sup>554</sup>Clinard, M. B. and Quinney, R. (1973 [1967]): *Criminal Behaviour Systems: A Typology*. New York: Holt, Rinehart & Winston.

<sup>555</sup>Payne, B. K. (2011): *White-Collar Crime: A Text/Reader*. Thousand Oaks, CA: SAGE Publications, 2011



Table 4.1: Evolution of the White-collar Crime concept

Concept	Definition	Reference
<b>Criminaloid</b>	The immunity enjoyed by the perpetrator of new sins has brought into being a class for which we may coin the term criminaloid. By this we designate such as prosper by flagitious practices which have not yet come under the effective ban of public opinion. Often, indeed, they are guilty in the eyes of the law; but since they are not culpable in the eyes of the public and in their own eyes, their spiritual attitude is not that of the criminal. The lawmaker may make their misdeeds crimes, but, so long as morality stands stock-still in the old tracks, they escape both punishment and ignominy	E.A. Ross (Sin and Society, 907, p. 48)
<b>White collar crime</b>	Crime committed by a person of respectability and high social status in the course of his occupation	Sutherland (1949)
<b>Corporate crime</b>	Offenses committed by corporate officials for their corporation and the offenses of the corporation itself.	Clinard and Yeager (1980, p. 189)
<b>Occupational crime</b>	Offenses committed by individuals in the course of their occupations and the offenses of employees against their employers.	Clinard and Yeager (1980, p. 189)
<b>Organizational deviance</b>	Actions contrary to norms maintained by others outside the organization . . . [but] supported by the internal operating norms of the organization	Ermann and Lundman (1978, p. 7)
<b>Elite deviance</b>	Acts committed by persons from the highest strata of society . . . some acts are crimes . . . may be criminal or noncriminal in nature.	Simon (2006, p. 12)
<b>Organizational crime</b>	Illegal acts of omission or commission of an individual or a group of individuals in a formal organization in accordance with the operative goals of the organization, which have serious physical or economic impact on employees, consumers, or the general public.	Schrager and Short, (1978, p. 408)
<b>Occupational crime</b>	Any act punishable bylaw which is committed through opportunity created in the course of an occupation that is legitimate.	Green (1990)

Source: Payne, "White Collar-Crime: A Text/Reader" p.38

Analysing the profile of the white collar criminals Wheeler et al.<sup>556</sup> found that white-collar offenders, comparing to conventional offender, have, among others, the following characteristics: college education, job and started their careers as criminals later in life. Therefore, Payne<sup>557</sup> claims that the recognition of difference between white collar crime/criminals and blue crime/offenders has a strong theoretical and policy implication reasons. Since none of the criminological theories can explain both types of crimes it is necessary to approach them differently. He further explains that regarding the policy implications, it is crucial to recognize that these two types of crimes require different criminal justice strategies. This is true because, regarding the efforts to prevent crime, the response of two groups of criminals is expected to be different. Payne explains that prevention of white collar crime is a far more complex issue compared to street crime.

To conclude, in the bribery agreement two parties are involved of which one is public official, in this case civil servant. The intuitional setting and according behaviour of civil servants in socialist countries was for decades highly corrupt. Since the legacies of the past do not disappear overnight, the claim of this research is that it still might be one of the important factors for the relatively high level of corruption in post-socialist countries. In order to

<sup>556</sup>Wheeler, S., Mann, K. and Sarat, A. (1988): *Sitting in Judgement: The sentencing of white-collar criminals*, Yale University Press (New Haven),

<sup>557</sup>Payne, B. K. (2011): *White-Collar Crime: A Text/Reader*. Thousand Oaks, CA: SAGE Publications, 2011

approach this problem in putting constraints on behaviour of civil servants and designing of adequate incentive system three issues has to be kept in mind. First, tolerance to corruption, inherited from the past, might be still widely present behaviour in post socialist administration. Second, in general civil servants are educated and skilled employees and they operate differently from “street criminals” and as such should be treated differently in terms of prevention and punishment. Finally, the consequences of civil servants engagement in corrupt activities are very difficult to detect due to the lack of a concrete victim. As such they might be diffused over time and over a high number of people. Before designing the punishment mechanisms, the necessary distinction among corrupt acts of bribery should be made.

#### 4.2.2. Three types of corrupt acts: “legal, illegal and quasi-legal” corruption

Not all acts of bribery have the same causes and as such they do not impose the same costs on the society. Bardhan<sup>558</sup> describes as a simplest model of corruption one in which excessive regulation is in place and the bureaucrats are given some discretionary powers to implement them. This provides an opportunity for civil servants to engage in corruption. Guriev<sup>559</sup> claims that optimal level of red tape is not considered as negative for society but the problem create “self-interested bureaucrats who tend to over produce red tape relative to the social optimum”. Therefore it is sometimes necessary for clients to “grace the weal” and bypass mindless regulations. Bardhan<sup>560</sup> claims that the bypassing might take two forms. One form includes bureaucrats who take bribes to do what they are supposed to do and the amount paid for this bribe presents an additional fee for the other party, paid beside the legally prescribed ones. The other form applies to situations in which civil servants are bribed to perform the act which they are not allowed to. Similar qualification is described by Bauhr<sup>561</sup>. She distinguishes between two types of corruption based on the motives for paying a bribe. She presents corruption in “need” and “greed” corruption. The former one occurs when, even though citizens are legally entitled to certain service, they have to pay bribe. This type of corruption is often built on extortion. Greed and corruption take place when the bribe is paid for the service to which individual is not entitled to. This act presents “collusion for mutual benefits” and as such is more hidden with costs shared “between large number of actors and taxpayers” The description provided implies that the two types of corrupt acts have differing implications.

The first type of bribe payment, here named as “*legal corruption*”, in general should “speed up the process”, the case of so-called speed money, and occurs when a civil servant’s client pays to avoid unnecessary delays in decision-making process regarding his right. In this

<sup>558</sup>Bardhan, P. (2006): “The economist’s approach to the problem of corruption”, *World Development*, 34(2), pp. 341–348, See also: Bardhan, P. (1997): “Corruption and development: a review of issues”, *Journal of Economic Literature* 35, pp. 1320–1346

<sup>559</sup>Guriev, S. (2004): “Red tape and corruption”, *Journal of Development Economics* 73 (2004), pp. 489-504

<sup>560</sup>Bardhan, P. (2006): “The economist’s approach to the problem of corruption”, *World Development*, 34(2), pp. 341–348, See also: Bardhan, P. (1997): “Corruption and development: a review of issues”, *Journal of Economic Literature* 35, pp. 1320–1346

<sup>561</sup>Bauhr, M. (2012): “Need or greed corruption”, in Holmberg, S. and Rothstein, B. (eds.): *Good Government: The Relevance of Political Science*, Edward Elgar, 2012, pp. 68-86

case client aims to reduce the “office value”<sup>562</sup> of his file. The other side of the coin in this case is that civil servants might have an incentive to delay the process, instead of speeding it up. This comes from the fact that more delays provide the civil servants more possibilities to extract the money. It also opens the floor for other bureaucrats to ask bribes or they will delay the case further and so on. Since the corrupt agreement is secret and illegal the bribe payer in this case is not able to go to the court and ask for the execution of the obligation taken by the bribe taker’s side. For the purpose of this research it is important to point out that this classification in the further analysis includes only the cases in which no harm is imposed to the third parties by this agreement. The second type of corruption, here called “*illegal corruption*”, include situations in which bureaucrats are doing the things which they are not allowed to violating by these acts rules and regulations which govern their work and entitlements. This type of secret agreement creates even stronger connections between the parties because both of them are in collusion and therefore none has an incentive to report the case. Here, one additional type of bribe might be added. Somewhere in between two types of corrupt deals could be positioned the cases which include the misuse of discretionary powers of civil servants as a result of the illegal collaboration with the party and they could be named as “*quasi-legal*”.

From this distinction some conclusions could be made regarding the effects which to types have on the society. Bauhr<sup>563</sup> claims that costs of different types of corruption might differ in their effects on the party who pays the bribe. For a person involved in need, here called “legal” corruption, the personal costs of corruption could be high compared to his income although it might be minimal in comparison to the sums paid in greed-initiated corruption. On the other hand, for person involved in greed corruption, here named as “illegal”, the amount paid “may have a minimal effect of everyday life of a person”, even if the amount is “high in absolute terms”. Bauhr concludes that greed corruption is “typically less obtrusive than need corruption”, and as such has limited influence on institutional trust compared to need corruption. Collective action literature associates need corruption to systemic corruption and low institutional trust while greed corruption does not affects the perception and trust and in general lowers collective action. Based on these claims it could be assumed that costs for society as a whole are in general lower when induced by legal corruption compared to illegal. Although Bauhr<sup>564</sup> claims that legal corruption is mainly based on the extortion, it is not necessarily the main trigger for corrupt action. Therefore, in the essence of this act lies an agreement which might be very unstable in the sense of breaking the silence among the parties. As stated above costs imposed to the society by these acts should be in general lower compared to those of the illegal corrupt agreement because they affect only the person who pays the bribe by imposing on him additional illegal fees. This party, as direct victim, is entitled to decide if

<sup>562</sup>“Office value” is described in one of the jokes about civil service and servants in Serbia. This joke tells the story of young civil servant who just started his job and was given the office to share with the old civil servant. At the beginning of his work the young servant was very diligent, responsive to requests, respected the deadlines and was always busy and overwhelmed with the work load. The old servant was observing him for a while and one day he decided to tell him that his approach towards work is not the correct one. He said: “If you rush and do everything on time the clients will think that our job is very easy. Therefore, you have to slow down and let the files to get the “office value””.

<sup>563</sup>Bauhr, M. (2012): “Need or greed corruption”, in Holmberg, S. and Rothstein, B. (eds.): *Good Government: The Relevance of Political Science*, Edward Elgar, pp. 68-86

<sup>564</sup>Ibid

he would fail the claim. However, on the other hand illegal corruption, as understood here, is in its essence an illegal agreement which brings greater distortions when it comes to legal rights distribution among the parties. More precisely, it can bring benefits to the party which have no legal rights to obtain the service in question. For instance, if someone obtains by illegal means the permission to run the school or university the benefits will go only to him, by receiving payments from students, and to a civil servant in charged for the issuing of the permit, who will receive his payment from the bribe. The question is who the victim is in this case and what are the costs of this deal. The answer to the former question is that in the first place the victim is a student who is deceived by the state that certain school operates in accordance to the prescribed rule. As such, he in good faith pays fees to the school hoping to receive knowledge which will provide a place for him in the labour market and according income. Until he realised that the licence is illegal, he might spend months or even years which at the end might mean nothing for his future because the diploma which he gets at the end has no value and as such cannot provide him with a job and incomes which he hoped for. However, the costs induced to not end here because schools have hundreds or thousands of students which in this case have the same story. Finally, the costs for the society which employs unskilled and uneducated workers as a result of the initial corrupt agreement are very difficult to measure. The intuition says that the domino effect which could be created in this case appears particularly harmful. Finally, as said above somewhere in between the legal and illegal the costs of quasi-legal corrupt deals might be located. For instance, civil servants usually possess discretionary power to decide on issuing a firearms licence. The rules which regulate the process differ from country to country but in this case the focus is on the discretionary power of civil servant which he uses after he received the bribe. These cases are very difficult to generalise since they might present a border line cases but roughly speaking, the costs of this agreement can go from no costs imposed on the society, to very difficult to measure. If person who paid the bribe harms no one, than the costs of paying bribe are only on him. However, if he injures at least one person the society might be affected on various ways depending on the facts of a particular case.

Beside economic there are also legal reasons why this differentiation should be made regarding the punishing of bribing of civil servants. Civil servants may produce an administrative act as part of their regular course of activity. If that act is produced while committing a violation of either administrative or criminal law, it will be subject to legal consequences. Cardona<sup>565</sup> explains that if an *administrative act represents a crime*, it becomes null or void. If the act is null anyone can ask his removal from a legal environment and in that case legal authorities, administrative or judicial, declare it non valid *ex tunc*, which means *ab initio*. On the other hand, when an act is void it means that it produces the effects, and only parties involved in it can ask for its nullification due to certain reasons. If this happens the act is declared non valid *ex nunc*, which means that it does not produces effects from the moment of a declaration. This further means that all actions taken until that moment are legally valid. If the act is a *result of administrative fault* it does not mean that it is void per se. It can be annulled only if proved that causal link exist between the fault and administrative decision.

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<sup>565</sup>Cardona, F. (2003): “Liabilities and Discipline of Civil Servants”, *Support for Improvement in Governance and Management SIGMA*, January, 2003

Applied to the bribery case this means that if all bribery acts are treated as criminal, without making above described distinction those to which parties had legal right face possibility to be declared null or void which might have consequences to legal certainty. On the other hand if the act provides to a party something which he is not entitled to, then such an act should be declared null or void. International regulations, more precisely only the GRECO Civil Law Convention on Corruption, regulate these issues but only in the domain of contracts which resulted from corrupt acts. The convention asks from the member states to provide the internal law according to which any contract or clause of a contract providing for corruption should be null or void. Since these provisions refer to the civil law acts and not the administrative or criminal, they are not in the scope of this thesis.

To sum up, *legal corruption* imposes lower costs to the society because they are bared only by the bribe payer. *Illegal corruption* could induce costs which are not even assessible to measurement. Finally *quasi-legal* corruption can go to both directions regarding the costs measurement. This analysis aimed to draw the attention to corruption, in a way different from the dominant approach and to provide the foundation for the future proposition regarding legal regulation. What is important to stress is that in some countries, like Germany, criminal codes make distinction between the above described types of corrupt acts. Graf von Kielmansegg<sup>566</sup> explains that German criminal law makes distinction in punishing corruption regarding the legality of the act which results from it. More precisely, if the act presents violation of the public official's duties it could be punished as active or passive bribery. If the act, on the other hand, does not violate the official's duties and it is not based on "improper considerations", it is still punishable as "granting" or "accepting an advantage" with less severe criminal sanctions. Furthermore, German law does not require that a decision by a civil servant is always based on an illegal act. He might have a discretion to make a decision, however if it is made as a result of payment his behaviour is considered wrongful while the decision itself is valid. Graf von Kielmansegg claims that by criminalising both types of corrupt acts, regardless of their legality, the clear attitude towards protecting the "institutional integrity of public administration" is expressed. Although transitional countries do not make the above distinction of bribery, almost all of them criminalise accepting and giving bribe, and intermediation in concluding corrupt agreements. The table in the *Appendix 4.1* provides the overview. However, treating all types of bribery as criminal acts brings another issue for discussion. Even though the message is clear that society will not tolerate any behaviour harmful for the institutions the question is how well the message is understood and implemented. Also, criminal process in the essence consists highly formal rules because it imposes restrictions on human rights and as such should be strictly followed. The next section discusses the obstacles in the corruption combat which are caused by the characteristics of both, corrupt acts and criminal procedures.

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<sup>566</sup>Graf Von Kielmansegg, S. (2006): "Legal Means for Eliminating Corruption in the Public Service", in Riedel, E.H. and Wolfrum, R. (eds.): *Recent Trends in German and European Constitutional Law*, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, pp.211-245

### 4.2.3. Punishment and corruption

#### 4.2.3.1. Treatment of corruption

It was mentioned earlier that in the countries around the world bribery is mainly regulated as criminal act, which complies with the international anti-corruption rules and regulations. Before looking into the bribe criminalization it is important to see what actually criminal act is in its essence. Bowles et al.<sup>567</sup> claim that although “universal legal definition of criminal act” does not exist, it could be said that it represents the violation of criminal code which could be performed by acting or omission. In general two characteristics are considered crucial. First, it does public harm and second, the act has incorporated harmful intent (*mens rea*) which is graded for the purpose of assessing the guilt and punishment. Criminalisation of a certain act usually means that society sees it as highly harmful and as such should be deterred by imposing various sanctions. However, since the acts are considered very harmful the sanctions prescribed impose various levels of limitations on human liberties and rights. Van den Berg and Visscher<sup>568</sup> explain that criminal law produces negative impact for the wrongdoer, such as loss of reputation or stigmatization, change in the personal and professional relations, and waste of time in prison, and as such requires the establishment of the procedures with many safeguards which should prevent wrongful convictions. As a consequence formal investigation and judicial procedures are conducted and as a result a decision is made on the basis of the evidence collected. These procedures aim, before imposing any of criminal sanctions, to identify the wrongdoer, the act that he committed, resulted victim and damages, causal link between the all and finally the wrongdoer’s intent.

The above provided description of a criminal procedure shows that processing of criminal cases is not always an easy task to perform. It appears even more difficult in cases of corruption due to specific characteristics of a corrupt act, its secrecy and mainly non-existing victim. Kwok Man-wai<sup>569</sup> explains that in the investigation of corruption usual elements present in ordinary types of crimes are missing. For instance there is often no scene of the crime, no fingerprint and no eye-witness which could help the investigation. By its nature bribery is a very secretive crime and usually involves just two parties, which in most cases have no incentive to reveal the existence of the agreement. This is particularly true if a distinction between different types of bribery in the sense provided in previous section is not made. More precisely, if sanctioning of bribery follows current trends it means that both parties in corrupt agreement face similar penalties which strengthens the existing code of silence among them. The profile of one side in the agreement is explained above and in practical terms it means that these offenders may be equally professional as the investigators and know how to cover their trails. They also could be “very powerful and ruthless in enforcing a code of silence

<sup>567</sup>Bowles, R., Faure, M. and Garoupa N. (2008): “The scope of Criminal Law and Criminal Sanctions: An Economic View and Policy Implications”, *Journal of Law and Society* 35, pp. 389-416

<sup>568</sup>Van den Bergh, R. and Visscher, L. (2008): “Optimal Enforcement of Safety Law”, *Erasmus University Rotterdam, RILE Working Paper Series* No. 2008/04, Rotterdam

<sup>569</sup>Kwok Man-wai, T. (2008): “Investigation of corruption cases”, published by *The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders*, pp. 140- 145 ([UNAFEI](http://www.unafei.or.jp/english/pages/RMS/No79.htm)), available at: <http://www.unafei.or.jp/english/pages/RMS/No79.htm>

amongst related persons through intimidation and violence to abort any investigation”.<sup>570</sup> Furthermore, as previously said, some types of bribery, like “illegal”, have no identified victim and the measuring of damages is difficult to provide. Finally, *mens rea* is also important element to prove. Beken et al.<sup>571</sup> present the results of national reports collected for the purpose of assessing the organisation of corruption combat in a specific country. They say that several countries indicated as the main obstacle in corruption combat is “the difficulty in proving the offence”. Another obstacle represents the burden of proof in the context of human rights guarantees and presumption of innocence. Finally, application of all investigation techniques available in a certain country is not possible to apply in cases of corruption.

In order to assist countries to improve the chances of proving corruption OECD<sup>572</sup> provides rules and guidelines for procedure improvement based on various practices employed around the world. Some of these instructions are: 1) the information about suspected should be gathered as much as possible; the more you know the person the more is possible to observe some unusual behaviour; 2) a motive for corrupt behaviour should be found; 3) connection between parties engaged in corrupt act is important to be discovered; 4) gathering the physical evidences as much as possible is one of the crucial things: pictures, tape recordings of conversations, documents related to transactions, etc.

In conclusion, since bribery is dominantly treated as a criminal act, the standard of proof is therefore considerably higher. Ashworth<sup>573</sup> claims that requirement to prove the case “beyond reasonable doubt” comes from the fact that criminal law impose a sentence which infringe defendant rights and therefore their better protection should be ensured. Lower standard of proof, used in administrative and civil procedures, provides less protection in that sense and as a result higher probability of conviction. This advantage of administrative law will be used as one of the arguments for advocating of administrative anti-corruption sanctioning but before going into details the Law and economics approach towards punishment will be discussed.

#### 4.2.3.2. Law and economics approach to punishment

Punishing wrongdoers has a history as long as humanity itself. Down through the centuries ways of punishing became numerous and as such subject of studding and observation. Criminal sanctions due to its characteristics are for a long time discussed in the literature. Justification and reasons for punishment by criminal law are discussed later in this chapter within the section devoted to punishing corruption by criminal law. Beside criminal, societies also employ administrative and civil punishments for sanctioning unwanted behaviour. The Law and Economic approach analyses all three approaches. This section presents the

<sup>570</sup>Ibid

<sup>571</sup>Beken, T. W., De Ruyver, B. and Siron, N. (eds.) (2001): *The organisation of the Fight against corruption in the Member States and candidate countries of the EU*, Makly Uitgevers nv., pp. 24-25

<sup>572</sup>See: “Effective means of investigation and prosecution of corruption”, published by the Organisation for Economic Co-operation and Development (OECD),

Available at: <http://www.oecd.org/corruption/acn/47588859.pdf>

<sup>573</sup>Ashworth, A. (2006): *Principles of criminal law*, 6ht edition OUP Oxford

discussion on criminal and administrative ways of punishment since their implementation is here advocated as effective mean for corruption combat.

The economic analysis of criminal law started with Becker<sup>574</sup>. He claims that criminals are rational self-maximisers who before engaging in a criminal activity, which should maximise their utility, make certain calculations and predictions regarding the costs and benefits of the act. In order to make criminal law enforcement optimal in deterring criminal behaviour some factors should be taken into account. These factors are: harm caused by crimes, costs of apprehension and conviction, probability of detection and severity of punishment. Therefore, a wrongdoer's calculation is based on the above mentioned factors. The benefits that are expected from the crime are calculated by multiplication of the probability of success with benefits of the crime, which can include various things such as: money, values of material good etc. In approaching the expected sanctions, he further assesses the level of deterrence which, according to the literature should be optimal. If that is not the case, the particular system achieves either under-deterrence, which means that society carries the burden of crime costs, or over-deterrence, which has the opposite effects from the former because it imposes excessive costs on an individual who takes precautionary measures. Both of these options are inefficient.<sup>575</sup> The magnitude of the sanction presents its severity and in general it should be based on the gain or the harm which resulted from the violation.<sup>576</sup> Finally, expected sanction is calculated when the probability of detection and conviction is multiplied by the monetary value of the sanction and any non-pecuniary loss suffered.<sup>577</sup> Therefore, the main goal of criminal justice system should be to minimize the total social costs of crime. They present the negative externalities imposed on the society minus the gains of wrongdoer, the supply of crime dependent on probability of detection and severity of the sanction and the costs of punishment. Minimization can be achieved through combination of the probability of detection, magnitude and type of the sanction. For instance, the increased probability of detection, according to Becker is more effective than punishment increasing. On the other hand, criminal fines are not costly to enforce and have great deterrent effect. However, besides other reasons imprisonment might be a solution for judgement proof problem<sup>578</sup>, but as a sanction it should be used exceptionally due to its costs and principle of marginal deterrence<sup>579</sup>. As previously mentioned, rationality of the actors is assumed in this model, although Becker<sup>580</sup> himself recognised that people are not always rational in decision-making. However, on the aggregate level these behavioural divergences play no role.

<sup>574</sup>Becker, G. (1968): "Crime and Punishment: An Economic Approach", *The Journal of Political Economy* 76, pp. 169-217

<sup>575</sup>Stigler, G. (1970): "The Optimum Enforcement of Laws", *The Journal of Political Economy* 78, pp. 526-536

<sup>576</sup>Shavell, S. (2004): *Foundations of Economic Analysis of Law*, The Belknap Press of Harvard Press University, Cambridge, Massachusetts

<sup>577</sup>Ulen, T. (2000): *Rational Choice Theory in Law and Economics*, Edward Elgar Publishing

<sup>578</sup>This means that if a wrongdoer is not able to pay monetary sanction he could be deterred by the treat of imprisonment.

<sup>579</sup>Marginal deterrence is one of the principles of theory of criminal justice which prescribes introduction of sanctioning scale by which less severe crime should be punished with lower sanctions and more severe with higher. Marginal deterrence will be more discussed later in this chapter in the section devoted to criminal sanctions.

<sup>580</sup>Becker, G. (1962): "Irrational Behaviour and Economic Theory", *The Journal of Political Economy* 70, pp. 1-13 and Becker, G. (1968): "Crime and Punishment: An Economic Approach", *The Journal of Political Economy* 76, pp. 169-217



Stigler<sup>581</sup> claims that optimal enforcement mechanism represents a degree of compliance which society considers affordable. More precisely the resources spent on the law enforcement are balanced with the gains they induce. However, enforcing the rule is almost impossible to fulfil because of its costs. Law and economics points also to the problem of negative externalities which are created by most harmful activities and achieving their optimal control is therefore required. Externalities are defined by Cooter and Ulen<sup>582</sup> as external costs imposed on an exchange in the market. They are in economics classified as market failure. As such they should be internalized by the wrongdoer in order to be prevented from pursuing his activity. Leger<sup>583</sup> says that the internalisation of the externalities could be achieved by imposing liability rules<sup>584</sup>, administrative sanctions<sup>585</sup> or some market based instrument such as taxation<sup>586</sup>. Van den Berg and Visscher<sup>587</sup> explain that external costs are costs created by the third party and not the parties involved in certain activity. If these costs are not imposed on the actor who caused them, it is highly likely that he would continue engaging in the harmful activity without taking necessary care. He will reduce the activity only if his private losses, which are the results of activity, “decrease by more than foregone benefits”. Furthermore, he will take more care only if the “decrease in personal losses outweighs the increase in care costs”. These calculations of the actor leave out the costs imposed on third-parties even though they should be included in the calculation. Therefore, the legal instruments should correct this situation and make the actor to internalize the externality and help him to “choose a better activity level”. In general, the acts cause higher losses to the victim than gains to the actor. Therefore, in order to influence actor’s decision “the externalities should be fully internalized” because only by this the actor in making decision will have a clear picture of relevant costs and benefits. This further means that “sanctions should vary with the size of the externalities caused”.

<sup>581</sup>Stigler, F. (1970): “The optimum enforcement of laws”, *The Journal of Political Economy* 78, pp. 526-563

<sup>582</sup>Cooter, R. and Ulen, T. (2011): *Law and Economics*, 6<sup>th</sup> ed., Prentice Hall

<sup>583</sup>Leger, C. A. (2014): *Sanctions and Public Enforcement of Insider Trading Laws in Europe*, European Doctorate in Law and Economics, p. 53

<sup>584</sup>Coase, R. (1960): “The problem of social cost”, *Journal of Law and Economics* 15, pp. 1-44

<sup>585</sup>Bowles, R., Faure, M. and Garoupa N. (2008): “The scope of Criminal Law and Criminal Sanctions: An Economic View and Policy Implications”, *Journal of Law and Society* 35, pp. 389-416

<sup>586</sup>Pigou, A. C. (1920), *The Economics of Welfare*, London, Macmillan; However, defining optimal level of social behaviour is not always possible since the market for certain issues, such as for instance air pollution, does not exist. In order to internalize environmental externalities Pigou has developed a concept, called Pigouvian tax, which aims to correct what economists call "market failures" or "negative externalities" that impose spillover costs on society, such as pollution. For instance, if factory does not take into account damages that its emission causes to the air, since there is no existing market for such an activity, officials create artificial costs by imposing a tax which is ideally equal to what the price would be if market had existed. In theory, Pigouvian taxes are efficient and straightforward, but in practice, they're anything but simple. Calculating the precise social costs of good deemed dangerous to the environment, is very difficult. Even if policymakers are able to solve the "knowledge problem" that plagues Pigouvian taxes, finding the optimal policy solutions may require additional analysis. See also: Tax Foundation: “Environmental policy and Pigouvian Tax”, available at: <http://taxfoundation.org/tax-topics/environmental-policy-and-pigouvian-taxation> See also: Frank, R. H. (2013): “Heads, you win. Tails, you win too”, *The New York Times*, available at: [http://www.nytimes.com/2013/01/06/business/pigovian-taxes-may-offer-economic-hope.html?\\_r=1&\\_](http://www.nytimes.com/2013/01/06/business/pigovian-taxes-may-offer-economic-hope.html?_r=1&_); Baumol, W. J and Oates, W. E. (1971): “The Use of Standards and Prices for Protection of the Environment”, *The Swedish Journal of Economics*, Vol.73, No.1, Environmental economics (Mar., 1971), pp. 42-54

<sup>587</sup>Van den Bergh, R. and Visscher, L. (2008): “Optimal Enforcement of Safety Law”, *Erasmus University Rotterdam, RILE Working Paper Series* No. 2008/04, Rotterdam

Cooter<sup>588</sup> tries to find the best solution looking from both, jurisprudential and economic approaches, to the problem of external costs. External costs are costs which someone imposes on others by engaging in certain activity and they can be reduced by the injurer at his expense, like for instance by taking precautions. Jurisprudential opinion is that economy can be regulated efficiently only by giving orders to which he disagrees by saying that instruments similar to prices can achieve that as well. On the other hand economists should be aware of the fact that sanction is not the price for doing what is forbidden. In attempt to reconcile two approaches Cooter explains that sanction is punishment for doing what is forbidden while price is payment for permitted activity. From the economic perspective prices should be used if obtaining accurate information about external costs is cheaper than those about socially optimal behaviour. If the reverse is true, then the activity should be controlled by sanctioning. In defining socially optimal behaviour officials can use community standard which represents a consensus among individuals, either private or specialized communities. Without community standard, officials have to assess the level of optimal behaviour by themselves which requires information about costs and benefits that may be difficult to obtain. On the other hand assigning the correct price to an activity only requires officials to compute the external cost, as opposed to balancing the costs and benefits. Based on the best assessment of social costs and benefits regarding the private persons and officials, Cooter creates a table (*Table 4.2*) which provides the best strategy answers to concrete situation.

*Table 4.2: Distribution of information and the optimal policy (assuming market failure and external costs)*

		<i>Best observer of social costs</i>	
		<b>Officials</b>	<b>Private Persons</b>
<i>Best observer of social benefits</i>	<b>Officials</b>	Legislative standard and sanction	Official subsidy
	<b>Private persons</b>	Official price	Community standard and sanction

Source: Cooter, "Prices and sanctions", p. 1537

Regarding the optimal enforcement, the literature says that enforcement costs should not be higher than the benefits of deterrence<sup>589</sup>. This practically means that some rule violations should be tolerated because otherwise it would be too expensive to deter all violations. Beside this, as discussed above, some additional costs should be taken into account. In order to provide internalization of externalities by wrongdoer an enforcement agent should acquire information on the wrongdoer's behaviour and accompanying consequences. Furthermore, obtaining and processing the information is also costly and also should be included in the decision about internalization instrument and the desired rate of compliance. Applied in the case of bribery two parties who engage in a corrupt agreement impose the costs

<sup>588</sup>Cooter, R. (1984): "Prices and Sanctions", *Columbia Law Review*, Vol.84:1523, pp.1523-1560

<sup>589</sup>See: Becker, G. (1968): "Crime and Punishment: An Economic Approach", *The Journal of Political Economy* 76, pp. 169-217; Posner, R. A. (1980): "Retribution and Related Concepts of Punishment", *The Journal of Legal Studies*, Vol.9, No.1 (Jan., 1980), pp. 71-92; Shavell, S. (2004): *Foundations of Economic Analysis of Law*, The Belknap Press of Harvard Press University, Cambridge, Massachusetts

to the society which vary depending on the act. Furthermore, since the victim is lacking in many cases their measurement appears difficult to perform. Criminalisation of bribery sends, from economic point of view message that society aims to deter any kind of this behaviour. Since the results of this policy are, in the literature which discusses its effects in post-socialist countries, described as unsatisfying the questions posed it what could be done for their improvement. Suggestion in this chapter is that beside deterrence, the approach of internalising external costs by the wrongdoer should be taken into account. Therefore Cooter's table (*Table 4.2*) claims that if the best observers of social benefits are private persons and best observers of social costs are officials due to the dispersed consequences of the corruption over time and population than official pricing should take place. In case of bribery this seems applicable. Private parties usually perceive only the benefits of the agreement without taking into account full costs of the agreement imposed to the society. Cooter<sup>590</sup> claims that pricing system allows individuals to choose how to behave as long as they have to pay. On the other hand penalty induces a jump of an individual's costs when he crosses the line between permitted and forbidden zone protected by sanctions. Since price provides the internalisation of the costs and depends on harm caused, individual can decide whether to engage in certain activity or not. Sanctions are, on the other hand, related to the wrongdoer's state of mind since they have purpose of deterrence punishment and compensation.

Coming back to the bribery cases it has to be repeated that not all acts of this type are the same because they do not produce the same costs for the society, as already discussed above. Therefore, their different treatment seems to be justified. The treatment, beside deterrence, should include the internalization of costs which can be achieved through pricing system which will be imposed on civil servants, the target of this research. However, price in this context should be interpreted very flexible, not only as monetary value. Before suggestion on concrete implementation some interesting aspects regarding the administrative and criminal law should be point out. In internalising externalities administrative and criminal laws have different approaches. Van den Berg and Visscher<sup>591</sup> claim that administrative law can prohibit certain behaviour or to impose a fine for its violation which is not limited to the losses induced. Beside the harmful behaviour the fine could be attached to the norm breaking one. On the other hand, criminal fines are financial sanctions which aim to deter wrongdoer from breaking the law and their magnitude is not limited to the size of the losses. However, they might induce some additional effects on the wrongdoer since involvement in criminal procedure leaves consequences on reputation or establishment of criminal record after the conviction. Criminal fines are in general considered as more serious than administrative because they have negative associations attached to them. However, these associations call for the use of criminal sanctions as "*ultimum remedium*", which means that only if administrative sanctions to not provide expected outcome the criminal ones should be applied. As a non-monetary fine it produces a solution to the judgement proof problem. Imprisonment with its highly intrusive character is seen as solution for the problem of low probability of conviction because negative sentiments that people attach to it should prevent them for engaging in criminal activities.

<sup>590</sup>Cooter, R. (1984): "Prices and Sanctions", *Columbia Law Review*, Vol.84:1523, pp.1523-1560

<sup>591</sup>Van den Bergh, R. and Visscher, L. (2008): "Optimal Enforcement of Safety Law", *Erasmus University Rotterdam, RILE Working Paper Series* No. 2008/04, Rotterdam

However, the use of this sanction should be exceptional because if many behaviours that are not desired by the society are treated as crimes then “the less self-enforcement” will occur.<sup>592</sup> Furthermore, an important economic reason for its limited use lays in the fact that it has very high opportunity costs for the society due to the inefficient allocation of labour force.

Based on all arguments provided above the claim of this thesis is that in case of legal bribery, which imposes low external costs to the society, “pricing mechanisms” should be employed in order to make parties of the harmful agreement internalise the costs they induced. To this category could be also included quasi-legal bribery which does not induce high costs. This “pricing mechanism” should be imposed in the form of administrative disciplinary sanction, whose main targets are civil servants engaged in corrupt agreement. Regarding the illegal acts of bribery and some of quasi illegal which induce high costs for the society, sanctioning mechanism should be applied designed according to the suggestions of Law and economics literature for reaching the optimal level of policy enforcement. Coming sections describe suggested system in more details. Its aim is to make civil servants comply with the anti-corruption policy as well as to deter them from committing bribery acts.

#### **4.3. Putting constraints – administrative sanctions**

##### *4.3.1. Justification and purpose of punishment*

Previous sections discussed administrative law and its sanctions from the perspective of Law and economics approach, more precisely its optimality. Here some aspects of administrative disciplinary regulation are discussed. Cardona<sup>593</sup> explains that the main rationale for the “*ius puniendi*” of sanctions applied in the administration is reinforcement of internal discipline and accountability for wrongdoing and poor performance. This has to ensure that employed agents will comply with their duties. The sanctions that administration employs could be classified in two groups. One type is imposed on the persons outside the administration who break the law and enforcement agency reacts accordingly. The other type of administrative sanctions, called disciplinary, is implemented within the organisation for those who, again, break the rules. Both types of sanctions aim to assure public that state apparatus has in place systems necessary to respond in appropriate manner to inappropriate conducts of public or public servants.<sup>594</sup> The focus of this research is on the second type of administrative punishment, disciplinary sanctions. The purpose of disciplinary sanctions is to motivate employees to comply with the rules of conduct which are prescribed by the organization. Their enforcement includes identifying the causes of misconduct and taking appropriate corrective measures. The mechanism of disciplinary sanctions serves to punish concrete wrongdoer as well as to deter any other possible.

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<sup>592</sup>Ibid

<sup>593</sup>Cardona, F. (2003): *Liabilities and Discipline of Civil Servants*, Support for Improvement in Governance and Management SIGMA, January 2003, p. 2

<sup>594</sup>Government of Canada Publications: “The financial Administration Act: Responding to non-compliance”, pp.17-33, available at: <http://publications.gc.ca/site/eng/322644/publication.html>

In the literature when compared to criminal law, administrative in general shows certain advantages. Bowles et al.<sup>595</sup> claim that application of criminal law costs society more than its alternatives, such as administrative law. This comes from the fact that criminal sanctions have higher costs due to the standard of proof as well as possible mistakes and therefore criminal law should be “more transparent and clearer”. The other side of the coin is that this solution “offers less flexibility and increases complexity”. On the other hand, administrative law is less complete compared to criminal, which gives to the regulatory agencies higher influential role and flexibility. Bowles et al. identify couple of characteristics which distinguish two laws and they are: the use of non-monetary sanctions, stigma, the necessity of specialisation in rule enforcement, flexibility and complexity of the law. Based on these criteria they claim that criminal law will be used in the situation when losses are diffuse and relatively large. The later also includes insolvency as a potential obstacle. The view is supported by Van den Berg and Visscher<sup>596</sup>. They explain that the administrative system of regulating human behaviour induces a certain amount of costs related to: formulation of detailed ex ante norms, possible inconsistencies due to the existence of different authorities, and the fact that ex-ante regulations are closely related to monitoring of the actors in terms of rule abiding and rule violating behaviours. In theory, costs of monitoring could be reduced by increasing the magnitude of fine but the judgement problem imposes limits to this option. They further explain that criminal law has higher amount of costs than administrative. The specificity of criminal law and negative impact that it has on a wrongdoer, such as loss or reputation and stigmatization, change in personal and professional relations and so on, asks for careful design which includes many safeguards in order to avoid wrongful conviction. In the case of criminal law its punitive character lowers social welfare “because there is no offsetting gain”. The problem could be reduced by imposing fines rather than imprisonment since they present transfer of money and the latter “creates additional harm”. Required safeguards in practice mean that enforcement agents have to collect sufficient information necessary for conviction which increases costs. In addition, imprisonment is itself costly because it induces variety of costs for its establishing and maintaining.

#### 4.3.2. *Administrative sanctions and corruption*

##### 4.3.2.1. Administrative disciplinary sanctions: general description

Discussing the disciplinary sanctions, Cardona<sup>597</sup> claims that the more activities of civil servants are able to impinge on citizens fundamental rights the more they should be controlled by standards and regulations and with harsher sanctions. If actions or omissions of civil servants present the violation of their duties established by the law, they can face three types of liabilities: disciplinary, penal and civil. Regulation of discipline in essence responds to fault

<sup>595</sup>Bowles, R., Faure, M. and Garoupa N. (2008): “The scope of Criminal Law and Criminal Sanctions: An Economic View and Policy Implications”, *Journal of Law and Society* 35, pp. 389-416

<sup>596</sup>Van den Bergh, R. and Visscher, L. (2008): “Optimal Enforcement of Safety Law”, *Erasmus University Rotterdam, RILE Working Paper Series* No. 2008/04, Rotterdam

<sup>597</sup>Cardona, F. (2003): “Liabilities and Discipline of Civil Servants”, *Support for Improvement in Governance and Management SIGMA*, January, 2003, pp.1-10

which could be “wilful wrongdoing” or “culpable negligence”. These rules are not applied in cases of incompetence or incapacity unless they are result of the factors under wrongdoer’s control<sup>598</sup>. However, disciplinary and penal liabilities, which are the subject of this chapter, have different types of procedure. Although they can overlap in some cases not all administrative misdeeds are crimes. Cardona<sup>599</sup> explains that act can be classified as both, administrative fault and crime, only in the situation when it affects public interest. Some crimes could be only committed by civil servants, such as abuse of power, while others provide harsher penalties if committed by civil servants, such as fraud, embezzlement and so on. The explanation for this treatment is that acts of civil servants are very sensitive regarding public trust in the administration and therefore, public interest should be protected. In the case when certain act might be susceptible to punishment by both, disciplinary and criminal laws, the criminal process prevails over the administrative which is mainly suspended until the former is finished. The facts proven during the criminal process can be included as evidence in the administrative disciplinary procedure as well as criminal conviction, which influence the disciplinary sanction. For instance, if a civil servant is sentenced to prison, the disciplinary sanction is almost always a dismissal from the service. On the other hand, if civil servant is acquitted it is still possible to be punished with disciplinary sanction<sup>600</sup>. However, it is still necessary to stress that administrative procedures and sanctions have subsequent, complementary role when compared to the criminal ones.<sup>601</sup> It is also important to stress that principle “*non bis in idem*”, which means that nobody may be punished twice for the same offence committed under the same legal order, does not apply in the case of phishing civil servants for the same misdeed with two procedures, criminal and disciplinary.<sup>602</sup>

The imposition of administrative sanctions is performed according to the procedure established in the regulation. The main goal of the procedure established for disciplinary sanctioning is to ensure fairness and respect of essential human rights. This is achieved by establishing principles which should be respected during the process. In general these principles are: 1) *adversarial principle*, which allows civil servants to present to the authorities “their side of the story” and evidences for it; 2) *access to documents*, provides civil servant with the access to all relevant documents which are the basis for the charges or those which could help him; 3) granting of hearing of the civil servant; and finally 4) appeal to a court in case of the imposition of disciplinary sanction<sup>603</sup>. Ghindar<sup>604</sup> explains that a civil servant “can

<sup>598</sup>Treasury Board of Canada Secretariat: *The Financial Administration Act: Responding to Non-compliance - Meeting the Expectations of Canadians*, available at: <http://www.tbs-sct.gc.ca/report/rev-exa/faa-lgfp/faa-lgfp-eng.pdf>

<sup>599</sup>Cardona, F. (2003): “Liabilities and Discipline of Civil Servants”, *Support for Improvement in Governance and Management SIGMA*, January, 2003

<sup>600</sup>Ibid

<sup>601</sup>For treating corruption by criminal and administrative sanctions in Germany see: Graf Von Kielmansegg (2006): “Legal Means for Eliminating Corruption in the Public Service”, in Riedel, E.H. and Wolfrum, R. (eds): *Recent Trends in German and European Constitutional Law*, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, pp.211-245

<sup>602</sup>Cardona, F. (2003): “Liabilities and Discipline of Civil Servants”, *Support for Improvement in Governance and Management SIGMA*, January, 2003

<sup>603</sup>Ibid

<sup>604</sup>Ghindar, A. (2009): *Why Go Democratic? Civil Service Reform in Central and Eastern Europe*, ProQuest LLC, pp. 86-88

be held responsible for a wide range of misconduct” which can vary from “minor” offences, such as disrespect of working hours or unjustified absence from work, to “grave” ones, such as abuse of authority, unjustified refusal to follow orders and so on. The rules on disciplinary punishment mainly prescribe variety of sanctions which could be imposed on civil servants which according to principle of proportionality, correspond to the gravity of the offence committed, actual harm caused and intention of the wrongdoer. The usual range of sanctions is: 1) oral warning; 2) written reprimand; 3) various suspensions, of career advancement and promotion for a certain period or without right to salary; 4) demotion to lower ranks; 5) financial penalty; 6) termination of employment or definitive separation from the public service<sup>605</sup>. Usually, except the dismissal sanction, all others are removed from a civil servant’s personal file after a certain period of time which varies from country to country (e.g. it goes from six months to ten years).<sup>606</sup> Disciplinary sanctions are usually imposed by the direct superior or head of the institution. However, many systems prescribe the establishment of disciplinary commissions which should carry the investigation of the offence and hold hearings of the parties. While pursuing the task they are guided by the principle described above. Based on their recommendation person in charged makes decision and imposes a sanction on civil servant<sup>607</sup>.

As previously explained, disciplinary law consist the rules of conduct which govern members of a group whose main goal is to keep its internal order.<sup>608</sup> The above described disciplinary process and its sanctions induce certain costs which should be taken into account in this research. As explained above, a disciplinary sanction is mainly imposed by a direct superior although a commission might be established to perform this task. The process itself is guided by principles which should assure the respect of law and human right of a civil servant charged for a misdeed. Regarding the mental state of the wrongdoer it should be proved that his act was wilful wrongdoing or culpable negligence. The standard of proof is not “beyond reasonable doubt” like in criminal cases but, preponderance of evidence or clear and convincing evidence. While the former represents the lowest level of standard and means that a certain claim is more likely true than not true, the latter presents the middle level of proof standard and means that for a certain evidence is substantially more likely than not that it is true. Finally, as previously mentioned usual disciplinary sanctions are: oral warning, written reprimand, various suspensions, of career advancement and promotion for a certain period or without the right to salary, demotion to lower ranks, financial penalty and termination of employment or definitive separation from the public service. The overview of the disciplinary and criminal procedures is provided in the *Table 4.3*. When compared the left and right columns show the difference in terms of costs for conducting both of the procedures appears fairly high since disciplinary process requires no special separate system for its conduction,

<sup>605</sup>Cardona, F. (2003): “Liabilities and Discipline of Civil Servants”, *Support for Improvement in Governance and Management SIGMA*, January, 2003

<sup>606</sup>Ibid

<sup>607</sup>Ghindar, A. (2009): *Why Go Democratic? Civil Service Reform in Central and Eastern Europe*, ProQuest LLC, pp. 86-88

<sup>608</sup>Sugman, K. G. (2003): “Slovenia, principles of criminal procedure and their application in disciplinary proceedings”, *Revue internationale de droit pénal*, 2003/3 Vol. 74, p. 1063-1076

less demanding principles of the process, lower levels of state of mind and standard of proof and finally, less costly sanctions.

Table 4.3: *Disciplinary and criminal procedure comparison*

	<b>Disciplinary procedure</b>	<b>Criminal Procedure</b>
<b>In charged for the implementation</b>	Direct superior or special disciplinary commission	Criminal Justice system: prosecutors and courts
<b>Principles</b>	<ul style="list-style-type: none"> <li>- Adversarial principle</li> <li>- Access to documents</li> <li>- Grantee of hearing</li> <li>- Right to appeal</li> </ul>	<ul style="list-style-type: none"> <li>- Presumption of innocence</li> <li>- Due process</li> <li>- Independent Judiciary</li> <li>- Openness and accessibility of the court</li> <li>- Equality before law</li> </ul>
<b>State of mind</b>	wilful wrongdoing / culpable negligence	Mens rea (negligence – recklessness- intent)
<b>Standard of proof</b>	Preponderance of evidence/clear and convincing evidence	Beyond reasonable doubt
<b>Sanctions</b>	oral warning, written reprimand, various suspensions, of career advancement and promotion for a certain period or without right to salary, demotion to lower ranks, financial penalty and termination of employment or definitive separation from the public service	Fines, capital punishment, imprisonment, preventive detention, suspended sentence and probation, pecuniary sanctions, community service, electronic monitoring, castration, rehabilitation programs, disenfranchisement, restorative justice or mediation

#### 4.3.2.2. Application in the case of corruption

##### 4.3.2.2.1. General discussion

The international community recognised the harmfulness of corruption, especially bribery, and made as one of the main requirement its criminalisation which was mainly accepted by the countries around the world. The table in the *Appendix 4.1* shows that transitional countries followed this pattern. However, as mentioned couple of times in this thesis, the literature points to the many shortcomings of the international approach. Bell<sup>609</sup> states that anti-corruption international rules do not represent a significant contribution for corruption combat because the core of the problems lays in culture and not in the laws. Culture is an important aspect in definition of corrupt acts and laws have only subsidiary role. Criminal law in this setting aims to target exchange conception by imposing liability and as such enforces a minimum of basic standards, while administrative law tends to act preventively enforcing the higher standards contained in the codes of ethics. As a result, criminal law enforces “basic minimum standards”. Graf von Kielmansegg<sup>610</sup> claims that corruption of civil servants in Germany is treated as a criminal offence. However, corrupt civil servants are subject of disciplinary sanctions in case of breaching their duties. In the case of overlapping the legal principles of “seniority of criminal law”, described in the previous section apply here as

<sup>609</sup>Bell, J. (2007): “Legal Means for Eliminating Corruption in the Public Service”, *Electronic Journal of Comparative Law*, Vol. 11.3, available at: <http://www.ejcl.org/113/article113-28.pdf>

<sup>610</sup>Graf Von Kielmansegg, S. (2006): “Legal Means for Eliminating Corruption in the Public Service”, in Riedel, E. H. and Wolfrum, R. (eds): *Recent Trends in German and European Constitutional Law*, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, pp.211-245



well. The above discussion provides the image in which countries besides criminal law use administrative law as additional in fight against corruption, mainly applied as preventive mean.

However, in some countries the approach of regulating corruption by both types of law shows some shortcomings. According to OECD<sup>611</sup> report in countries of CEE and Central Asia, mainly post-socialist, corruption is treated as criminal as well as administrative offence. This means that same acts are covered by two procedures of which administrative should be applied in a case when the specific act is not classified as criminal. This situation reflects the trends present in many post-soviet countries which aim to “decriminalise and to humanise legislation”. However, the report points out that this overlapping is fertile ground for abuse since authorities tend to use administrative sanctions because clear differentiation between administrative and criminal description of an act is difficult to draw. This overlapping causes “weakening of repression mechanisms”. Therefore, the suggestion is that they should follow the international trends and treat corruption as criminal act. Furthermore internal ethical bodies are usually in charge of the application of disciplinary sanctions based on internal investigations. If an investigation indicates that certain act is rather criminal than administrative offence it should be transferred to the criminal law enforcement authorities. However, there is not much information on the effects of their work in corruption combat. Therefore the report identifies as a danger reluctance of the agencies to expose corruption even when they identify it. Furthermore, the unclear and overlapping threshold for the distinction of criminal and administrative offences may lead investigators to prefer administrative processes and sanctions over criminal<sup>612</sup>.

To sum up, criminal sanctions are dominantly imposed for acts of bribery although administrative law in many cases presents its complementary. However, in cases of post-socialist countries it is used for voiding criminal liability of wrongdoers. The claims of the importance of a culture in particular country appear valid in this context. However, since all the regimes applied provide unsatisfying results the alternative solution should be provided. The discussion in this chapter pointed out the difference between the administrative and criminal law. While former aims to secure compliance with the legal rules the latter aims to punish and deter. Svatikova<sup>613</sup> claims that in certain cases criminalization might be socially desirable from economic point of few. There are four normative criteria which should help in making such a decision: 1) imprisonment – only when monetary sanctions are insufficient to internalize the social cost of harms and when offender should be removed from a society; 2) stigma – if that is the one of the purposes; 3) preference for deterrence vs. compliance strategy; 4) enforcement costs.

However, having in mind the high cost of the criminal law, legal systems which are based dominantly on criminal law enforcement and lack of or limited possibilities to enforce via administrative law may be less effective. This claim is supported by the assumption that given the high costs of the criminal procedure, public prosecutors have to allocate their scarce

<sup>611</sup>Organisation for Economic Co-operation and Development (2008): *Fighting Corruption in Eastern Europe and Central Asia*, OECD, 208, pp.41-59

<sup>612</sup>Ibid, pp.70-71

<sup>613</sup>Svatikova, K. (2012): *Economic Criteria for Criminalization: Optimizing Enforcement in Case of Environmental Violations*, European Studies in Law and Economics, Intersentia Publishing Ltd., pp. 79

resources to the most important cases which, as a consequence has a large number of cases which might not be prosecuted, while there is a range of cases, which deserves sanctioning. On the other hand administrative proceedings are less strict and more informal in terms of time, money and personnel and therefore administrative fines might be relatively cheaper to impose than criminal sanctions. Svatikova says that administrative law has a shortcoming regarding stigma because administrative sanctions do not possess a “shaming element”.

Stigma itself is, according to some authors, a cost-effective means of criminal law. One line of discussion compares stigma with fines. For instance Rasmusen<sup>614</sup> claims that although Becker suggested that fines represent the transfer and not social costs and as such should be used whenever possible, there are many problems associate to implementation of this suggestion. One of them is judgement proof problem. Another issue is that high fines might be used to increase the government’s revenue. He suggests stigma as a solution for the concerns presented because it represents a fine which affects future labour rents of a wrong doer. As such it is imposed by private sector and therefore it is non-costly for the government and does not present revenue-raising like fines. However, its main disadvantage is that in the case of recidivism the effects are diminished. This means that stigma in the first conviction has greater effects than all other subsequent. It is only applicable in cases when people have a reputation to lose. Applied to the case of optimal deterrence, the sanctions imposed for the first offence should be lower than for the subsequent once. Rasmusen further explains that stigma and fines have the advantage of deterring criminals “without creating real costs” since both transfer wealth from the criminals to the society. Further limitations are discussed by Funk<sup>615</sup> who claims that stigma plays an important role in cases where the offence committed is connected to high illegal earning opportunities at the work place to which convicted individual applies. Therefore, the employer should be informed about the criminal past of a candidate. Nevertheless, in case of the offences which are not related to a certain type of a work, “benefits of stigma are less clear”.

Another line of discussion on stigma compares its effects to those of imprisonment. Kahan<sup>616</sup> follows this view and claims that people should be educated about the alternatives on the “virtue of prison’s rivals” such as stigma. Alternatives are usually seen as less severe because they fail to express condemnation which poses imprisonment and to not make people suffer for breaking the law. However, beside deterrence and retributivism Kahan claims that punishment has “the expressive dimension”. Broadly speaking it is very difficult to measure the level of subjective displeasure which certain punishment induces when imposed on an individual. For instance, arguing for application of fines in cases of white-collar criminals, he says that these offenders are mostly well situated and their crime does not include violence. However, people are prone to think that in this way they are just “buying their way out”. Therefore in order to identify alternative sanctions to imprisonment which would satisfy expressive sensibilities of people, Kahan classifies shaming penalties in four groups: 1)

<sup>614</sup>Rasmusen, E. (1996): “Stigma and Self-Fulfilling Expectations of Criminality”, *Journal of Law and Economics*, Vol. 39, No. 2 (Oct., 1996), pp. 519-543

<sup>615</sup>Funk, P. (2003): “On the effective use of stigma as a crime-deterrent”, *European Economic Review* 48, 2004, pp. 715-728

<sup>616</sup>Kahan, D. M. (1996): “What Do Alternative Sanctions Mean?”, *The University of Chicago Law Review, Faculty Scholarship Series*, Paper 114., pp.591-653, Available at: [http://digitalcommons.law.yale.edu/fss\\_papers/114](http://digitalcommons.law.yale.edu/fss_papers/114).

*stigmatizing publicity*, which communicates the offender's status to a wider audience; 2) *literal stigmatization*, represents the stamping of and offender with a mark or symbol that invites ridicule; 3) *self-debasement*, includes penalties which involve ceremonies or rituals that publicly disgrace the offender; 4) *contrition*, which in one version requires the offender to publicize their own convictions by describing his own crime in first-person terms and apologizing for them and another version is apology ritual. Shaming penalties are cheaper than imprisonment and they express appropriate moral condemnation and according to Kahan they should be widely used also in combination with other sanctions. Shavell<sup>617</sup> express the same view by explaining that sanctions differ not only by the costs they impose but also by disutility they create. Therefore the effectiveness of a sanction is defined as disutility it generates per monetary unit of social cost. Base on this definition some sanctions can be seen as more effective compared to imprisonment for certain people. For example, individuals with reputation "might be significantly deterred by the humiliation of having their names and violations published". Since humiliation appears cheaper for society, because among other things "it does not remove individuals from the labour force", its effectiveness might be very high.

It is also important to keep in mind that stigma is culturally dependent and their effects vary from country to country. For instance, Treisman<sup>618</sup> claims that corrupt public officials besides using the job may face stigma whose effects vary from society to society since its roots are grounded in the culture. He points to the claims of Myrdal<sup>619</sup> and Ekpo<sup>620</sup> that in traditional societies, where distinction between public and private, as well as a tribute of giving and bribery are not clearly made, stigma might be low or non-existent. Kramer<sup>621</sup> in this sense provide the image of Soviet societies in which public officials do not attach stigma to corrupt acts and as such contradict and reject officially promoted values. Perez-Lopez<sup>622</sup> explains that in socialist societies system makes no differentiation between public and private purposes, and therefore "individuals in these societies tended to use state property as their own, with very little stigma attached to it".

The main target of this research is corruption of civil servants in post-socialist countries since their administrations are in general graded as highly corrupt. Their profile complies with the profile of white-collar criminals, in sense that they are educated and skilled workers which makes them different from "blue", "street" criminals. This implies that different sanctions might be applied for more effective corruption combat. Bribery of civil servants is dominantly

<sup>617</sup>Shavell, S. (2004): *Foundations of Economic Analysis of Law*, The Belknap Press of Harvard Press University, Cambridge, Massachusetts, p.513

<sup>618</sup>Treisman, D. (2000): "The Causes of Corruption: A cross National Study", *Journal of Public Economics*, 76, pp. 399-457

<sup>619</sup>Myrdal, G. (1970): "Corruption as a hindrance to modernization in South Asia" in: Heidenheimer, A.J. (ed.): *Political Corruption: Readings in Comparative Analysis*, Holt, Rinehart and Winston, New York, p.237

<sup>620</sup>Ekpo, M. U. (1979): "Gift-giving and bureaucratic corruption in Nigeria" in Ekpo (ed.): *Bureaucratic Corruption in Sub-Saharan Africa: Toward a Search for Causes and Consequences*, University Press of America, Washington, DC,

<sup>621</sup>Kramer, J. M. (1977): "Political corruption in the U.S.S.R.", *The Western Political Quarterly*, Vol. 30, No. 2, Jun 1997, pp. 213-224

<sup>622</sup>Perez-Lopez, J. F. (1999): "Corruption and the Cuban Transition", *Association for the Study of the Cuban Economy*, pp.453-468

Available at: <http://www.ascecuba.org/publications/proceedings/volume9/pdfs/perezloplz.pdf>

prescribed as a criminal act although administrative penalties play certain role in punishing, hence in many cases not positive. Earlier in this chapter it was argued that criminal procedures and sanctions induce high costs for the society and in certain cases administrative procedure and sanctions are seen as their alternatives. The remark made that the latter do not impose sufficient stigma on the wrongdoers, could be corrected with the introduction of expressive dimension in sanctions imposed. Following these arguments, it is suggested here, according to the anti-corruption pyramid, application of administrative procedures and sanctions for fight against corruption in specific cases which are discussed in the next section.

#### 4.3.2.2.2. Concrete implication

Criminalisation of bribery has its limitations which have been already discussed earlier. Besides being expensive, it also makes no distinction among different bribery acts and as such the system lacks, in a way, marginal deterrence. Heavy weapon of criminal sanctions, with dominant use of imprisonment in transitional countries (see *Appendix 4.1*), do not provide sufficient deterrence and induces numerous costs which these countries with limited material resources cannot afford. As said above criminalisation is socially desirable from economic point of view if four normative criteria are fulfilled. The criteria are: imprisonment should be used only when monetary sanctions are insufficient to internalize the social cost of harms and when offender should be removed from a society; when state express preference for deterrence over compliance strategy; when stigmatisation is one of the purposes of punishment and finally if enforcement costs are not too high for a society. On the other hand, Shavell<sup>623</sup> stresses that general enforcement strategy has no strong effects if very high sanctions for criminal acts are accompanied by low probabilities of detection. For general enforcement maximal sanctions should be employed only for the most harmful acts and lower for the less harmful ones.

The literature has already pointed out that not all types of bribery are the same and suggested that they require different treatment by criminal law. For instance, Basu<sup>624</sup> focuses on harassment bribe, here called legal, and argues that the giving of bribe in this case should be considered as legal activity, which practically means that a bribe-giver will have full immunity while the bribe-taker will be charged. This scenario will make the former to cooperate in catching the latter and as a result the other bribe-takers will be deterred from taking it. Furthermore, the problems related to detection of bribery will be lowered because bribe-givers, aware of the immunity, will try to make evidence which should prove that bribery took place. Basu claims that this approach will “cause a sharp decline in the incidence of bribery”, since it will not take place in the first place. The downside of this approach is that since faced with weaker position in the corrupt agreement, a civil servant might become the subject of black mail and false accusations. The solution for this case might be to increase the punishment for these particular acts for which a bribe-giver will be charged. However, he is aware that this might be only one step in all the others necessary to tackle corruption as complex problem.

<sup>623</sup>Shavell, S. (2004): *Foundations of Economic Analysis of Law*, The Belknap Press of Harvard Press University, Cambridge, Massachusetts, p.513

<sup>624</sup>Basu, K. (2011): “Why, for a Class of Bribes, the Act of Giving a Bribe should be treated as Legal”, *Ministry of Finance Government of India Working Paper* No. 1/2011-DEA, March 2011

Dufwenberg and Spagnolo<sup>625</sup> analysing Basu's proposal conclude that it could have poor effects in countries with weak institutions. For instance, they say that the bribe-giver might not be motivated to report the act because of the fear of being harassed by the police after the reporting. Therefore this proposal asks for "complementary policies" which target improvement of civil service performance and accountability of law enforcement institutions.

Anti-corruption pyramid, introduced in *Chapter 3*, in its third layer introduces administrative sanctions for punishment of bribery among civil servants. This layer is aimed to be applied if the first two layers do not provide a sufficient level of compliance since they should provide an environment in which pursuing public goals and care of the society's interest is established among servants as the highest norm. That should be achieved by careful selection of employees and monitoring of their work through transparency and accountability. These mechanisms aim to create environment in which prevailing opinion will go in line with the highest norm. This is important step for post-socialist countries in which prevailing opinion was that stealing from a state is not a wrong behaviour. As previously mentioned, during the socialist time punishing of corruption was mainly missing since the party members could always find their way out. It is therefore crucial to send the message to civil servants that bribery is behaviour which is not acceptable anymore because it harms society and prevents its economic development. They have to become aware that their conducts are harmful if power is abused and as a consequence they destroy trust of people in public administration. In order to build this awareness suggestion is that less harmful acts of bribery should be punished with the disciplinary sanctions, whose aim is to reinforce the internal discipline. Since this proposal departs substantially from dominant approach in order for any confusion and misinterpretation to be avoid, it is necessary that three questions *who-what-how* important for proposals implementation are answered as precisely as possible.

*Who*– The comparison of civil servants and white-collar criminals are made couple of times thought this chapter. The main purpose of this linkage was to describe the profile and distinguish them from ordinary, "street" or "blue" criminals". Comparison with white collar criminals was related only to the profile description but not in terms of sanctioning since white collar criminals receive harsh sentences. Actually, Wheeler et al.<sup>626</sup> claim that the higher is the status of the white-collar offender the more sever the sentence is. What is important here is to stress that they share common characteristics. They are educated, have a job, have a reputation which is usually important to them since it is closely related to their job and they are less likely to repeat the crime once being caught. Since they have more to lose than ordinary criminals, other sanctions, than predominantly used imprisonment, could be applied. Some which cost society less and could be more effective than heavy one employed by criminal justice system.

*What* – The differences between legal, illegal and quasi-legal acts of bribery are widely discussed. The proposition here is that *legal* bribery and *some acts of quasi-legal* bribery which do not impose high costs for the society, should be targeted by administrative disciplinary sanctions. As mentioned earlier, some Criminal codes make the above mentioned distinction, but the difference is only visible with regard to the harshness of criminal sanction.

<sup>625</sup>Dufwenberg, M. and Spagnolo, G. (2011): "Legalizing Bribes", *EIEF Working Paper*, December 2011

<sup>626</sup>Wheeler, S., Weisburd, D. and Bode, N. (1982): "Sentencing the White-Collar Rhetoric and Reality", *American Sociological Review*, Vol. 47, No. 5, Oct., 1982, pp. 641-659

*How*—Administrative law is used if policy makers aim to secure compliance and make a wrongdoer to internalise the costs of his acts. The use of administrative law is usually faster and also imposes lower costs for the society since its enforcement is cheaper than this of a criminal law. As previously shown, in the *Table 4.3*, for the implementation of administrative disciplinary sanctions in charged is either direct superior or special disciplinary commission formed within the organisation. The principles of the procedure corresponds the low level of intrusion to human rights of a wrongdoer. Furthermore, the state of mind in the moment of breaking the law should correspond to wilful wrongdoing or culpable negligence and this should be proved with standard of proof which corresponds to preponderance of evidence or clear and convicting evidence. In addition, the lower level of proof further means that the probability of punishment is higher which has more importance than severity, as discussed earlier.

However, it was previously mentioned that disciplinary and criminal procedure may be pursued for the same act. Unlike in the counters, where in this case administrative law is subordinated to criminal, in some CEE countries the provisions of both law seems to compete. The criminal and administrative law which regulate corruption appear to show no demarcation line due to very broad definitions in both codes. This allows abuse of administrative law in order to allow the wrongdoer to avoid punishment for corruption. It seems that in these cases the old practice from the soviet times only found the new way of living, even though these countries formally follow the international anti-corruption requirements.

What is suggested here is that administrative disciplinary law when applied to cases of bribery should be clearly defined in order for any misuse to be avoided. It is argued here that it should be used as a mechanism only in the case of legal bribery and quasi legal in which costs to the society are measurable and not very high. As explained earlier in the case of legal bribery, since the party is already entitled to a certain right, and bribe pays as an additional fee only to speed up the process, the costs are dominantly bared by the bribe-giver. In order to prevent civil servants from taking bribe in this case, the bribe giver's act should not be punished, while civil servant should bare all the consequences. In order to break with the *homo sovieticus* tradition, civil servants have to learn to respect work discipline and they might be thought that lesson effectively and efficiently through the administrative law in cases when the harm to society is very low or non-existing. In order to make them comply with the disciplinary rules, another pyramid of responsive regulation approach could be constructed which employs some of the existing disciplinary sanctions. The *disciplinary anti-corruption pyramid*, *Pyramid 4.1* depicts this proposal.

Pyramid 4.1: Disciplinary anti-corruption pyramid



Disciplinary sanctioning systems have scale which goes from less to more severe sanctions, which should have marginal deterrence, like in the case of criminal sanction. Some of these sanctions could be applied in the case of bribery. First punishment in this scale could be a *written warning* for the reported attempt of bribe taking by the civil servant. It is important to be written in order to be noted since according to the administrative procedure any document produced within the administration or received from the outside should be registered. For the second attempt or the first detected case of taking bribe, applied sanction should be *suspension and stigmatizing* by using some of the types of shaming penalties provided earlier. Suspension might be implemented in a way of career advancement and promotion for a certain period of time or without right to salary. Stigmatization could also be achieved through various means. For instance, the decision and reasons for suspension could be communicated publicly, by announcing on the information boards within the administration (stigmatizing publicity). The wrong-doer could be stamped with the mark or symbol which says that he is bribe taker and which should cause ridicule (literal stigmatization). Furthermore, stigmatization might include the ceremonies or rituals which disgrace the bribe taker which might be performed for instance by reading the decision of disciplinary sanction to the co-workers of the offender (self-debasement). Finally, the bribe taker should publicize his own wrongdoing by describing it in a letter to his colleagues written in first-person in which he would apologize for his acts (contrition). Stigmatization in this context will add the strength to administrative sanctions which, according to Svatikova<sup>627</sup> have a lack of it, and make them an acceptable replacement

<sup>627</sup>Svatikova, K. (2012): *Economic Criteria for Criminalization: Optimizing Enforcement in Case of Environmental Violations*, European Studies in law and Economics, Intersentia, 2012, pp. 81

for criminal sanctions. She stresses that stigma has a desirable, strong effect in cases of: small, petty crimes, first time offenders and white collar criminals who will suffer social and economic consequences if being convicted. Both of the penalties, according to the administrative rules, should be registered and be part of the civil servant's personal file and as such used as a basis for the evaluation of his work which should be performed in order of fulfilling the merit-based criterion for promotion (see *Chapter 2*). The stigmatization in this context should send the message that corruption is, unlike in previous regime, not anymore tolerated. As mentioned earlier, during the socialist time the widespread opinion was that cheating the state is "cool". It was a result of the lacking system of sanctions and no stigma attached to it. Therefore, if applied in this case stigma should revive the good reputation as one of the high quality virtue of civil servants by making them aware of their misdeeds. Finally, depending on the gravity of the corrupt act, *firing* civil servant should be used as the most severe sanction. In this case his punishment is the harshest since he loses the job and future income as well as reputation. In the last two cases disciplinary sanctions should be accompanied by *forfeiture* of the bribe taken.

The whole process should be in general initiated by the bribe-giver who in this case faces no sanctions or any kind of prosecution. This should make the corrupt agreement among the parties very weak and impose the fear on civil servant that he might be reported and sanctioned. This further should decrease their readiness to take the bribe and as such the amount of legal bribe in general. After the reporting, the disciplinary process should be conducted by a direct superior, or ad hoc disciplinary commission or in some cases special units within the organisation in charged for corruption combat, since some institutions have these type of bodies with employees specialised for corruption. If during the investigation process person or body in charged discover that the act committed does not fulfil the criteria for being characterized as legal bribe, it should forward the case to the criminal justice system which, according to the suggestions in this thesis, is responsible for illegal bribes. It is also important to stress here the problem of false accusations or black mailing of civil servants. The gradual system of penalties might mitigate the negative effects of a dishonest client of a civil servant. If however, in theory the result of his action is firing of civil servant he can use the remedies provided in civil or criminal law to protect himself.

#### **4.4. Putting constraints – criminal sanctions**

##### *4.4.1. Justification and purpose of punishment*

Criminal sanctions are mainly considered by people as the important keepers of social order which should punish the wrongdoers who harmed society's values. Justification for society's right to punish those who break the law was since ancient times subject of discussion between lawyers, philosophers, sociologists, etc. From these discussions different theories have been developed which justified this practice. The two most important approaches will be presented in this chapter: retributivist and utilitarian. Besides the justification, the effects of punishment will be also analysed such as: deterrence, incapacitation and rehabilitation. Before discussing application of criminal law in cases of bribery, the important aspects of criminal law discussed in the literature are provided.



### *Retribution and desert*

Retributive view justifies punishment on the ground that “person who does wrong should suffer in proportion to his guilt”<sup>628</sup>, and therefore sanction’s severity should depend on the depravity of the act. The history of this view in law and philosophy is long and goes back to the *lex talionis* – “eye for an eye”. The main proponent of this approach is Immanuel Kant<sup>629</sup>. He claimed that reason for punishment should be found in the fact that individual committed a crime and not in its threatening effects to potential offenders. He explains that when a person commits a crime he gains unfair advantage over other individuals in society and therefore the punishment should help in restoring the previous equilibrium. Moore<sup>630</sup> describes retributivism as very straightforward theory of punishment. Society is justified in punishing because offenders deserve it since he is morally culpable. Moral culpability is not only a justification for but punishment but it also creates the duty for society to react. In essence the retributive theory of punishment focuses on offender’s act and his moral culpability and as such recognizes the value of person and the person’s place in society.”<sup>631</sup>

Modern approach to retribution is *desert*. Von Hirsch<sup>632</sup> does not find retribution as helpful term which expresses the essence of the idea that criminal should be punished because he deserves it. Instead he prefers the term *desert* due to its less emotional load and better expressiveness in focusing on past event. Hirsch points out evidence that society benefits from the existence of the punishment but that itself cannot be a good reason for “depriving the offender of his liberty and reputation”.<sup>633</sup> The rationale behind this view lies in the primacy of the individual fundamental rights, idea which is the best way expressed in work of philosopher John Rawls in his book *Theory of Justice*.

**Utilitarian** - The utilitarian theory of punishment justifies imposing punishment upon the offender because it will bring greater good by affecting potential criminals in preventing them from engaging in criminal activity. Rychlak<sup>634</sup> says that pure utilitarian thought does not take moral culpability into account. In the 18<sup>th</sup> century Beccaria<sup>635</sup> wrote that the sovereign’s right to punish crimes lies in his duty to protect public interest entrusted to him from the individual’s usurpation. Since past crime cannot be undone the purpose of punishment should prevent potential criminals of committing crimes and that could be achieved through the

<sup>628</sup>Posner, R. A. (1980): “Retribution and Related Concepts of Punishment”, *The Journal of Legal Studies*, Vol.9, No.1, Jan., 1980, pp. 71-92

<sup>629</sup>Kant, I. (1974): *The Philosophy of Law*, Augustus M. Kelly Publishers, New Jersey, 1974,

<sup>630</sup>Moore, M. S. (1987): “The Moral Worth of Retribution” in Schoeman, F. (ed.), *Responsibility, Character, and the Emotions: New Essays in Moral Psychology*, Cambridge, Cambridge University Press, 1987. See also: Moore, M. S. (2010): “Placing Blame: A theory of the Criminal Law”, Oxford Scholarship Online

<sup>631</sup>Rychlak, R. J. (1990): “ Society’s Moral Right to Punish: A Further Exploration of the Denunciation Theory of Punishment”, *Tulane Law Review*, Vol.65, 1990, pp.299-338

<sup>632</sup>Von Hirsch, A. (1976): *Doing Justice: The Choice of Punishments*, Report of the Committee for the Study of Incarceration, Hill and Wang, New York, 1976, p.46

<sup>633</sup>Ibid, p. 51

<sup>634</sup>Rychlak, R. J. (1990): “Society’s Moral Right to Punish: A Further Exploration of the Denunciation Theory of Punishment”, *Tulane Law Review*, Vol.65, 1990, pp.299-338

<sup>635</sup>Beccaria, C. (1995): *On Crimes and Punishments, and Other Writings*, Richard Bellamy, ed., translated by Richard Davies, Cambridge University Press, New York, 1995

sanctions which have to be balanced with the particular crime. Following Beccaria, Bentham<sup>636</sup> considered the punishment as an instrument available to state for preventing crime through imposition of fear. This could be achieved if authorities impose a threat of costs which exceed potential benefits of crime.<sup>637</sup> By doing this the state invests in prevention which could be divided in two branches: particular prevention – applies to wrongdoer itself and general prevention – applicable to whole society.<sup>638</sup> Since the punishment involves infliction of pain the only justification for using it if there are beneficial consequences to outweigh it which could be found in deterrence. However, this holds with the assumption that citizens are rational human beings which could be deterred by the well-constructed sentencing system which creates disincentives to crime.<sup>639</sup>

As previously discussed, Becker<sup>640</sup> translated deterrence theory to economic model by showing that criminals are rational utility maximisers who before committing the crime calculates the costs and benefits of it. Therefore, a person commits a crime if the expected utility to him exceeds the utility he could get by using his time and resources in performing other activities. In calculating the expected benefit of the offence, criminals take into account not only the likelihood of punishment but also of the probability of being detected. Therefore, in deterring crime the key lies in optimal amount of enforcement of the law, which depends on costs of catching and convicting offenders, the nature of punishment and responses of offenders to change in enforcement more precisely probability of conviction. Becker, therefore, claims that “some persons become criminals not because their basic motivation differs from that of other persons, but because their benefits and costs differ.” Following Becker, Posner<sup>641</sup> claims that the economic function of punishment is to make criminals internalize the social costs of their activities. From an economic point of view, the rationale of punishment is not to undo bad consequences of crime, but to affect people’s incentives for future engagement in criminal activity by placing a price on crime. He states that economic rationale for punishment thus resembles, but not replicates the deterrent theory of criminal punishment. They are not the same because “the economist’s objective is not to deter crime as such but simply to assure that any prospective criminal internalize the full social costs of his activity” which also has effects on people’s incentives to commit crimes. The latter is not in the scope of interest of retributivist/desert theory. This view is shared by Von Hirsch and Ashworth<sup>642</sup> who claim that economic theorists are not purely deterrence theorists. Their only concern is to “promote economically efficient penalties, and this optimizing approach leads them to take account of

<sup>636</sup>Bentham, J. (1840): *Theory of Legislation: Principles of the Penal Code*, Vol. 2, Weeks, Jordan & Company, Boston, 1840.

<sup>637</sup>Bentham, J. (2007): *An Introduction to the Principles of Morals and Legislations*, Dover Publications, INC., New York 2007

<sup>638</sup>Bentham, J. (1920): “The Principles of Penal Law”, in Bowring, J. (ed.): *The Works of Jeremy Bentham* (1838-43) p. 396.

<sup>639</sup>Ibid

<sup>640</sup>Becker, G. S. (1986): “Crime and Punishment: An Economic Approach”, *The Journal of Political Economy* 76 (2) 1986, pp.169-217

<sup>641</sup>Posner, R. A. (1980): “Retribution and Related Concepts of Punishment”, *The Journal of Legal Studies*, Vol.9, No.1 (Jan., 1980), pp. 71-92

<sup>642</sup>Von Hirsch, A. and Ashworth, A. (eds.) (2009): *Principled Sentencing: Readings on Theory and Policy*, 2<sup>nd</sup> edition, Hart Publishing, Oxford pp. 44-52

the costs of law enforcement as well as the probable benefits and disbenefits from the offender's point of view". Beside the discussion about justification of punishment, theory also analyses the effects which punishment has on potential law breakers. Von Hirsch and Ashworth<sup>643</sup> claim that deterrence, rehabilitation and incapacitation are forward-looking aims which "may be termed preventive". They all share the idea that punishment is warranted by reference to its crime-preventive consequences. These aims are advanced within utilitarian framework, the justification for punishment and the measure of punishment calculated by its utility compared with the attendant disutilities.

**Deterrence** –Von Hirsch and Ashworth<sup>644</sup> argue that on a broader level, deterrence aim belongs to the overall aim of the reduction or prevention of crime which are part of a set of social and political principles for government, more precisely the aim of criminal justice system as a whole. Blumstein, et al.<sup>645</sup> explain that underlying hypothesis of general deterrence claims that human behaviour can be influenced by incentives, thus sanctions are negative inducements and their imposition on a detected offender serves to discourage at least some others from engaging in similar pursuits. This assumes that people have free will and that they behave rationally. That practically means that criminals weight the consequences of their acts, more precisely, probability of being caught and convicted (certainty of punishment) and severity of punishment. If the offender thinks that capture and conviction can be avoided, then the deterrent effect will be missing regardless of the severity of any punishment. Thus, Rychlak<sup>646</sup> claims, observers of popular sciences are more prone to argue that certainty, not severity of punishment is the key to effective deterrence.

Deterrence is divided to individual and general. Shavell<sup>647</sup> explains that the former on presents the tendency of a punished wrongdoer to be deterred from committing a crime in the future as a result of sanction imposed on him. General deterrence is the tendency of people who did not commit the crime yet to prevent doing it in the future because of the prospect of sanctions prescribed. Individual deterrence is important if a person does not know the probability of being sanctioned. Therefore, if sanctioned for a misdeed a wrongdoer "will rationally increase his estimate of the likelihood of punishment" because of peoples immanency to adjust the beliefs about probability upwards. Magnitude of sanction provides slightly different picture regarding the individual deterrence because it depends on the estimation of the wrongdoer before being punished. If he underestimated it when actually punished with higher sanction he would be more deterred in the future. However, if he overestimated the magnitude but actually was punished with the lower sanction he would be less deterred in the future. This analysis leads to conclusion that individual deterrence matters in the situations when "there is substantial uncertainty about the likelihood of sanctions" or when parties "systematically underestimate the magnitude of sanctions". In all other situations,

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<sup>643</sup>Ibid

<sup>644</sup>Ibid

<sup>645</sup>Blumstein, A., Cohen, J. and Nagin, D. (eds.) (1978): *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*, National Academy of Sciences, Washington, D.C. 1978

<sup>646</sup>Rychlak, R. J. (1990): "Society's Moral Right to Punish: A Further Exploration of the Denunciation Theory of Punishment", *Tulane Law Review*, Vol.65, 1990, pp.299-338

<sup>647</sup>Shavell, S. (2004): *Foundations of Economic Analysis of Law*, The Belknap Press of Harvard Press University, Cambridge, Massachusetts, pp. 514-539

individual deterrence does not appear relevant. Apart from making a choice of committing or not a certain crime, Shavell<sup>648</sup> explains that an offender can also make a choice among them. In this case the magnitude of sanction can have deterrent effect in sense that he can choose to commit less harmful act with lower sanction over the opposite one. This deterrence is called *marginal deterrence*. The offender's moderation of the level of harm could be beneficial for the society and therefore, "sanctions should rise with the magnitude of harm". More precisely, all harmful acts, beside the most harmful ones, should be punished by less than maximum sanctions.

**Incapacitation** - Incapacitation, according to Blumstein et al.<sup>649</sup>, involves removing of the criminal from society and as such reduces the crime by physically preventing him from future committing of crime. It is, as Von Hirsch and Ashworth<sup>650</sup> say, the idea of "simple restraint. By rendering the convicted offender incapable for a certain period of time, society imposes an obstacle and prevents him offending again. Usual obstacles are the prison walls but there are other incapacitative techniques such as: exile or house arrest. Incapacitation has, usually, been sought for the offenders who deemed more likely to reoffend. However, Rychlak<sup>651</sup> argues that this is not easy to determine. Moreover, even when the common factors among likely repeat offenders are detectable, consideration may prevent judges from imposing longer sentences. He claims that white-collar criminals are less likely to be repeat offender but whenever they get relatively minor sentences people are upset.

**Rehabilitation** - Rehabilitation is based on the idea of "curing" an offender of his criminal tendencies. It assumes the changing an offender's personality, outlook, habits, or opportunities so as to make him less inclined to commit crimes. Von Hirsch and Ashworth<sup>652</sup> claim that rehabilitation often is said, involves "helping", but it does not necessarily mean that benefit of the offender is presupposed. In other words, those who are benefiting are other persons who become less likely to be victimized by the offender, ourselves and society as whole. Traditionally, rehabilitation included offer of counselling, psychological assistance, training, or support – but a variety of other techniques might be used. Some of the techniques, such as aversive therapies, may be unpleasant. The success in rehabilitation is measured by recidivism rates: whether the offender has been induced to desist. So the idea that society takes the offender provides education and makes him a better person with one important fact which Rychlak<sup>653</sup> points out. It assumes that an offender is capable of being rehabilitated.

Describing the justification of punishment and its consequences, this section aimed to provide the ground for further discussion of application of criminal sanctions in corruption combat. Important aspects of it are types of criminal sanctions as well and closer look on them

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<sup>648</sup>Ibid

<sup>649</sup>Blumstein, A., Cohen, J. and Nagin, D. (eds.) (1978): *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*, National Academy of Sciences, Washington, D.C. 1978

<sup>650</sup>Von Hirsch, A. and Ashworth, A. (eds.) (2009): *Principled Sentencing: Readings on Theory and Policy*, 2<sup>nd</sup> edition, Hart Publishing, Oxford

<sup>651</sup>Rychlak, R. J. (1990): "Society's Moral Right to Punish: A Further Exploration of the Denunciation Theory of Punishment", *Tulane Law Review*, Vol.65, 1990, pp.299-338

<sup>652</sup>Von Hirsch, A. and Ashworth, A. (eds.) (2009): *Principled Sentencing: Readings on Theory and Policy*, 3<sup>rd</sup> edition, Hart Publishing, Oxford

<sup>653</sup>Rychlak, R. J. (1990): "Society's Moral Right to Punish: A Further Exploration of the Denunciation Theory of Punishment", *Tulane Law Review*, Vol.65, 1990, pp.299-338

will be provided below. An already criticized approach based on increased criminalisation, which in case of transitional countries includes dominant use of imprisonment, will try to be improved with new solutions and application of other sanctions and will take into account all that is stated above.

#### 4.4.2. *Criminal sanctions and corruption*

##### 4.4.2.1. Criminal sanctions: general description

The characteristics of criminal act are already described earlier. Two important characteristics refer to harm and the state of the mind of a wrongdoer. Bowles et al.<sup>654</sup> explain that the harm is usually substantial and it should be caused by the offender who in the moment of committing a crime has mens rea. Criminal law is in economics treated as one of the mechanisms which can control harmful behaviour. It is applied if it brings society closer to the optimal level of harmful activities which is assessed through comparison of costs and benefits of the tools applied. Bowles et al. claim that efficiency of using criminal law sanctions is determined on the basis of victim's role and the nature or magnitude of harm caused. As shown at the beginning of this chapter, the literature on optimal law enforcement in its extensive discussions recommends that sanctions should depend on the characteristics of acts and parties.

While criminal act represents the behaviour which is in criminal code prescribed as criminal act, criminal sanction represents the punishment for committing a criminal offence.<sup>655</sup> Criminal sanctions imposed by the society on offenders are usually divided in two types: nonmonetary and monetary. Nonmonetary sanctions are death penalty, imprisonment, probation, community service, etc., while monetary sanctions are fines and forfeiture. In the law and economics theory, Becker<sup>656</sup> claims that fines have several advantages over other sanctions. They, among the others, conserve resources, compensate society as well as punish offenders, etc. However, offenders who are not able to pay fines have to be punished in other ways. Shavell<sup>657</sup> follows these claims and says that monetary sanctions are superior to nonmonetary because the latter are socially costly to be employed. Therefore, monetary sanctions should be always the first choice while nonmonetary should be employed only if the former are not able to deter adequately. However, Shavell stresses that monetary fines are cheaper for the society but not costless as sometimes is claimed. Their imposition requires legal proceeding, locating the assets of a wrongdoer and "forcing him to disgorge" them. Therefore, all these costs should be added to the sanction which is already imposed as optimal. In order to assist in deciding which sanction, monetary or nonmonetary should be applied,

<sup>654</sup>Bowles, R., Faure, M. and Garoupa N. (2008): "The scope of Criminal Law and Criminal Sanctions: An Economic View and Policy Implications", *Journal of Law and Society* 35, pp. 389-416

<sup>655</sup>Definition available at: <http://legal-dictionary.thefreedictionary.com/sanction>

<sup>656</sup>Becker, G. S. (1986): "Crime and Punishment: An Economic Approach", *The Journal of Political Economy* 76 (2) 1986, pp.169-217

<sup>657</sup>Shavell, S. (2004): *Foundations of Economic Analysis of Law*, The Belknap Press of Harvard Press University, Cambridge, Massachusetts, p.513

Shavell<sup>658</sup> provides a framework, which consists “five factors”. These factors include: (1) the value of the wrongdoer's assets; (2) the probability that the wrongdoer will escape being sanctioned; (3) the level of benefits to the wrongdoer from engaging in the harmful act; (4) the probability that an act will cause harm; and (5) the magnitude of the harm. Applying these criteria he claims that monetary sanctions might be inadequate if the purpose of policy maker is deterrence. Therefore, nonmonetary sanctions should be imposed. If a wrongdoer has a low level of wealth it is less likely that he would be deterred with a monetary fine. This also applies to those who can escape the punishment. For the offender who gains substantial benefits from a crime required monetary sanction should be accordingly high. However, it alone might not be sufficient for deterrence. Finally, expected harm should be observed through two criteria, the likelihood of harm is high and its magnitude tends to be high as well. If based on them the harm caused by wrongdoer is high, then the act should be deterred.<sup>659</sup>

Regarding corruption, application of criminal law has its rationale. Corruption is secret agreement which could induce high costs for the society and in that case it asks for criminalisation. Earlier in this chapter the four *economic* criteria for criminalisation were mentioned<sup>660</sup>: 1) harm is a large and/or immaterial and/or diffuse and/or remote; 2) stigma is desired; 3) the probability of detection is low; 4) the criminal enforcement costs are sufficiently low. It is earlier explained that *illegal corruption* and in *some cases of quasi-legal* corruption can produce substantial harm to the society. Usually, in these cases the bond among the parties is very strong and therefore the probability of detection is very low. Furthermore, since the costs are difficult to measure due to the non-existence of a precise victim, it appears that in this case criminal enforcement costs might be lower than those produced by corruption. Finally, stigmatization is highly desirable in this situation and criminal law poses this characteristic. The next section discusses the implementation of criminal sanctions in cases of bribery in post socialist countries, current state of art and suggestions for improvement.

#### 4.4.2.2. Application in the case of corruption

International anti-corruption conventions prescribe criminalization as one of the main instruments for fighting corruption. This “push for criminalization” comes from developed, wealthy, countries with strong judicial system and it was already been discussed in *Chapter 1* of this thesis. When applied to transitional countries, this policy does not give expected results, most probably due to limited resources and weak judicial system. The table in the *Appendix 4.1* shows the list of formally imposed criminal sanctions for bribery in post-socialist countries. In most of the cases imprisonment is prescribed as dominant sanctions, while the others mainly have supplementary role. This situation has its rationale. Since corruption and poverty go hand in hand, in countries which aim to improve the economic performance corruption imposes significant problems. Its criminalisation sends the message that this type of behaviour is not

<sup>658</sup>Shavell, S. (1985): “Criminal Law and the Optimal Use of Nonmonetary Sanctions as a Deterrent”, 85 *Columbia Law Review* 1232 (1985)

<sup>659</sup>Shavell, S. (2004): *Foundations of Economic Analysis of Law*, The Belknap Press of Harvard Press University, Cambridge, Massachusetts, p.544

<sup>660</sup>See supra note 613 at p.186

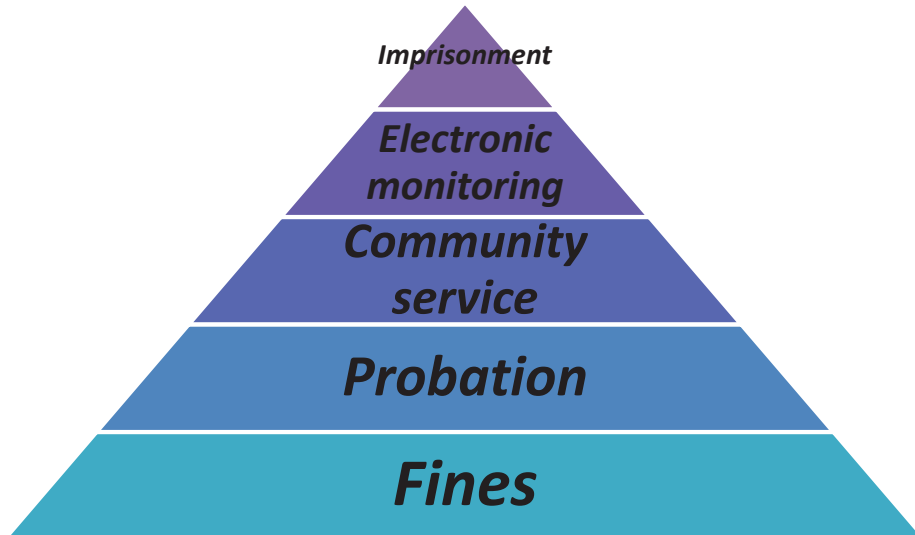
tolerated in the society. However, definition of formal rules is just one step. The other, more important, is their enforcement, which is usually low due to the reasons embedded in the mentality of post-socialist people, widely discussed in this thesis.

Criminalisation of certain acts has necessarily economic consequences since public enforcement by criminal justice system is required. Economics focuses on a couple of elements of criminal acts which are considered basic for the application of this type of law enforcement system. Bowles et al.<sup>661</sup> list these elements. The first is *mens rea*, which is “an essential element of crime” which goes from negligence to intent. In general economic analysis assumes that actors are aware of the scale of damages they cause and certainty of its occurrence. However, intent is mainly required in the moment of offender’s act which imposes difficulties for its accurate and cheap observation by enforcement agencies. The second element is *detection of victim* which in some cases might be difficult to detect, like in the above mentioned cases of bribery. Therefore the state is required to intervene “in order to achieve efficient control of negative externalities”. The third element is *enforcement technology* which is based on the deterrence theory. This element is string argument in cases of victimless crimes. Finally, criminal law has *punitive nature of enforcement* and compared to compensation in civil law, it provides full compensation. From the above provided analysis it could be concluded that criminalisation of illegal and some cases of quasi-legal corruption is justified due to the difficulties of harm and victim assessment. Furthermore criminalization should also deter people from committing a corrupt act and finally, it might provide if not full compensation then the highest possible.

The law and economics approach teaches us that criminal sanctions, especially imprisonment, due to its high costs to the society, should be used as last resort for deterring people of committing undesirable acts. Therefore, the employment of other nonmonetary and monetary sanctions with lower costs which if applied might produce similar deterring effects like the most expensive one, imprisonment. Another argument for wide use of the alternative sanctions is that civil servants, as argued earlier, are educated and skilled and as such could be sanctioned in the way to compensate more effectively society for the harm they caused. Imprisoning might not achieve this goal and in addition would induce additional costs. It is also important to stress that with imprisonment in many countries the disciplinary sanction of firing is triggered *ex lege*. By using alternative sanctions, civil servant is able to keep the job and repay to society the damage that he caused. The counter argument could be that by keeping the job he could be tempted to engage in similar activities and cause additional harm. However, this problem might be resolved by using disciplinary sanctions as a complementary mean since double punishment in different procedures is allowed according to the law. It was previously said that facts established in criminal procedure are taken as proved in case that the parallel disciplinary one is going one. In concrete case, based on the criminal judgement, the disciplinary sanction of moving civil servant to another job might be applied. This will change the environment and will also allow him to repay the debt to society. The practical application of the above described criminal sanctioning system is presented in *Pyramid 4.2*.

<sup>661</sup>Bowles, R., Faure, M. and Garoupa, N. (2008): “The scope of Criminal Law and Criminal Sanctions: An Economic View and Policy Implications”, *Journal of Law and Society* 35, pp. 389-416

Pyramid 4.2: Criminal anti-corruption pyramid



On the first level, monetary sanctions, *fin*es should be used as the first option in punishing corrupt parties and especially civil servants. As already explained, fines are considered less costly to enforce and they represent a state's revenue which compensates for the harm caused. One of the main arguments against fines, judgment proof argument here might be mitigated since civil servants have secure income and as mentioned above if allowed to keep the job, society can be secured that they would pay their debt. Furthermore, the *day fines* could be also applied in this case. Polinsky and Shavell<sup>662</sup> suggest that if individuals differ in wealth, than the fines imposed on them should differ as well. Hillsman<sup>663</sup> explains that day fines link the wrongdoer's income and the gravity of the harm he caused. The calculation of the fine has two steps. First, a certain number of fine units (days) is set and that is usually done according to specific guidelines designed for this type of sanction. Second, the amount of the unit is defined based on the offender's economic circumstances which include income, assets and financial obligations. This sanction aims to impose an equal burden on the offenders who committed the crime regardless of their wealth. In the next layer of pyramid *probation* is located. It allows the postponing of the sanction imposed on the offender under condition that he will not commit any additional crime. This sanction, although includes occasionally various conditions such as: supervision and special treatment programs, is still more affordable to

<sup>662</sup>Polinsky, A. M. and Shavell, S. (1984): "Optimal use of fines and imprisonment", *Journal of Public Economics* 24, 1984, pp. 89-99

<sup>663</sup>Hillsman, S. T. (1990): "Fines and Day fines", *Crime and Justice*, Vol. 12, 1990, pp. 49-98



society compared to prison<sup>664</sup>. In the third layer is *community service* which presents the unpaid work for the benefit of society. The sanction is imposed with the consent of the offender since in many countries forced labour is forbidden. This sanction is in law and economics literature treated as combination of imprisonment and fines. Since the offender is performing unpaid labour for public good this sanction transfers the wealth to the society and as such is more efficient than imprisonment.<sup>665</sup> The next sanction which is listed in the criminal sanction pyramid is *electronic monitoring*. This sanction is enforced by attaching the surveillance device to the offender's ankle. The ankle band sends the signal once he leaves a determined area, usually his accommodation place. This sanction has not benefits of monetary fines, which transfer wealth to the society, however it is still, according to the law and economics theory, considered as less expensive than imprisonment, since the costs for maintenance are lower.<sup>666</sup> Finally, as the last option, the pyramid provides *imprisonment*, as sanction for corruption. As previously argued prison is considered as costly way for crime combat and it does not transfer wealth back to the society and therefore scholars suggest that other measures should be exhausted prior to its imposition.

Two more sanctions might be provided as additional punishment to the main ones described in the pyramid. The first one is *forfeiture*. This pecuniary measure gives right to the authorities to confiscate, without compensation a benefit which offender obtained illegally.<sup>667</sup> Law and economics literature as one of the benefits of adding this sanction to the already imposed one improves the marginal deterrence because of the variation in the punishment based on the gravity of the crime. The table in the *Appendix 4.1* shows that forfeiture in transitional countries is not in some cases directly prescribed for bribery. However, general norms of many criminal codes include forfeiture as sanction which applies to all criminal acts in which an offender gained unlawful benefit. The second sanction, called in some codes deprivation of rights, is provided in some of the criminal codes in transitional countries for acts of bribery (see Appendix 4.1). This sanction *deprivation of the right to occupy a position or pursue a particular activity* means that a convicted civil servant is forbidden to be assigned to a position in civil service or to pursue professional or other activity, in general for a certain period of time. However, it is might be interesting to mention here a criminal sanction of disenfranchisement. It represents the restriction of a citizen's voting right and it is usually applied to prisoners. Ewald and Rottinghaus<sup>668</sup>, say that it is not clear whether this sanction aims to achieve deterrence or retributive effects. It affects one of the crucial rights

<sup>664</sup>Klaus, J. F. (1998): "Handbook on Probation Service: Guidelines for Probation Practitioner and Manager", *United Nations Interregional Crime and Justice Research Institute*, available at: [http://www.unicri.it/services/library\\_documentation/publications/unicri\\_series/Probation\\_handbook.pdf](http://www.unicri.it/services/library_documentation/publications/unicri_series/Probation_handbook.pdf)

<sup>665</sup>Ashworth, A. (2010): *Sentencing and Criminal Justice*, Cambridge University Press (5<sup>th</sup> edn), 2010

<sup>666</sup>Bungerfeldt, J. (2011): "The Impact of Alternative Sanctions and the Electronic Monitoring", seminar in Vilnius, Lithuania, March 2011,

available at: <http://www.tm.lt/dok/Renginiai/Monitoringas20110303/Bungerfeldt.pdf> ; see also Haverkamp, R. Mayer, M. and Levy, R. (2004): "Electronic Monitoring in Europe", *European Journal of Crime, Criminal Law and Criminal Justice* 12 (1), 2004, pp. 36-45

<sup>667</sup>Levy, L. W. (1996): *A Licence to Steal: The Forfeiture of Property*, The University of North Carolina Press, 1996

<sup>668</sup>Ewald A. and Rottinghaus, B. (eds.) (2009): *Criminal Disenfranchisement in and International Perspective*, Cambridge University Press, Cambridge, UK, 2009

in a democratic society, right of the citizen to be involved in a political life and therefore policy shaping in his country. Empirical studies run in this matter focus on the impact it has on election's outcome rather than its deterrent effects.<sup>669</sup> In the cases of corruption of civil servants, a sanction “*administrative disenfranchisement*” could be established. Since sanction of deprivation has in general time limits, this one could be used in the sense of losing right to perform civil duty in the future, more precisely it should create the ban on being employed by the state in the future. This sanction, due to limitations which are imposed on human labour rights, should be in theory considered as a sufficient deterrent for people who usually see as high benefit life tenure which civil service provides. In addition, majority of civil servants in post socialist countries work in public administration for decades and losing this job will cause for them substantial costs. The range of sanctions presented in the pyramid should be applied on civil servants on a case-by-case basis, having in mind particularly facts of the case, and the way which will deter corrupt behaviour the best and which will be the most beneficial for society.

Another important issue discussed earlier is the difficulty of detecting and investigating criminal acts. In case of illegal corruption the agreement among parties is even stronger since they collude knowing that both are doing something wrong. Bell<sup>670</sup> explains that in processing corruption one of the major issues is protection provided to those who report corruption “whistle-blowers”. Even though some individuals are obliged to report corrupt acts, whistle-blowers are mainly volunteers and as such need special protection. Cooter and Garoupa<sup>671</sup> discuss the creation of distrust among criminals in order to prevent cooperative crime, focusing of bribery of state officials. This should be achieved by offering amnesty or bounty to “the first criminal who secures his partner’s conviction”. Shavell<sup>672</sup> suggests that self-reporting by the wrongdoer could be induced if state provides lower sanctions for those individuals who disclose their misdeeds. This approach is important for a couple of reasons. First, it reduces enforcement costs because enforcement agency does not need to spend resources identifying and proving the wrongdoers. Second, it is advantageous if potential offenders are risk averse. Third, it can mitigate the harm or reduce its level. Finally, Lambsdorff and Nell<sup>673</sup> suggest approach of unequal, asymmetric, sanctions in punishing corruption. They divide corrupt deal into four actions: 1) accepting bribe by public official, 2) his illicit reciprocation by giving

<sup>669</sup>See: Uggen, C. and Manza, J. (2004): “Voting and Subsequent Crime and Arrest: Evidence from a Community Sample”, *Columbia Human Rights Law Review* 36(193), 2004 and Uggen, C. and Manza, J. (2002): “Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States”, *American Sociological Review* 67, 2002, pp. 777-803

<sup>670</sup>Bell, J. (2007): “Legal Means for Eliminating Corruption in the Public Service”, *Electronic Journal of Comparative Law*, Vol. 11.3, accessible at: <http://www.ejcl.org/113/article113-28.pdf>

<sup>671</sup>Cooter, R. and Garoupa, N. (2000): “The Virtuous Circle of Distrust: A Mechanism to Deter Bribes and Other Cooperative Crimes”, *Berkley Online Program in Law and Economics*, Working Paper 32

<sup>672</sup>Shavell, S. (2004): *Foundations of Economic Analysis of Law*, The Belknap Press of Harvard Press University, Cambridge, Massachusetts, p.513

<sup>673</sup>Lambsdorff, J. G. and Nell, M. (2007): “Fighting Corruption with Asymmetric Penalties and Leniency”, Centre for Globalization and Europeanization of the Economy, Georg-August-Universität Göttingen, February 2007; See also: Lambsdorff, J. G. (2013): *The Institutional Economics of Corruption and Reform*, (1st edn), Cambridge: Cambridge University Press, 2007, *Cambridge Books Online*, Web. 11 June 2013; Lambsdorff, J. G. and Nell, M. (2005): “Let Them Take Gifts, and Cheat Those Who Seek Influence”, *Economic Faculty of Passau University, Discussion Paper* 41-05, December 2005; Lambsdorff, J. G. and Nell, M. (2006): “Corruption: Where We Stand and Where to Go,” in Kreutner, M.(ed.): *The Corruption Monster: Ethik, Politik und Korruption*, 2006,

favourable treatment, 3) bribe giving, 4) accepting the favourable treatment. In order to foster whistle-blowing and to break the mutual silence in corrupt agreement, they suggest asymmetric design of sanctions that should be applied, shown in *Table 4.4*. They also claim that if used, immunity must be granted only to the bribe-giver in case when civil servant has already provided favourable treatment.

*Table 4.4: Asymmetric sanction design*

<i>Type of corrupt action</i>	<i>Severity of sanctions</i>
Accepting bribe	Low
Illicit reciprocating by benefit	High
Giving bribe	High
Accepting illicit benefit	Low

*Source: Lambsdorff and Nell, "Let Them Take Gifts, and Cheat Those Who Seek Influence"*

Basu's<sup>674</sup> shares this view by explaining that the parties are not equal in corrupt agreement. A public servant should be a "gate keeper", who in case of bribery violates the rights which he should protect. Therefore he has "the primary moral responsibility" and the gravity of his act is higher. Keeping in mind the specific situation of transitional countries and the mentality which should be changed this thesis also supports this view.

#### 4.5 Conclusion

The purpose of this chapter was to discuss *how constrains should be imposed in order to achieve the optimal level of corruption combat in public administration of post-socialist countries*. Bribing of civil servants is in many countries sanctioned by criminal law in accordance to international anti-corruption requirements. In addition some of them treat bribery with and administrative disciplinary law as well. However, legal principles provide supremacy of criminal law whenever the act has dual treatment, and therefore administrative law has subsequent role. Nevertheless, some CEE post-socialist countries following the patterns of the old regime use both laws in a way which mitigates punishment of corruption and liability of civil servants. Important issue from the point of this research is that transitional countries do not make a distinction between legal, illegal and quasi-legal corruption, suggested in this chapter. The differentiation is made according to the costs and level of harm which each of them induce.

This division is important from the prospective of detecting and prosecuting corrupt acts, since these two might appear a difficult task to perform. It was previously argued that civil servants of post-socialist countries might still keep the mentality of *homo sovieticus* who did not see anything wrong in stealing from the state. In that sense he needs to internalise new values of how administration should operate (discussed in Chapter 2) and to perceive corruption as wrongful act. The important aspect of any administration is discipline which is in place to assure respect of the goals and values of the institution. In order to discipline corrupt

<sup>674</sup>Basu, K. (2011): "Why, for a Class of Bribes, the Act of Giving a Bribe should be treated as Legal", *Ministry of Finance Government of India Working Paper* No. 1/2011-DEA, March 2011

civil servants and their acts of taking bribes this thesis suggests that legal bribing and some cases of quasi-legal bribing should be punished with the range of administrative disciplinary sanctions, provided in the *Pyramid 4.1*. This approach is suggested with respect to a couple of facts. First, in general legal bribing induces only costs for a bribe giver and not to the society as a whole. Second, administrative procedure is less demanding and requires lower standard of proof which makes bribery's detection and punishing more successful and less costly as well. Finally, by punishing only a civil servant, the secret agreement becomes less stable and as such has a deterrent effect.

Illegal corruption and some acts of quasi-legal corruption in general induce higher costs for the society since the victims are difficult to access and consequently the harm as well. According to the Law and economics literature this situation asks for application of criminal law for deterring undesired behaviour. However, optimal use of criminal sanctions depends on many aspects. According to the literature imprisonment should be used as last instance since it provides mainly costs and no returns for the society. Nevertheless, according to the international anti-corruption regulation, transitional countries mainly prescribe the use of imprisonment as sanction for corruption punishment. Other sanctions are reserved for limited cases. Therefore, the suggestion in this research is that in punishing bribery of civil servants a range of sanction, provided in the *Pyramid 4.2*, should be employed before imprisonment. In addition, for achieving higher level of detection and prosecution of these cases the asymmetric punishment regime should be employed. However, since the civil servant's misdeed carries higher level of moral condemnation, the immunity when granted should be provided only for a bribe giver.

### Appendix 4.1

Table: Punishing of bribery of civil servants

<b>Country</b>	<b>Bribery is a criminal act</b>	<b>Types of bribery regulated</b>	<b>Imprisonment</b>	<b>Other sanctions</b>
<i>Albania</i>	Yes	Accepting and giving bribe bribing	Yes	No
<i>Belarus</i>	Yes	Accepting and giving bribe and intermediation in bribing	Yes	No
<i>Bosnia &amp; Herzegovina</i>	Yes	Accepting and giving bribe, mediation in bribing	Yes	- Forfeiture
<i>Bulgaria</i>	Yes	Accepting and giving bribe, mediation in bribing,	Yes	- Fine with prison - Deprivation of rights - Forfeiture
<i>Croatia</i>	Yes	Accepting and giving bribe, mediation in bribing	Yes	- Forfeiture
<i>Estonia</i>	Yes	Accepting and giving bribe, mediation in bribing ,	Yes	- Forfeiture - Fine/prison for intermediation
<i>Georgia</i>	Yes	Accepting and giving bribe, accepting illegal presents	Yes	- Deprivation of rights for accepting illegal presents
<i>Hungary</i>	Yes	Accepting and giving bribe, failing to report bribery,	Yes	No
<i>Kazakhstan</i>	Yes	Accepting and giving bribe, mediation in bribing,	Yes	-Fine - Restriction of freedom - Deprivation of rights - Forfeiture - Correctional labour - Detention under arrest
<i>Kirgizstan</i>	Yes	Accepting and giving bribe, mediation in bribing	Yes	- Fine - Forfeiture - Deprivation of rights
<i>Latvia</i>	Yes	Accepting and giving bribes, misappropriation of bribes, mediation in bribery	Yes	- Community service - Fine - Deprivation of rights - Forfeiture
<i>Lithuania</i>	Yes	Accepting and giving bribe, mediation in bribery	Yes	- Deprivation of right - Fine - Restriction of liberty
<i>Macedonia</i>	Yes	Accepting and giving bribe	Yes	No
<i>Moldova</i>	Yes	Accepting and giving bribe	Yes	- Fine - Deprivation of rights
<i>Montenegro</i>	Yes	Accepting and giving bribe	Yes	No
<i>Romania</i>	Yes	Accepting and giving bribe	Yes	- Deprivation of rights
<i>Russia</i>	Yes	Accepting and giving bribe, mediation in bribing	Yes	- Fine - Deprivation of rights - Compulsory labour -
<i>Serbia</i>	Yes	Accepting and giving bribe, Intermediation in bribery	Yes	- Forfeiture
<i>Slovakia</i>	Yes	Accepting and giving bribe,	Yes	No
<i>Slovenia</i>	Yes	Accepting and giving bribe, intermediation in bribery	Yes	- Fine

Source: Legislation online, accessible on: <http://www.legislationline.org/documents/section/criminal-codes>

## ***Chapter 5: The case study of the Republic of Serbia***

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*“Reform is not pleasant, but grievous;  
no person can reform themselves  
without suffering and hard work,  
how much less a nation”  
Thomas Carlyle*

### **5.1. Introduction**

The Republic of Serbia is a country with a fifteen century long turbulent history. In one part of that history Serbia was part of the Socialist Federal Republic of Yugoslavia (SFRY) which was created after the Second World War. The fifty years of socialist institutional setting had significant impact on the people and its behaviour which became visible when transition and implementation of new values started. This chapter will provide the explanation of the reasons for pursuing the case study and all other information necessary for the completing the image of corruption in Serbian public administration. It consists of two parts. In the first part some basic history facts, current situation, and anti-corruption framework of the Republic of Serbia are described. Second part presents the results of the case study conducted. The main goal of running the qualitative study in this case was to provide insights in to some of the issues addressed in previous chapters. Methods used are grounded theory, case study and survey

### **5.2. Motivation for the case study**

In the discussion about socialism it was mentioned that, comparing to Soviet Block, Yugoslavia had different approach towards the interpretation of socialism which caused the difference in the state organization. These differences will be elaborated on later in this chapter but here it is important to stress that in the essence they made the authoritarian socialist regime less visible to people inside and outside the country. Sevic and Rabrenovic<sup>675</sup> claim that on one hand, “Tito’s moderate socialism made Yugoslavia complaisant” but on the other, it had effects on the ex-Yu republics by making them reluctant “to introduce the necessary changes quickly”. *Table 5.1* provides the list of six ex-Yugoslavian countries and current important facts relevant for this research.

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<sup>675</sup>Sevic, Z. and Rabrenovic, A. (1999): “The Civil Service of Yugoslavia: Tradition vs. Transition” in Verheijen, T. (ed.): *Civil Service Systems in Central and Eastern Europe*, Edward Elgar Publishing, 1999

Table 5.1: General data of the ex-Yu countries

Country	EU status	Population <sup>676</sup>	No. of employed	Employed in Public Sector <sup>677</sup>	Employed in Civil Service	TICPI 2013 (1-10)	GCB 2013 (1-5)
Bosnia & Herzegovina	Potential candidate (2000)	3,833,916	442,111 <sup>678</sup>	222,000 (50%)	20,000 (9%)	4.2	3.9
Croatia	Member (2013)	4,281,000	1,388,045 <sup>679</sup>	388,222 (28%)	63,000 (16%)	4.8	3.9
FYR Macedonia	Candidate (2005)	2,071,000	685,479 <sup>680</sup>	170,000 (25%)	44,500 (26%)	4.3	3.6
Montenegro	Candidate (2010)	621,000	197,300 <sup>681</sup>	61,500 (31%)	10,511 (17%)	4.4	No data
Serbia	Candidate (2012)	7,181,505	1,698,000 <sup>682</sup>	781,000 (46%)	30,000 (3.8%)	4.2	4.3
Slovenia	Member (2004)	2,059,000	796,601 <sup>683</sup>	266,000 (33%)	45,220 (17%)	5.7	3.5

What could be seen from the table is that countries, during the transition, had different paths towards the EU accession. The first column provides the information on the EU membership status which in a certain way provides the image how the transitional changes are graded externally. Second column provides the number of country's population while the next one gives the number of people employed in general. The third column presents the number of people employed in public sector and in the brackets its percentage regarding the total number of employed people (provided in the previous column). The fourth column provides the number of those employed in civil service together with their percentage calculated from the number of people employed in public sector. TICPI gives the rank of the country regarding corruption but since it refers to the general perception of corruption additional indicator, Global Corruption Barometer<sup>684</sup>, is presented as well. As explained in the introduction of the thesis, the GSB indicator measures corruption in main public institutions in a country. Here the aggregate values of the respondent' opinion about corruption in the civil service are presented. The two rankings go to different direction. In TICPI scale 1 stands for highly corrupt country while 10 is the grade of the "cleanest" country. In the GCB scale 1 refers to "not corrupt at all", while 5 stands for "extremely corrupt". What could be seen from the table and the *Graph 5.1*, if all parameters from the *Table 5.1* are taken into account, is that even though their progress in transitional process is graded differently, the problem of corruption in the civil service is still perceived as serious. For instance Slovenia is, according to many parameters, the most

<sup>676</sup>Data available at: <http://countryeconomy.com/demography/population>

<sup>677</sup>Description and data available at: [http://www.b92.net/biz/vesti/srbija.php?yyyy=2014&mm=04&dd=07&nav\\_id=833547](http://www.b92.net/biz/vesti/srbija.php?yyyy=2014&mm=04&dd=07&nav_id=833547)

<sup>678</sup>Data available at: <http://www.fzs.ba/>

<sup>679</sup>Data available at: <http://www.dzs.hr/>

<sup>680</sup>Data available at: <http://www.stat.gov.mk/>

<sup>681</sup>Data available at: <http://www.monstat.org/cg/page.php?id=23&pageid=23>

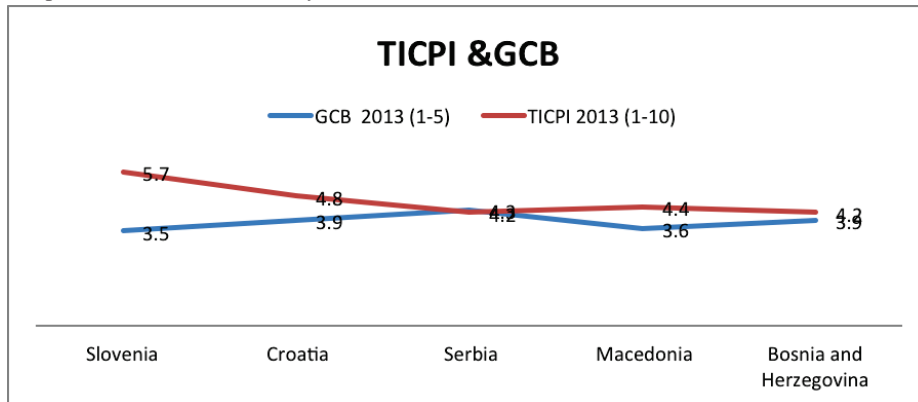
<sup>682</sup>Data available at: <http://webzrs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=24>

<sup>683</sup>Data available at: [http://www.stat.si/eng/novica\\_prikazi.aspx?ID=6318](http://www.stat.si/eng/novica_prikazi.aspx?ID=6318)

<sup>684</sup>Data available at: [http://www.transparency.org/gcb2013/in\\_detail/](http://www.transparency.org/gcb2013/in_detail/)

advanced ex-Yu countries. It became the EU member in 2004, and its TICPI is the highest among the six countries. However, the GCB for 2013 shows that on the scale from 1 to 5 its administration is graded corrupt with the 3.5 score.

Graph 5.1: TICPI and GCB of ex-YU countries



What could be also noticed from the table is that the size of the public sector, shown in percentages, is relatively high. In the EU countries the average size of the public sector is between 10-20%<sup>685</sup>. In the literature the size of the public sector is measured in various ways. The commonly used measures include relating income public sector or its expenditure to GDP or connecting them to the number of employees. How the size of the government affects corruption is still not finally concluded. Goel and Nelson<sup>686</sup> claim that size of the government, analysed through its spending, has strong positive influence on corruption. However, Montinola and Jackman<sup>687</sup> reach the opposite conclusion and claim that, contrary to the rent-seeking literature opinion, large public sector is not “necessary... and... sufficient cause of corruption per se”. Nevertheless, they explain that their conclusion might not stand if instead of using government expenditure, the number of public employees would be taken into account. Glaeser and Saks<sup>688</sup> claim that government size measured by the number of state legislatures per capita, the number of local governments per capita and the share of GDP related to government’s size have no effects on corruption. Without deepening debate one interesting point, made by Montinola and Jackman, should be kept in mind. Intuition could lead us to conclude that the greater the number of people employed by public sector the higher the number of corrupt opportunities might arise. If this claim is put in the context of post socialist

<sup>685</sup>Maroto, A. and Rubalcaba, L. (2012): “Innovation and R&D in Public Sector Modernization and Performance”, *Modern Economy*, 2012, 3, pp. 873-883

<sup>686</sup>Goel, R. and Nelson, M. (1998): “Corruption and government size: a disaggregated analysis”, *Public Choice* 97 (1), pp.107–120

<sup>687</sup>Montinola, G. R. and Jackman, R. W. (2002): “Sources of Corruption: A cross-country study”, *British Journal of Political Science*, Vol.32, January 2002, pp. 147-170

<sup>688</sup>Glaeser, E. L. and Saks, R. E. (2006): “Corruption in America”, *Journal of Public Economics* 90, 2006, pp. 0153-1072



countries, whose administration structure and mentality were widely described earlier, the reasons for concern appear conclusive. This research is focusing on the specific socialist regime of SFRY, and as such takes the Republic of Serbia, the largest ex-YU republic, as unit for case study analysis. It is considered that since the six republics share the history and institutional setting it is most likely that conclusions from the one representative case study could be applied to the rest of five countries

### 5.3. The Republic of Serbia

#### 5.3.1. Facts

##### 5.3.1.1. History

The Republic of Serbia is located in the South-Eastern Europe on Balkan Peninsula. It has the population of around seven million inhabitants. History of Serbia starts at the end of sixth century when Serbian tribes settled the Balkans, which in that time was the border of Byzantine Empire. Due to the geographical position of its settlement, which is often called “the bridge”, between East and West and North and South, the 15 century long history was, on one hand, full of different influences and cultural varieties and, on the other, wars and conflicts that those influences created, which both inevitably left marks on the people who lived and still live on this territory. During its history Serbia was kingdom, empire, vassal feudal country, capitalist country, socialist country and at the end transitional country. Transition in Serbia started during the 1980’s after almost 50 years of communism, which was introduced after the Second World War by creation of Socialist Federal Republic of Yugoslavia (SFRY) with Josip Broz Tito as its president. At that time it was a promise of better future, and for a while, at least for the people in Yugoslavia, the promise was fulfilled. However, the happy future was limited and, like majority of socialist regimes, the socialism in Yugoslavia did not pass the duration test of history. The idea of socialism and its different implementation in practice was already described in *Chapter 1* and therefore this chapter will only touch upon the specificities of Yugoslavian socialism.

From its implementation in 1945 till 1948, Tito followed the Soviet model of socialism, complying with the path of other Eastern European countries. However, unhappy with the role of Stalin’s obedience he decided to take another direction in implementing socialist idea. In 1948, Communist Party of Yugoslavia refused to take further dictates from the Soviet Union, and as such was expelled from Communist Information Bureau (Cominform). This decision reflected on Yugoslavian internal and external politics. Baradat<sup>689</sup> analyses that are the essential differences in Soviet and Yugoslavian socialism caused by Tito’s attitude that “there are many different paths of socialism”. He, claims that Tito reversed the Soviet interpretation in many principles and created “the most pragmatic and least dogmatic” variant of communist ideologies which reflected, as mentioned above, international and domestic policy. Reversing the principle of permanent revolution, in international arena he pioneered the policy of

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<sup>689</sup>Baradat, L. P. (1991): *Political Ideologies: Their Origins and Impact*, Prentice Hall, Inc., Englewood Cliffs, New Jersey 07632, pp. 198- 202

neutrality, non-alignment with either East or West, and cooperation and trade with both. The level of cooperation with the West might be depicted through an interesting situation, quite unusual for that time. Tito was in very friendly relation with John F. Kennedy and after his assassination in Yugoslavia the day of mourning was declared. Furthermore he was one of the founders of the Non-Aligned Movement (NAM)<sup>690</sup> which brought many benefits to Yugoslavian economy.

Regarding domestic policy Baradat<sup>691</sup> claims that Tito's conviction that "there was no true interpretation of socialism", led him to introduce some innovations in this area. Afraid that regime has a tendency to over-centralization he focused on decentralization in three aspects. The first one was structural decentralization, explained by Tito who described Yugoslavia as "one country with two alphabets, speaking three languages, professing four religions, made up of five nationalities in six republics". It was implemented through federal state organization composed of six republics. The second one was political, which transferred the involvement of the Communist Party to people's life from central to the local level Party's machinery. However this decentralization was abandoned after some unexpected outcomes. Finally, the third decentralization, the most significant one was decentralization of the economic system called *market socialism*. This included on one hand, recapitalization, returning private ownership to agricultural enterprises and small business and on the other, introducing in industrial sector *worker's self-management (WSM)*. The changes made in the industrial sector were considered the most advanced because it gave to the workers direct control of the factories. In this program all workers, not only the most qualified ones, stand for election to the factory's *workers' council* and as such became part of the management which allowed them to participate in making plans and carrying out production goals. However, these goals, certainly, had to agree with the needs of society defined at higher levels. Some authors, like Kuljic<sup>692</sup>, describe worker's self-management as modern for the time when it was established and which combines the best from socialism and capitalism. He claims that on one side it had pluralism of ownership, and on the other, it had the dictatorship of the party from the top and democracy from the bottom of the organization. There are three aspects in which workers' councils had different voting power. In one, which concerned division of the earnings among the workers, the councils had full voting power. In the second aspect, which includes question referred to the expert regarding production process, the experts had final word. Finally, human resource management was in the power of the Communist party and workers' councils did not have voting power in decision making. However, this was not absolute rule since the worker could not be fired without the permission of the council. Kuljic states that this system was not without structural problems which could be classified in three groups. The first group of

<sup>690</sup>Non-Aligned Movement is a group of states which formally do not align with any of the power block. It was conceived by Indian's first prime minister Jawaharlal Nehru, Indonesian's first president Sukarno, Egypt's second president Gamal Abdel Nasser, Ghana's first president Kwame Nkrumah and Yugoslavia's president Josip Broz Tito. The first conference was held in Belgrade in 1961. See more on: <http://www.nam.gov.za/>

<sup>691</sup>Baradat, L. P. (1991): *Political Ideologies: Their Origins and Impact*, Prentice Hall, Inc., Englewood Cliffs, New Jersey 07632, pp. 198- 202

<sup>692</sup>Kuljic, T. (2003): "Autogetion de trabajadores en Yugoslavia", available at [http://www.republicart.net/disc/aeas/kuljic01\\_es.pdf](http://www.republicart.net/disc/aeas/kuljic01_es.pdf) and "Jugoslovensko radnicko samoupravljanje", available on website of European Institute for Progressive Cultural Policies: <http://eipcp.net/transversal/0805/kuljic/sr/print>

problems is related to the characteristics of the workforce. During the fifties, when worker's self-management started, farmers dominated in the population and it was a big challenge to create industrial workers out of them. The problem was not only an underdeveloped industrial culture but political as well. The turbulent history of Balkans, with many wars and dictatorships, did not allow a development of stronger political culture which affected WSM as well. The basic conditions for its well-functioning are, according to him, culture, education, schools and expert's knowledge. Second problem relates to the antagonism between direct democracy and human resource management from the top which creates internal tensions since the workers were aiming to create its own democratic space. Finally, the tensions between rich and poor areas of the country and rich and poor republics, which arose in 60', additionally disturbed the functioning of WSM.

However, social experiment called worker's self-management, created on the ground of the Paris Commune inheritance, ideas of Serbian socialist democracy at the end of 19<sup>th</sup> century, relicts of anarchy and ideas of Trockizm used for criticism of Stalinism, moved formally, together with other socialist institutions, to the history with collapse of the socialist regime. Yugoslavia disintegrated at the beginning of 90's and during this time economic crisis escalated in all countries created on its territory. The socialist regime in Serbia, tried to overcome the crisis, which was particularly large due to the civil war on the territory of ex-Yugoslavia and UN economic sanctions imposed on Serbia. In 1994 in order to stabilize the hyperinflation that reached enormous rate in 1993, it was 2% per hour, government introduced the economic reform program, made by Governor of National Bank of Serbia, Dragoslav Avramovic. However, this program did not have long impact. On the 5<sup>th</sup> October 2000, after the big demonstrations of citizens caused by the irregularities during the elections for the president of Federal Republic of Yugoslavia<sup>693</sup>, in so called "5<sup>th</sup> October Revolution", socialist regime was dethroned. The power was taken by Democratic Opposition of Serbia (DOS), composed of a coalition of 19 parties. This overthrow has been seen by the people in Serbia as promising in reforming the country and its economy, and it could be described the best way by the Hirschman's "tunnel theory".<sup>694</sup> He claims that in the initial stage of the change people are ready to accept greater inequalities in the society even if that means that means that their own social and economic status will degrade because of the expectancy that success of others, created by social differentiation, indicates improvement of their own future opportunities. He compares this situation with the traffic jam in a tunnel. People in the inner line will accept for some time their position if they see that people in the outer line are moving because this is seen as indicator that all of them soon will be able to move out of the tunnel. However, if they stay caught for a long time they will react against the unfair treatment of the cars in inner lane and will ask from the police privileges given to the cars in the outer lane.

Serbian government used this initial time, as Norgaard calls "opportunity space", to implement "shock therapy" introducing reforms in financial sector, forcing liberalization and privatization of state owned companies. The last measure is by some authors considered as the

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<sup>693</sup>Federal Republic of Yugoslavia was created on 27 April 1992, composed of Montenegro and Serbia. This Yugoslavia, the third one, was founded after the breakup of the socialist Yugoslavia.

<sup>694</sup>Norgaard, O. (2000): *Economic Institutions and democratic Reform – A comparative Analysis of Post-Communist Countries*, Edward Elgar Publishing, Inc., 2000, p. 105-109

crucial one which assumes transformation of social to private ownership and it is considered as the main presumption and mean of the transitional process.<sup>695</sup> Together with other macroeconomic components it is aimed at providing the structure for the development of open market institutions. However, the results of privatization in Serbia were not as they were expected to be. In research, which included empirical analysis of effects of privatization conducted after 2002, Nikolić<sup>696</sup> claims that privatized companies make a modest contribution in creation of value added in the economy of Serbia. General conclusion is that from the year 2000 onwards, the privatization concept did not bring to Serbia expected results. When looking closely at specific companies the conclusion is that effects vary and they depend on the size of the company. More precisely larger companies showed faster progress and higher profitability while small and middle-size enterprises, even after five years, did not enter the positive business zone. In addition 45,000 work places per year disappeared.

These results have negative effects on the people's attitude towards reform and quite often the current situation is compared with the times in ex-Yugoslavia of which they think with nostalgia. This attitude might surprise the reader unfamiliar with the circumstances but as explained above the Yugoslavian socialism had in some aspects different path from the Soviet one. Although they ended the same way, their life had different characteristic which affected people's everyday life. However Rueschemeyer<sup>697</sup> claims that although Yugoslavia in the initial stage experienced rapid modernisation in sense of the expansion of the female work force, mobility within and out of work force and mobility of whole households, the performance was not that different from the other socialist countries. Maddison historical GDP data<sup>698</sup> per capita for couple of socialist countries are presented in the *Graphs 5.2* and *Graph 5.3*. *Graph 5.2* shows the trends in GDP per capita for the socialist countries: Bulgaria, Czechoslovakia, Hungary, Poland, Romania, Yugoslavia and USSR for the years 1950, 1960, 1970, 1980 and 1990, and, even though the results are shown in "1990 international dollars" the reader can get the impression of the situation back in the past. *Graph 5.3* compares these values to the values of France, the UK and the USA in order to show the difference among the two types of countries. Detailed numbers are provided in the table in the *Appendix 5.1* of this chapter.

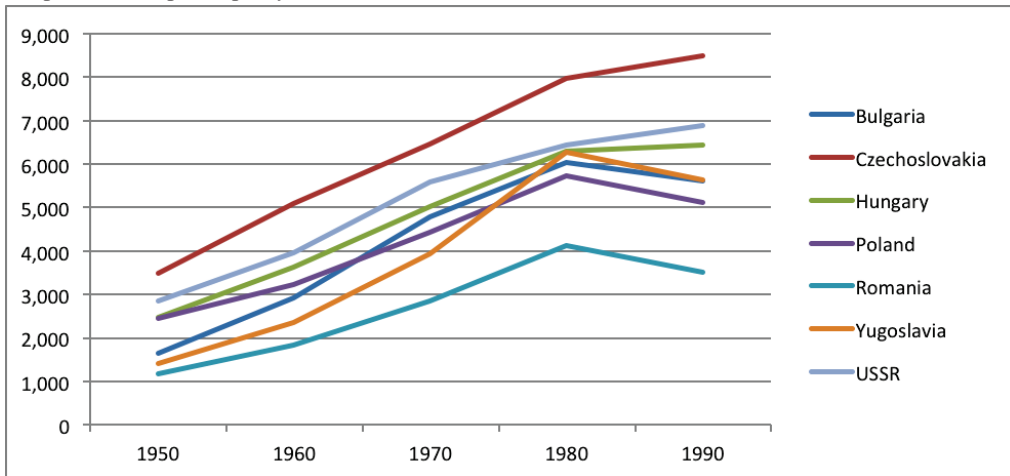
<sup>695</sup>Buncic, S. M. (2012): "Dvadeset godina procesa privatizacije u zemljama na prostoru bivše Jugoslavije – modeli i rezultati" (Twenty years of privatization process in the countries formed on the territory of ex-Yugoslavia – models and results), *Srpska politička misao*, (2), pp.201-222

<sup>696</sup>Nikolić, I. (2010): "Privatizacija u Srbiji- od euforije do razočarenja" (Privatization in Serbia – from euphoria to disappointment), *Industrija*, Vol. 38, No. 4, pp. 69-94

<sup>697</sup>Rueschemeyer, M. (1998): *Women in the Politics of Post-communist Eastern Europe*, M.E. Sharpe, Inc., p.200

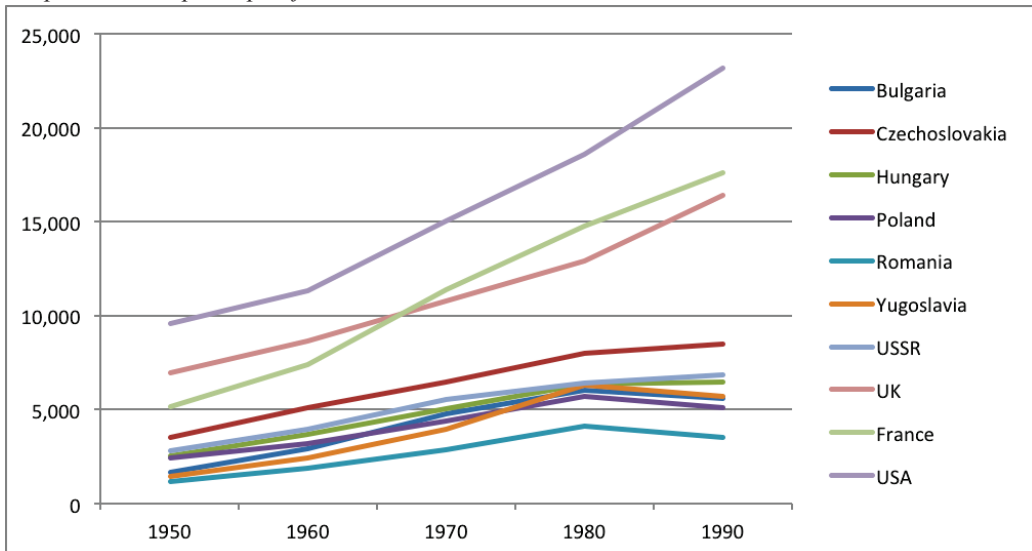
<sup>698</sup>Bolt, J. and van Zanden, J. L. (2013): "The First Update of the Maddison Project; Re-Estimating Growth Before 1820", *Maddison Project Working Paper 4*. Available at: <http://www.ggd.net/maddison/maddison-project/home.htm> and on World Economics – Maddison Historical GDP data: <http://www.worlddeconomics.com/Data/MadisonHistoricalGDP/Madison%20Historical%20GDP%20Data.efp>

Graph 5.2: GDP per capita for socialist countries



Source: Maddison Project database

Graph 5.3: GDP per capita for socialist countries and France, UK and USA



Source: Maddison project database

Although the data present the economic situation which is not significantly different, the people in Serbia show a tendency to think that they live much better compared to other socialist countries. It appears that central planning and soft budget constraints as well as state's obligation to provide free education and healthcare, jobs and housing for all citizens diluted the real picture of the economic performance of the country. Another interesting aspect which

might contribute to explain the phenomenon is found in the article written by Jansen<sup>699</sup>. He analyses traveling document in ex YU, so called the “red passport”, which allowed citizens to travel all around the world without visa, and visa regime imposed on the states formed after the break up. He says that many of the citizens of Serbia and Bosnia and Hercegovina, who were ones Yugoslavian republics, say that “...normal lives in Yugoslavia were commonly recalled in terms of living standards, order, and social welfare, but explicitly related to the dignity of having a place in the world”. This impression is gained through traveling anecdotes in which foreigners expressed admiration for Yugoslavia, as anti-fascistic country with social well-being, and its leader Tito, who had a status of “great statesmen”. Although people will admit that Tito was authoritarian ruler they will focus on how he created a place in the world for Yugoslavia and its citizens. All put together this might be an explanation why people in Serbia, when reform did not fulfil their expectations, turn back to the image of the past as better society leaving the impression that they do not count the bad aspects, which in practical terms may create obstacles to change.

### 5.3.1.2. Current situation

In the beginning of its transitional journey Serbia committed itself to become a member of the European Union. The European framework is imposed as the guiding principle in this process. On 1 October, 2005 negotiations for Stabilisation and Association agreement were launched. Two years later on 22 December, Serbia applied for the EU membership. On 1 March 2012 European Council confirmed Serbia as a candidate country and finally, on 21 January first intergovernmental conference Serbia-EU was held.<sup>700</sup> Parallel with the EU accession, Serbia started the accession to the World Trade Organization (WTO)<sup>701</sup>. The application was submitted on 23 December 2004. This double track accession imposes lots of changes and adjustments on Serbia legal and economic system. The method chosen for the adjustment is, like in the majority of transitional countries, through legal transplants. The Watson’s<sup>702</sup> *theory of legal transplants* has been already discussed earlier in this thesis as well as its implications studied by Berkowitz et al.<sup>703</sup>. Legal history of Serbia in most cases was combination of original and transplanted law. From Dušan’s Code in Middle Ages, through 19<sup>th</sup> century, socialism and nowadays legal acts were in a larger or smaller part based on imported law.<sup>704</sup> It is, however, interesting to observe what impact this type of laws have since

<sup>699</sup>Jansen, S. (2009): “After the red passport: towards an anthropology of the everyday geopolitics of entrapment in the EU’s ‘immediate outside’”, *Journal of the Royal Anthropological Institute (N.S.)* No. 15, pp. 815-832

<sup>700</sup>European Commission web site:

[http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index\\_en.htm](http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm)

<sup>701</sup>Data available at: [http://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_serbia\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/a1_serbia_e.htm)

<sup>702</sup>Watson, A. (1974): *Legal Transplants: An Approach to Comparative Law*, Scottish Academic Press, 1974; American ed. University Press of Virginia, 1974).

<sup>703</sup>Berkowitz, D., Pistor, K. and Richard, J. F. (2003): "Economic development, legality, and the transplant effect," *European Economic Review*, Elsevier, vol. 47(1), pages 165-195

<sup>704</sup>In middle ages, one of the most important written laws was the Code of Czar Dušan, called Dušan’s Code. This Code, famous for clear separation and independence of judicial power from the Czar’s authority, was a combination of Serbian and Byzantine laws. During the occupation of the Ottoman Empire, combination of imposed Ottoman’s law and Serbian informal, customary, was in application. After the liberation, and according to the new situation, the desire for progress motivated Serbian leaders of that time, to adopt in 1835 the

the institutions defined by law should determine the incentive structure of a society and help it in promotion of efficiency, which is the key of sustained economic growth. Buch et al.<sup>705</sup> claim that basic institutional reforms in transitional countries include the establishment of a legal system, property rights, contract law and company law. This also applies to anti-corruption measures which are predominantly based on the imported rules and regulations. This chapter will, therefore, first present the anti-corruption framework implemented in Serbia and, second, the data analysis of various qualitative research on their effectiveness in corruption combat.

Current economic parameters of Serbia show that it has population of 7.2 million inhabitants<sup>706</sup> of which, although, around 3 million makes labour force, around 1.7 is employed. According to official statistics the unemployment rate, in October 2013, was 20.1%. Nominal GDP per capita in 2013 was \$5,421. Average monthly salary in 2013 (fourth quarter) was 52,438 dinars (around 504 Euros) and average monthly expenditure per household was 55,881 dinars (around 540 Euros). Inflation rate was 2.2%. According to some analysts<sup>707</sup>, in 2011 grey economy provided significant level of cash, around \$100 million per month, and although it had positive effect to the living standard of the population it, also has a negative impact to couple of aspect such as number of potential credits approved to the citizens due to the lack of evidence on economic power of the household. In 2012 10% of the population lived below the poverty line. More precisely 800,000 people are not able to even buy food while 2 million are in the situation to cover basic needs and to pay taxes. Public sector, public administration together with state companies and other institutions, employ 781,000 workers<sup>708</sup> of which 30,000 people work in the former (before year 2000 it employed around 8,000). Numbers show that around 45% of employed people in Serbia are paid from the state budget, which consequently draws attention to the public administration as an important constituent in the country and as such to the reform process.

### 5.3.1.3. Public administration

Administration during the socialist times in Serbia was like in all ex-YU republics. Sevic and Rabrenovic<sup>709</sup> explain that from 1945 till 1953 in SFRY government and civil service were “very centralized and highly hierarchical”. The state-owned enterprises and the

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Constitution called “Sretenjski Ustav”. It was modelled on the basis of the French Constitutional Charters from 1814 and 1830, and the Belgium Constitution from 1831. In 1844 the Serbian Civil Code was adopted which as a model used the Civil Code of Austria, which, again, was written on the basis of the Code Napoleon. During the socialism, after the short period of transplanting from the soviet model, Serbia introduced worker’s self-management which was to a certain extent original creation, although the idea was not new.

<sup>705</sup>Buch, M. N., Norbert, F., Heinrich, R., and Raiser, M. (1994): *Overcoming Obstacles to Successful Reforms in Economies in Transition*, J.C.B. Mohr (Paul Siebeck) Tübingen, 1994, pp.13-14

<sup>706</sup>Data without population on Kosovo and Metohija. Data available on the website of Statistical Office of the Republic of Serbia: <http://webbrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=2>

<sup>707</sup>Ipsos strategic marketing: “Makroekonomski podaci i trendovi Srbija“, Avgust 2012, <http://de.slideshare.net/IpsosStrategicMarketing/makroekonomski-podaci-i-trendovi-srbija-avgust-2012-v9> and <http://www.ipsos.com/observer/>

<sup>708</sup>Data provided by Serbian Minister of finance in January 2013. However he claimed that this list is not final yet. <http://www.rts.rs/page/stories/sr/story/13/Ekonomija/1504674/Krsti%C4%87%3A+U+javnom+sektoru+radi+780.000+ljudi.html>

<sup>709</sup>Sevic, Z. and Rabrenovic, A. (1999): “The Civil Service of Yugoslavia: Tradition vs. Transition” in Verheijen, T. (ed.): *Civil Service Systems in Central and Eastern Europe*, Edward Elgar Publishing

institutions which performed entrusted public services had the status of administrative organs. Overall they describe the “executive authority” as a “very powerful conglomerate”. After the split with Stalin and the introduction of a worker’s self-management the change in Constitution occurred in 1953. The civil servants were threatened by these changes as special group, different from regular workers, with special legal regime. However, this special status disappeared ten years later with the enactment of the new constitution. Besides this change, the Constitution of 1963, introduces decentralization by transferring the original power vested in the federal state, to the republic’s level. Finally, the Constitution of 1974 confederalized the country. It also confirmed that civil servants are equal to all other workers without any special treatment. However, Sevic and Rabrenovic claim that “civil service tradition was very strong and the public perception of public servants remained unchanged”. This further means that a “civil service career continued to be regarded as good career choice” and therefore “civil servants... were regarded as a privileged group”.

After the breakup of the Socialist Federal Yugoslavia in 1992, the third Yugoslavia<sup>710</sup>, composed of Serbia and Montenegro was created. In 2003 it changed the name to Serbia and Montenegro, until finally the two countries split in 2006. This period will be left out of the scope and only the crucial changes regarding Serbia’s administration transformation will be discussed. Facing the necessity of the bureaucracy reform, first moves towards it were made already in 1992. However, the real foundation for depoliticization and professionalization of civil service was established in 2004 when *Strategy for the reform of civil service was enacted*<sup>711</sup>. Shortly after the adoption of the strategy the *Law on State Administration* was enacted (2004) which was the basis for the adoption of the *Law on Civil Servants*<sup>712</sup> in 2006. This law re-established the special regime for civil servants and its main goal was to professionalize the public sector by promoting legality, transparency and merit-based principles of functioning. The latter one was aimed to be achieved by allowing a political influence only on the top level by appointing the highest ranked position in the ministry, the minister and state secretaries (minister deputies). According to the Law, the ranks below these positions should be held by career public servants, either by hiring or promoting. Lončar<sup>713</sup> claims that all these changes were crucial for the development of professional civil service because the promotion of merit-based criteria for recruitment and promotion of civil servants establishes new values and separates them from ordinary workers. In addition to the laws, two bodies specialised for civil servants were established: *Human Resource Management Service*<sup>714</sup> and *High Civil Service Council*<sup>715</sup>. The former one exercises important professional tasks and it is considered crucial in the process of development and management of human resources, while the latter has established as its main goal creation of policies and strategies of

<sup>710</sup>Yugoslavia was first established after the World War I and it was called the Kingdom of Yugoslavia.

<sup>711</sup>The document available at: <http://reforma.bezbednost.org/wp-content/uploads/downloads/2012/09/2004-Strategija-reforme-dr%C5%BEEavne-uprave-u-Republici-Srbiji.pdf>

<sup>712</sup>Available at: [http://www.paragraf.rs/propisi/zakon\\_o\\_drzavnim\\_sluzbenicima.html](http://www.paragraf.rs/propisi/zakon_o_drzavnim_sluzbenicima.html)

<sup>713</sup>Lončar, Z. (2013): “Depoliticizacija I profesionalizacija uprave u Republici Srbiji” (Depoliticization and professionalization of governance in the Republic of Serbia), *Zbornik radova Pravnog fakulteta u Novom Sadu*, 4/2013, pp. 185-202

<sup>714</sup>More about the Service see on the website: [http://suk.gov.rs/en/about\\_us/](http://suk.gov.rs/en/about_us/)

<sup>715</sup>More about the Council see on the website: [http://suk.gov.rs/en/senior\\_incumbent\\_council/index.dot](http://suk.gov.rs/en/senior_incumbent_council/index.dot)



human capital development. From 2008 another set of laws and regulation was enacted to support the ongoing reform. In 2009, the *Public Administration Reform Council* has been established but it was practically inactive. Finally, in January 2014, the *Public Administration Reform Strategy* was adopted which promoted as its main goals: decentralization, professionalization and politicization, rationalization and modernization of public service. Beside this, few important documents<sup>716</sup> for public administration are enacted, such as: *Nacionalni program za integraciju u EU (2008)*, *Strategija za profesionalni razvoj civilnih službenika u Republici Srbiji za period 2011-2013*, and *Nacionalni program za usvajanje pravnih tekovina Evropske unije (2008)*, *Strategija za profesionalni razvoj civilnih službenika u Republici Srbiji za period 2011-2013*, and *Nacionalni program za usvajanje pravnih tekovina Evropske unije (2008)*.

In addition to these steps, the reform process included some other aspects with mixed results. Regarding the reform of law and regulation the step forward was made with the enactment of the *Strategy of regulatory reform* for the period 2008-2011. The main goals of the Strategy are rationalization and simplification of administrative procedures in order to increase foreign investments. Following this the Comprehensive reform of legal acts, called "*Regulatory Guillotine*", was presented to the Government and 203 out of 304 recommendations were implemented. However, besides the recommendations which were not implemented, Serbian Parliament and Government adopted few thousand laws, regulations and other legal acts which impose additional burden to the economy. This process was named as "regulatory cunami".<sup>717</sup> The next reform step was made in 2010 when the governmental *Office for Regulatory Reform and Regulatory Impact Assessment*<sup>718</sup> was established with the main task of implementing regulatory reform. Nevertheless, its work faces challenges such as: expired regulatory strategy without new one enacted, previous recommendations implemented partially and lack of institutional capacities for the realization of the initiatives for regulatory reforms and proper usage of Regulatory Impact Assessment (RIA) methods.

The overall results of the reforms of public administration in Serbia, according to the critics, do not leave positive image despite all efforts. Discussing the changes regarding the core of the professional administration, the merit based criteria, Lončar<sup>719</sup>, claims that after the year 2004 formally established presumptions for the successful reform of public administration are subverted in the practice because politicians are not ready to give up their intervention in the selection of high civil service official and therefore the proper enforcement of legal rules is missing. The research made in 2013 within the framework of *COCOPS – Coordinating for the*

<sup>716</sup>Nacionalni program za integraciju u EU (National program for EU integration) available at: <http://www.seio.gov.rs/documents/nacionalni-dokumenti.226.html> ; Nacionalni program za usvajanje pravnih tekovina Evropske unije (National program for adoption of EU acquis communautaire), available at: <http://www.seio.gov.rs/vesti.145.html?newsid=1412> and *Strategija stručnog usavršavanja državnih službenika u Republici Srbiji* (Strategy for professional development of civil servants in the Republic of Serbia) available at: <http://suk.gov.rs/dotAsset/7326.pdf>

<sup>717</sup>USAID: "Business Enabling Project", report, available at: <http://www.policycave.rs/documents/briefers/c1/Sveobuhvatnom%20regulatornom%20reformom%20do%20boljeg%20poslovnog%20okruzenja.pdf>

<sup>718</sup>Office for regulatory reform and Regulatory Impact Assessment, web site: <http://www.ria.gov.rs/eng>

<sup>719</sup>Lončar, Z. (2013): "Depolitizacija i profesionalizacija uprave u Republici Srbiji" (Depolitization and professionalization of governance in the Republic of Serbia), *Zbornik radova Pravnog fakulteta u Novom Sadu*, 4/2013, pp. 185-202

*Cohesion in the Public Sector of the Future*<sup>720</sup>, conducted among the senior managers in the civil service about the public administration reform in Serbia reaches similar conclusions. Their findings reveal that high level officials have concentrated significant amounts of power in their hands which is particularly disturbing since in the practice they are susceptible to the political influence. This further means that they are highly fluctuating whenever government change occurs. In the essence of this practice lies the fact that politicians do not respect professional knowledge of senior civil service managers and if they have no political influence their activity is reduced to obeying the rules which further creates the “culture of civil service based on rules and risk avoidance”<sup>721</sup> which might be dangerous in the situation when pursuing reforms is necessary. The overall conclusion of the senior managers is that reforms of Serbian public administration are partial and unsuccessful.

Furthermore, Dzinic<sup>722</sup> finds that one of the main reasons for underperformance of the reform process is “bad implementations” of the laws adopted. Looking at the possible reasons for this situation, she claims that “the weak motivation for work in public administration” could be the most important one. Besides this some other obstacles should also be taken into account, such as: 1) Partocracy, expressed through the influence of the political parties on public administration by appointing senior civil servants; 2) disregarding of legal provisions by civil servants which creates distrust in public authorities among citizens; 3) the lack of the HR capacity and coordination between various sectors in the law-drafting process and leaving out the key stakeholder from it; 4) hierarchical decision making style inherited from the socialist period; 5) weak monetary and administrative capacities for appropriate decentralization and finally 6) the lack of the capacity to benefit from foreign support. SIGMA<sup>723</sup> report for 2012, points mainly to the similar direction like previous commentators. According to it, the professionalization of the civil service is jeopardized because politicians have “excessive concentration of decision making powers” which do not delegate to the administration. This gives as a result: a) difficulties in policies and laws implementation, since political pressure “inhibits the development of managerial skills”, b) lack of accountability, transparency and predictability of administrative procedures and finally c) weak legality and equality before the law in decision-making process. Again, the merit-based system for recruitment and promotion is not implemented because it is replaced in practice by political affiliation and patronage. This is result of the wide discretion left in hand of senior officials. The performance-appraisal

<sup>720</sup>More about the project at: <http://www.cocops.eu/>. The research available at: <http://www.cocops.eu/wp-content/uploads/2014/01/Serbian-Country-Report.pdf>; More about Fund at: <http://www.bfpe.org/en/>

<sup>721</sup>Eriksen, S. (2005): “ Unfinished Transition – Public Administration Reform in Serbia 2001-2004”, in 13<sup>th</sup> NISPAcee Annual Conference, Democratic Governance for the XXI Century: Challenges and Responses in CEE countries, Moscow

<sup>722</sup>Dzinic, J. (2011): “Public Administration Reform in Serbia”, *Croatian and Comparative Public Administration*, 11 (4), pp. 1075-1105

<sup>723</sup>SIGMA (Support for Improvement in Governance and Management) is a joint initiative of the European Union and the OECD. Its key objective is to strengthen the foundations for improved public governance, and hence support socio-economic development through building the capacities of the public sector, enhancing horizontal governance and improving the design and implementation of public administration reforms, including proper prioritisation, sequencing and budgeting. The participating countries are: Albania, Algeria, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Egypt, FYR of Macedonia, Georgia, Jordan, Lebanon, Moldova, Montenegro, Morocco, Serbia, Tunisia, Turkey and Ukraine.

The 2012 report on Serbia is available at: [http://www.sigmaweb.org/publications/Serbia\\_Assess\\_2012.pdf](http://www.sigmaweb.org/publications/Serbia_Assess_2012.pdf)

scheme is formally implemented and according to it around 80% of civil servants are graded as excellent or very good, while 20% are good or satisfactory with 0% of those with “unsatisfactory” grade. Another problem defined by SIGMA report is that “constant proliferation of public bodies”, mainly agencies, which took place after the year 2000, additionally made the public administration complicated and created “parallel state administration without clear accountability”. This fragmentation further weakens the accountability, transparency and efficiency of public administration.

Finally, the European Commission, in its report on Serbia’s progress, issued for the year 2013 evaluates the implemented reforms. General observation that EC makes about public administration is that “reform remains hampered by the lack of clear steer and coordination structures”<sup>724</sup>. More precisely, the system is fragmented with low coordination capacity, without clear lines of accountability and low level policy development. It is necessary to improve the institutional and administrative capacity for policy planning and coordination. Promotion and recruitment are still problematic because they not follow merit-based principle and much recruitment is still conducted on non-transparent way. Professional development should be also improved through training. Although government showed the willingness to rationalise the organization of PA and to advance subordinate bodies and agencies, the clear and comprehensive organization policy still has to be determined. However, beside the bad image of the public administration, the research conducted under the auspice of the Serbian Ministry of Youth and Sport<sup>725</sup>, shows that 40% of young people will rather choose lower paid but a more secure job, which is, according to view of 57% examines, seen as such in public sector. The explanation for this result might be found in the fact that 40% of the same sample of people thinks that private entrepreneurs are not adequately paid and rewarded for their efforts when compared to civil servants. Moving to the second important aspect of this thesis, the next section presents anti-corruption framework which is in place in the Republic of Serbia.

### 5.3.2. *Anti-corruption framework*

The anti-corruption framework in Serbia is created of formally established bodies with direct or indirect jurisdiction to confront corruption and set of laws and regulations enacted with the same goal. Regarding bodies this section will present: Anti-corruption council, Anti-corruption agency and Commissioner for information of public importance and personal data protection. Section devoted to anti-corruption acts provides, beside the ratified international documents, description of Strategy for Fight against Corruption, Integrity plan and Ethical code for civil servants.

#### 5.3.2.1. Anti-corruption council

*The Anti-corruption council*<sup>726</sup> was established by the Decision of the Government of the Republic of Serbia in October 2001. The Council is an expert, advisory body of the

<sup>724</sup>European Commission progress report on Serbia for 2013,

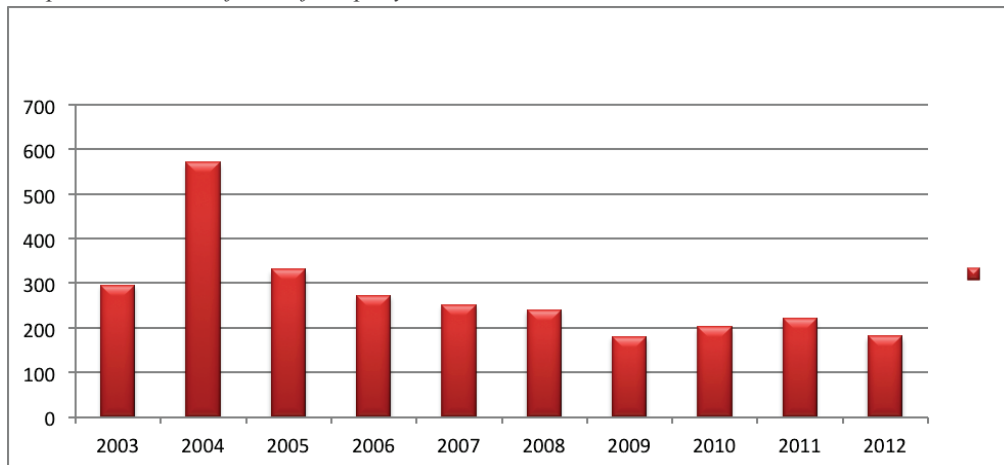
available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf)

<sup>725</sup>The research available at: <https://docs.google.com/file/d/0B3GsvcnrBBm-Ymdkc3R0U3hhVzA/edit>

<sup>726</sup>Data available at: <http://www.antikorupcija-savet.gov.rs/en-GB/page/home/>

Government. It is founded with a mission to observe all aspects of anti-corruption activities, to propose measures to be taken in order to fight corruption effectively, to monitor their implementation, and to make proposals for introducing regulations, programmes and other acts and measures in this area. The Council receives petitions from the citizens on a daily basis but it reacts in particular cases only if they indicate the existence of a larger problem, especially if they point to the corruption in the economy or politics. After the processing, it forwards petition to the competent state institutions with the request that both, the Council and the petitioners, would be informed about the steps taken. Since 2003 until 2012 the Council has received 2,751 petitions with complaints on the work of judiciary, local governments, privatization process, processes for issuing the construction permits and corruption in the healthcare system, police and private companies. The number of complaints per year is given in the *Graph 5.4* while the detailed numbers are available in the *Table*, located in the *Appendix 5.2*.

*Graph 5.4: Number of cases filed per year*



*Source: The Anti-corruption Council web-site*

The largest number of petitions refers to the privatization process implemented according to the Law on privatization from 2001 and to the trade of stocks of companies privatizes according to the laws in 1990s. In most of the cases petitioners are labour unions and associations of minority shareholders, and very rarely participants of the auctions and tenders. Petitions filed in 2003 and 2004 mostly address issues such as: not adequate (minimized) price of the capital made during the assessment process in the privatization and initial low stock price of the privatized company. From 2005 dominant are the petitions for termination of the purchase contract due to the buyer's breach of duties to which he agreed to fulfil in terms of: social and investment programs, non-adequate control in the process of privatization by the Commission for securities and minority shareholder oppression.

As mentioned above the Anti-corruption Council is Government's advisory body. In accordance to its jurisdiction, it forwards received petitions to the competent state institutions,

which contain information used for the examples of large systemic corruption. Although Council enjoys respect among citizens, especially its deceased president Verica Barač, almost none of the reports and criminal charges filed by the Council were prosecuted. The same destiny share the numerous criminal charges filed by citizens. The reason for this is, according to the Council, the protection which the people in question enjoy from the state.

### 5.3.2.2. Anti-corruption agency

In 2009 *the Anti-corruption Agency*<sup>727</sup> was established as institution with strong preventive role, which has not been assigned to any of the anti-corruption bodies founded earlier, and its main goal is to improve the corruption combat with cooperation of other public institutions, civil sector, media and general public. Legal framework in which Agency operates consist domestic laws and regulations as well as international anti-corruption documents such as UN, GRECO and OECD conventions. Regarding jurisdiction the agency is in charge of: (1) the monitoring of the implementation of the Strategy for fight against corruption and its Action plan, (2) monitoring of the adoption and implementation of the Integrity plans in public and private sector, (3) providing opinions and recommendations in enacting the anti-corruption laws and regulations, (4) training of key stakeholders crucial for corruption combat such as: scientific and educational institutions, media, NGOs, (5) development of methodologies and tools for measuring different types of corruption as well as implementation of the international ones, (6) keeping the records of officials and their incomes and properties, (7) protection of whistle-blowers, (8) receiving citizen's complaints, (9) international cooperation with GRECO, UNODC and OECD and coordination of domestic laws with international rules and regulations, (10) carrying on the process and resolving the issues regarding conflict of interest, (11) monitoring the financial status and activities of the political parties, etc.

From the data available on the web site of the Agency, what is not clearly readable are the success rates of the opinions, recommendations, and decisions regarding the issues from its jurisdiction in the implementation process but some interesting numbers regarding research made by the Agency are available. For instance, the research on civil servant's perception of the Agencies activities provides information relevant for the purpose of this thesis<sup>728</sup>. The questions in this research addressed the issues such as the general impression about the Agencies work, the ways of acquiring the information about the Agency and the obligations which the law imposes on public institutions. The results show that half of the respondents consider themselves informed about the Agency and its work and the other half has the opposite opinion. These results should be interpreted in light of the claim that people usually tend to overestimate their knowledge in self-assessment, which practically means that the higher is the percentage of the latter group. However, when asked about the necessity of establishing the Agency 82% said that this type of institution is necessary for Serbian society, 7% said that the

<sup>727</sup>Data available at: [http://www.acas.rs/sr\\_lat/o-agenciji/nadleznosti/sektora.html](http://www.acas.rs/sr_lat/o-agenciji/nadleznosti/sektora.html)

<sup>728</sup>Research is available at: [http://www.acas.rs/images/stories/Percepcija\\_uloge\\_Agencije\\_-\\_Organi\\_javne\\_vlasti.pdf](http://www.acas.rs/images/stories/Percepcija_uloge_Agencije_-_Organi_javne_vlasti.pdf). The research about the perception of the Agency's work includes other stakeholders such as: citizens, media and NGOs. Research made with these groups is available at: [http://www.acas.rs/sr\\_cir/podizanje-antikorupcijske-svesti/698.html](http://www.acas.rs/sr_cir/podizanje-antikorupcijske-svesti/698.html). Since in the focus of this thesis are civil servants only the examination on their views is presented here.

other anti-corruption bodies are sufficient for corruption combat while 11% had no opinion about this question. When asked about the effects of the Agency's work on citizens and officials the respondents gave interesting answers. They think that it had greater effects on the work of the officials (39%) than citizens (30%) but they also think that nothing significantly changed in the behaviour of both categories which is in partial collision with the finding that the funding and work of the Agency brought positive effects in corruption combat. This is interpreted through the possible difference in two attitudes, one that on some general level some positive effects exist (eg. corruption is recognized as important issue) and the other, that on the concrete level of each person significant improvements still should be made.

### 5.3.2.3. Commissioner for information of public importance and personal data protection

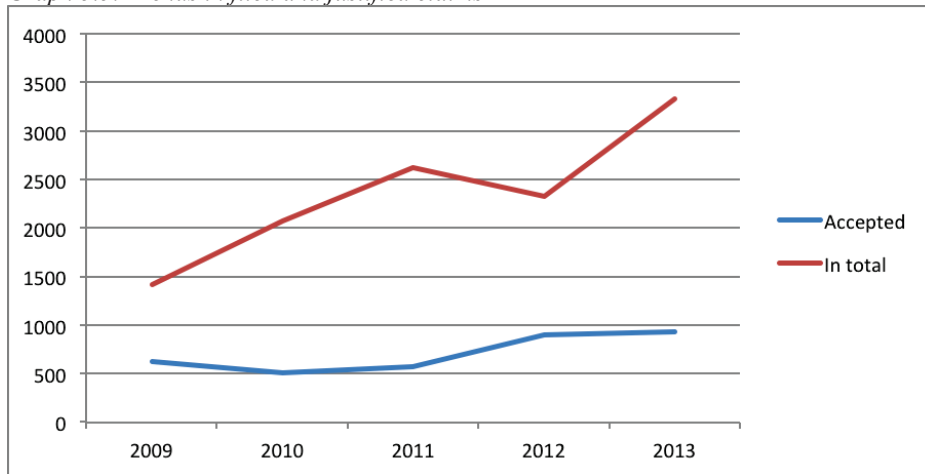
The necessity of improving transparency and strengthening of civil sector resulted in the establishment of *the Commissioner for information of public importance and personal data protection*<sup>729</sup> in 2004. It is an autonomous public authority, who exercises his powers independently and whose competences are set by the *Law on Personal Data Protection*. For the purpose of exercising the duties within his sphere of competence, the Commissioner basically has two types of powers: those relating to his capacity of a second-instance authority responsible for protecting the right to data protection in appeal proceedings and those related to his capacity as a supervisory authority responsible for enforcing the law. According to the *Law on Free Access to Information of Public Importance* in his jurisdiction is, among the others,; (1) monitoring of public institutions and their compliance with the Law, (2) education of the public service employees on their duties regarding citizen's right to access the information and (3) appellate procedure against the authorities decisions with which the rights protected by the Law are infringed. The data available on the Commissioners web site<sup>730</sup> show the number of complaints filed to the Commissioner regarding the access to public information and their acceptance. From 2009 to 2013 the number of complaints increased but the percentage of justified claims varies. For example, in 2009, in 44% of the cases the Commissioner found the infringement of the rights and issued an order to the authority to comply with the Law, while in 2013 this number is 23%. The *Graph 5.5* presents these variations and concrete numbers for the each year could be found in the *Table* in the *Appendix 5.3* of this chapter.

<sup>729</sup>Data available at: <http://www.poverenik.org.rs/en.html>

<sup>730</sup>Annual report on work of the Commissioner for Information of Public Importance and Personal Data Protection, p.159

Data available at: <http://www.poverenik.rs/images/stories/informator-o-radu/2014/mart/cirinformatormart2014.pdf>

Graph 5.5: Trends in filed and justified claims



Source: The Commissioner's web-site

European Commission in its report on Serbia's progress<sup>731</sup> observes that the Commissioner is active both within the government and with the media and civil society. The Commission notices that number of citizen's request increased but without further explanation. The results from the above provide graph show two things. One is that the number of cases increased but the number of justified claims varies. This could be interpreted that the Commissioner gains greater importance over time as an institution important for the society and, as a result, people are more encouraged in terms of protection of their rights which makes good overall impression of his work. On the other hand, if compared, the two numbers might be interpreted as expressed mistrust which by citizens towards the administration because they ask the protection of their rights from the outside unbiased authority believing that civil servants did not respect their rights.

#### 5.3.2.4. Anti-corruption Acts

Serbian anti-corruption legal framework consist numerous laws, regulations and by-laws which govern the institutions in their functioning regarding the fight against corruption. However, this section will only reflect of the most important once such as UN and GRECO Conventions, Strategy for fight against corruption, Integrity plan and Code of Ethics for civil servants. Serbia has not ratified the OECD convention on bribery.

*UN Convention Against Corruption* – Serbia has ratified the Convention in October 2005<sup>732</sup>. The Law on Anti-corruption Agency does not explicitly derive the legal ground for its foundation from the Convention but it might be present in the annotation part of the Law draft, which explains the reasons and motivation behind the law proposition and it is a mandatory

<sup>731</sup>European Commission progress report on Serbia for 2013, available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf)

<sup>732</sup>The Law is available at: [http://www.acas.rs/sr\\_lat/zakoni-i-drugi-propisi/medjunarodne-konvencije.html](http://www.acas.rs/sr_lat/zakoni-i-drugi-propisi/medjunarodne-konvencije.html)

part of each drafted law submitted to the parliament. However, Article 6 of the Convention provides grounds for such a conclusion especially if combined with Article 5 of the Law, which entitles the Agency to cooperation with international institutions and obliges it to follow the international rules and regulations. The web-site of the Agency also refers to the cooperation with the UN as one of its important goals. However, the area which the convention regulates includes some other institutions important for fight against corruption, such as Ministry of Justice, and therefore it is treated as “cover regulation”.

*GRECO conventions* – Serbia had ratified the two anti-corruption conventions of the Council of Europe. Criminal Law Convention on Corruption became part of Serbian legal system in 2002, while additional protocol and Civil Law Convention on Corruption were ratified in 2007<sup>733</sup>. Like in the previous case, these conventions are “cover regulations” and all institutions which deal concretely with the corruption consider them important documents for their practice and harmonisation of domestic laws.

*Strategy for Fight against Corruption* – New Strategy for fight against corruption<sup>734</sup> was adopted in July 2013 for the five year period and it is defined on the basis of international best practice framed under the auspice of the UN, GRECO and OECD and domestic experiences gained through cooperation with all institutions in charge of corruption combat. Due to the time and resource constraints the Strategy targets couple of areas which are considered crucial in decreasing the corruption level in the society and these are: political activities, public finances, privatization and public-private partnership, judicial system, police, space planning and building, healthcare system, education and sport and media. Prevention is considered equally important aspect in corruption combat and therefore the special attention should be devoted, among the others, to: risk assessment in the processes of drafting laws and regulations, recruitment and promotion in public institutions, which should be merit-based, transparency, increasing of the opportunities for continuous education about corruption, the improvement of the conditions for larger participation of civil society as well as private sector and providing better protection of whistle-blowers. The strategy has it accompanying Action plan the monitoring of their implementation is in the hands of the Anti-corruption agency. However, coordination on the Government level in the implementation process is entrusted to the Ministry of justice.

*Integrity plan* – The integrity plan<sup>735</sup> is developed by the Anti-corruption Agency and presents a preventive anti-corruption measure, document which consist of self-assessment of the risks to which institution is exposed in relation to corruption, its incidences, development and unethical and unacceptable behaviour. The main objective of the plan is to reinforce the “integrity of an institution, including individual honesty, professionalism, ethical behaviour, institutional entirety, as well as acting in accordance with moral values”, which, as a result, should mitigate the risk of misuse of power. Realization of this task is within the Anti-corruption agency jurisdiction and it is obliged to provide any assistance to the institutions regarding its fulfilment.

<sup>733</sup>The Law is available at: [http://www.acas.rs/sr\\_lat/zakoni-i-drugi-propisi/medjunarodne-konvencije.html](http://www.acas.rs/sr_lat/zakoni-i-drugi-propisi/medjunarodne-konvencije.html)

<sup>734</sup>The document is available at:

[http://www.acas.rs/images/stories/Nacionalna\\_strategija\\_za\\_borbu\\_protiv\\_korupcije.pdf](http://www.acas.rs/images/stories/Nacionalna_strategija_za_borbu_protiv_korupcije.pdf)

<sup>735</sup>The document is available at: [http://www.acas.rs/images/stories/Manual\\_for\\_Integrity\\_plan\\_developmnet.pdf](http://www.acas.rs/images/stories/Manual_for_Integrity_plan_developmnet.pdf)



*Ethical Code* – Ethical Code of Conduct for Civil Servants in Serbia was enacted in 2008<sup>736</sup>. The Code promotes the fundamental values which should be incorporated in the behaviour of civil servants such as: legality and impartiality in job performing, political neutrality, protection of public interest, prevention of conflict of interest, respecting clients and their privacy, rejection of presents and proper use of information related to job performance. Monitoring of the Code's implementation is entrusted to the High Civil Service Council<sup>737</sup>, which operates in the auspice of the Government Human Resource Management Service.

This section provided the list of main anti-corruption acts which are in place in the Republic of Serbia. It is clear that laws and regulations are present, updated and synchronized with the best international practice, at least on paper. However, the reality appears to be different, since life is always more creative than law makers, and therefore the next section presents various research results pursued in order to acquire the picture of the field situation regarding the presence of corruption, its causes, consequences and attitudes of people towards it.

### 5.3.3. *Hitherto research results on corruption*

In 2013 Transparency International Corruption Perception Index (TICPI), with score of 42, ranked Serbia on the 72 position out of 177 countries and territories observed. This section presents previous research carried out on corruption in Serbia from both, international and domestic sources. International sources include: UNDP, TI, UNODC, Dutch Embassy in Serbia, and EC reports, while domestic describes the analysis of the Anti-corruption Agency performance.

#### 5.3.3.1. International organizations

The United Nations Development Program (UNDP) is supporting the Government of Serbia and civil society in promoting good governance, accountability and transparency and corruption combat through monitoring of corruption perception by households. In the research regarding corruption, done in 2010<sup>738</sup> on 600 examinees, the main goal of exploring was the citizen's perception of the level of corruption in Serbia together with their experience with corruption. People in Serbia ranked corruption as the fifth important problem, while the first four positions are held by unemployment, poverty, low salaries and lack of opportunities for young people. They believe that all spheres of life are to a certain extent affected by corruption, but 81% think that political life is the flourishing area of corruption. Regarding everyday life, 83% of people think that corruption is a common practice in Serbia and 56% agree that some level of corruption is expected. Although corruption combat should be initiated and led by the Government it is interesting that citizens seem to underestimate their own role, contribution and responsibility. Regarding corruption in public administration, the dominant opinion is that

<sup>736</sup>Available at: <http://www.ombudsman.rs/index.php/lang-sr/vazni-pravni-akti/oblast-dobre-uprave>

<sup>737</sup>More about the Council available at: [http://suk.gov.rs/en/senior\\_incumbent\\_council/](http://suk.gov.rs/en/senior_incumbent_council/)

<sup>738</sup>UNDP research available at: [http://www.undp.org.rs/index.cfm?event=public\\_publicationsDetails&revid=DA421DCD-B7B3-F06E-0DC9F97AC6AF13B0](http://www.undp.org.rs/index.cfm?event=public_publicationsDetails&revid=DA421DCD-B7B3-F06E-0DC9F97AC6AF13B0)

strong penalties are the most appropriate measure to reduce corruption in it. *Table 5.2*, presents the sectors which citizens consider most affected with corruption. Citizens think that the leading role in corruption combat should be entrusted to the Government (50%) and the police (46%). Although they perceive severe penalties as a crucial method for decreasing corruption, rising public awareness, strengthening of civil society and transparency in administrative decision making are considered an important one as well.

*Table 5.2: Extent to which, by citizens' perception, particular sectors are affected by corruption*

<i>Sector</i>	<i>%</i>	<i>Sector</i>	<i>%</i>
<i>Political parties</i>	76.7	<i>Police</i>	62.3
<i>Health service</i>	73.6	<i>Media</i>	51.6
<i>Judges</i>	69.3	<i>City/Administration</i>	54.7
<i>Prosecutors</i>	66.0	<i>Education</i>	51.0
<i>Lawyers</i>	67.0	<i>Business/private sector</i>	48.3
<i>Customs</i>	65.7	<i>International help and donors</i>	50.3
<i>Government</i>	63.3	<i>Tax board</i>	49.0
<i>Parliament/legislation</i>	63.3	<i>Average other institutions</i>	35.2

*Source: TNS-Medium Gallup/UNDP, 2011. The three rounds have been averaged*

In 2011 *Transparency International* issued National Integrity System (NIS) Assessment for Serbia<sup>739</sup>. This evaluation provides an objective introspective of the legal basis and regulations of the country assessed. It does not measure corruption or an effort invested in fight against it, but rather presents the potential and capacities of the key state and social institutions and their contribution to corruption combat. Assessment describes Serbia's NIS as moderate with imbalance between the independent institutions and government/legislative and political parties. The System consists of fifteen pillars which include analysis of the work of following institutions: Ombudsman, Commissioner for Information of Public Importance and Personal Data Protection, Supreme Audit Institution, Anti-corruption Agencies, Judiciary, Political Parties, Civil Society, Executive, Law Enforcement Agencies, Business, Local Self-government, Electoral Management Body, Legislature, Public Sector and Media. Among the other things the report stress that the legislature in practice operates almost exclusively on the initiative of the government; reports of the independent bodies are formally analysed but monitoring the implementation of their recommendations is lacking; the decision-making process of the Government is not transparent and it also fails to monitor the public companies under its jurisdiction. Finally, the public sector is under heavy political influence, especially recruitment and promotion of the employees, besides the existence of the rules and regulations which should prevent it. One of the main recommendations in the Assessment include depoliticization of the managers in public sector, increasing transparency in decision making, protecting whistle-blowers and strengthening the independence of judiciary and media.

In 2011, another research project was carried out by *United Nations Office on Drugs and Crime*<sup>740</sup>. This research focused on the actual experience of administrative corruption and the nature of bribery and its procedure and not on the people's perception of it. More precisely,

<sup>739</sup>The document is available at:

[http://www.transparency.org/whatwedo/pub/national\\_integrity\\_system\\_assessment\\_serbia\\_2011](http://www.transparency.org/whatwedo/pub/national_integrity_system_assessment_serbia_2011)

<sup>740</sup>United Nation Office on Drugs and Crime Report: [http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Serbia\\_corruption\\_report\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/statistics/corruption/Serbia_corruption_report_web.pdf)

the subject of investigation was petty corruption that affects the daily lives of ordinary people in their dealings with public administration, since it plays a large role because nine out of ten people interact with it in some point during the course of the year. Therefore, respondents rank corruption as the third most important problem of the country, after the unemployment and poverty/low living standard. On a yearly basis, in contacts with public officials 13.7% of Serbian citizens experience direct or indirect exposure to bribery while 9.3% actually pays it. Half of the bribes paid (56%) are initiated by citizens due to their belief that PA cannot function without payment which facilitate bureaucratic procedure. More than 40% are paid in response to the request, direct or indirect, by public official. One third of those who pay a bribe do so to speed up a procedure, while almost one in five does that in order to finalize the procedure or to receive better treatment. Although the situation explained seems like a troubling one it is also important to say that there is some resistance to bribery and people do not always accept paying bribes. More precisely, for every three who agree to so there is one who refuses. However, less than 1% of those who pay report their experience to the authorities and there are various reasons for this practice such as: bribery is not seen as serious crime but rather a common practice or gratitude for service rendered, it can be of direct benefit to the bribe-payer and, finally, they think that not much can be done about it because no one would care. The report states that not only citizens are affected by bribery but public officials as well, since the public administration is the largest employer and job security and accompanying benefits are highly desired. Around 16% of Serbian citizens applied for a job in public sector and of those who were successful 6% admitted to paying some money, giving a gift or doing a favour to help secure the position. Among those who failed only 8% think that the selection was mad on the merit basis while others have perception that cronyism, nepotism and bribery played a crucial role in the recruitment process. On the other hand, besides the results on bribery experiences, perceptions about corruption in Serbia are not positive as well. More than 50% of the population believe that corruption is often or very often present in numerous public institutions such as political parties, public hospitals, the police and judiciary, customs office and local government. Although perceptions are nothing more than opinions and should not be confused with real experience, they are important as an expression of a citizen's awareness of the main challenges which Serbia faces.

The results of the latest research project “Intensifying anti-corruption policy in Serbia by furthering law enforcement transparency and evidence based policy making”,<sup>741</sup> were published in the beginning of year 2012. It was supported by the Dutch Embassy and it aimed to “shed light on the criminal side of corruption and related offences”. This field is characterized by the authors as “camera obscura”, with prevailing lack of transparency of the processes which are going on inside and it gives rise to a “black box” research approach to the institutions of law enforcement. The research did not aim to look into the black box but rather to investigate its inputs and outputs and their characteristics. More precisely, the question was: what kind of corruption related cases enters the judicial institutions, prosecution or courts, and how, what and when they leave the institution. One of the interesting points, made by the authors, is that

<sup>741</sup>Research available at: <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/Istrazivanje/Corruption%20in%20Serbia.pdf>

scientific research in Serbia virtually stopped after 2007 due to the lack of interest. Therefore in order to collect the necessary data, they had to look at multiply resources and to “knock on many doors” facing different responses from the institutions in charged. The results show that black boxes are acting without statistical order when dealing with the cases. The authors could not find coherence and correlation between the variables of the inputs and outputs which made them to conclude that “the judicial institutions concerning corruption (in its broad meaning) behave statistically at random” which describes it as more random box than a system. It is also pointed out that for a fact based anti-corruption strategy it is necessary to single out “real” corruption from the variety of offences covered by the “abuse against official duty” articles”. Finally, the existence of major defects in the communication between competent organs decreases the effectiveness of corruption combat.

Finally, in 2013 the Progress report of Serbia<sup>742</sup> issued by the European Commission evaluated various aspects important for Serbia’s accession to the EU. There are several issues which should be improved for effective fight against corruption. The implementation of the legal framework and improvement of the efficiency appears as the first on the list. Furthermore, a proactive approach to corruption investigation has to be maintained and should result in final convictions, especially in high profile cases, because the ratio of convictions remains relatively low. In this regard, the judiciary has to build up a solid track record of prosecution and convictions. The law enforcement institutions need to become more proactive, they should improve internal capacity and inter-institutional cooperation. Finally, continued political support for institutions is needed, together with more effective inter-agency coordination in order to significantly improve performance in combating corruption.

#### 5.3.3.2. Domestic institutions

In 2012 an interesting research in the domain of public administration was made by the Anti-corruption agency<sup>743</sup> and included 368 institutions. In the first part the examinees, public servants, were asked some general questions regarding corruption while in the second part they had to reply on couple of questions related to the work of the Agency. Since the second part of the research was presented in this chapter in the section devoted to the Agency, here the results on the questions related to corruption will be discussed. When asked who contributes more to the emergence of corrupt deal, 26 % of respondents said that it is civil servants who are abusing power, 5% said that citizens initiate the deal because they are ready to do anything for their own gain, 66% claimed that both are equally contributing and finally, 3% did not have opinion about the issue. Regarding the crucial cause of corruption in Serbia, 39% of public servants think that corruption is a matter of a personal integrity, 56% claims that the whole system setting causes corruption and 5% has no opinion about the topic. Furthermore, when asked to rank the causes of corruption in the system the results show the equal score for political influence in the functioning of the administration and existence of the “red tape”, while as “other causes” are listed lack of transparency and broad discretionary power. When

<sup>742</sup>EU Progress Report Serbia 2013, p. 10 on web site:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/sr\\_rapport\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf)

<sup>743</sup>Available at: [http://www.acas.rs/images/stories/Percepcija\\_uloge\\_Agencije\\_-\\_Organi\\_javne\\_vlasti.pdf](http://www.acas.rs/images/stories/Percepcija_uloge_Agencije_-_Organi_javne_vlasti.pdf)

asked about public interest, majority of the examinees (62%) think that “public interest” is something which is in the interest of the whole community and each individual in that community. However, 11% percent of the public servants said that public interest is the state interest, regardless of the interest of the citizens and society as a whole, which is a matter of concern because they justify the principle of “state reason”. Furthermore, another 10% of the examinees think that the public interest is defined in each concrete case by the part of the state apparatus in charge of governing certain areas. This view is seen as problematic especially because of the fact that it comes from the public servants who do not see the state as an instrument for the protection of public interest but rather as the main actor for its definition.

In terms of being informed on the ways and situations which might lead to the corruption incidents and in which way it is possible to prevent it, 38% of the respondents said that they think that they are well informed, 57% think that they need to have more information and 5% claim that they have no knowledge about the issue. Regarding the selection of the more appropriate method, 77% percent said that prevention is a better method while 23% votes for repression. According to the research, the concept of good governance has many supporters in public service in Serbia. Namely, the 71% percent of the public employees think that each institution has to develop its own preventive anti-corruption mechanisms, 27% votes in favour of specialized anti-corruption institutions and 2% has no opinion on this matter. This research revealed some important aspects that should be considered carefully for future anti-corruption action. Public servants think that in the anti-corruption fight, institutions do not cooperate even though they all supposed to work on the same goal. It is especially important to keep in mind the fact that 69% of the respondents think that Serbia lacks the will for real and efficient fight against corruption. This is troubling because the expressed attitude shows that civil servants do not see themselves as part of that “will” which should fight against corruption. They think that each institution, and them as well, should engage in corruption combat but at the same time they claim that there is no will for this task to be completed. This attitude is more clear only if put into the context of “political will”, which means that willingness to fight corruption seriously should come “from the above”, more precisely from the political parties which are seen as centres of power. This implies that in the future substantial efforts should be made in order to change the mentality of people in the direction which puts the willingness and readiness of each individual in each public institution in the heart of corruption combat. The following section presents the method and results of the case study conducted for the purposes of this thesis.

## 5.4. Case study

### 5.4.1. Research area and methods applied

The research is commonly divided to qualitative, which aims to understand and interprets social interactions and quantitative, whose goal is to test the hypothesis, look at causes and effects and make predictions. Denzin and Lincoln<sup>744</sup> explain that qualitative research locates

<sup>744</sup>Denzin, N. K. and Lincoln, Y. S. (2005): *The Sage handbook of qualitative research* (3rd ed.). Thousand Oaks, CA: Sage.p. 3

the researcher in the world and allows him, by using different tools such as field notes, interviews, etc., to make the “world visible”. More precisely he study things in their natural settings and tries to interpret the studied phenomena in “terms of the meanings people bring to them”. Creswell<sup>745</sup> in his definition puts the emphasis on the process of research which flows from “philosophical assumptions to worldviews through theoretical lens” and on the “procedures involved in studying social or human problems”. These procedures include different frameworks such as: grounded theory, case study research, narrative research, etc. He explains that various reasons can cause the use of qualitative research such as: necessity to explore the issue, if empowerment of the individuals to share their stories is desired, if an understanding of the context or settings in which participants in a study addresses a problem or issue, if the need to develop theories exist because the existing ones are inadequate or they do not capture the complexity of the phenomena, and for other similar reasons.

The qualitative study in this research includes two approaches: grounded theory and case study. Regarding the *case study method* Creswell<sup>746</sup> explains it as one of the qualitative approaches in which the researcher investigates the case(s) through data collection from multiple sources of information and reports the results. According to Yin<sup>747</sup>, this method is preferred if three conditions are met: 1) “how” or “why” questions are being posed by the researcher, 2) researcher has little control over the events, and 3) his focus is on a contemporary phenomenon within a real-life context. *Table 5.3* shows the comparison between the various research methods.

*Table 5.3: Research method comparison*

<b>METHOD</b>	<b>Form of research question</b>	<b>Requires Control of Behavioural Events?</b>	<b>Focuses on Contemporary Events?</b>
<b>Experiment</b>	how, why?	Yes	yes
<b>Survey</b>	who, what, where, how many, how much?	No	yes
<b>Archival Analysis</b>	who, what, where, how many, how much?	no	yes/no
<b>History</b>	how, why?	no	no
<b>Case Study</b>	how, why?	no	yes

*Source: Yin – Case Study Research, Design and Methods , p.8*

The purpose of this study was to acquire an insight into how public administration functions and why the anti-corruption framework is not effective in the Republic of Serbia (RS). This was done by testing the assumptions based on work experience of the author in RS public administration and the theoretical framework established in chapters 1 to 4 of this thesis. Common public opinion in Serbia is that administration is not effective in performing its duties and the increased number of civil servants after the year 2000, from 8,000 to 30,000 employed, was made only for purposes of taking care of party members. This as a consequence resulted in

<sup>745</sup>Creswell, J. W. (2007): *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*, Sage Publications Inc., p.37

<sup>746</sup>Ibid, p.73

<sup>747</sup>Yin, R. K. (2009): *Case Study Research: Design and Methods*, (4th ed.), Sage Publications, Inc. Pp. 3-21

the establishment of numerous ministries, departments, governmental agencies, openings of new positions, etc. In everyday conversation the opinion is present that state job is the “best deal” that one can get. The explanation for this could be found in the fact that this was, and in a way still is, an alternative solution because state owned companies collapsed and their privatisations turned out to be unsuccessful in large number of cases. This together with weakly developed private sector increases the value of the secure state job. An additional problem imposes the labour force, which is in many cases hardly adaptable to new circumstances. Socialist system promoted idea of stability by giving everyone right to free education, health care, housing and employment which decreased the ability of people to “swim in uncertainty” and deprived them of developing skills necessary for survival in the open market environment. Faced with new challenges during the system change, not many found the way out and therefore, the logical solution for the existential problem was, and still is, a state paid job.

Therefore, the questions which this study seeks to answer include: reform of public administration, mentality of people employed, (un)transparent work, effectiveness of anti-corruption framework and punishment mechanisms. All the issues targeted are considered related and might be depicted in the way in which citizens observe the state and its role. As mentioned above, during socialism the government was seen as an institution with super powers which was capable of solving each and every problem that arose. Totally opposite from the Kennedy’s quote<sup>748</sup>, most of the citizens asked, and still ask, what can my country do for me. This attitude, according to author’s view might reflect many important issues, especially during the reform process which has to change the perspective of administration as wealth creator to service which should facilitate people’s lives.

Looking for the research in this area, the author found that the literature, in general, addresses questions mentioned above, and it is used for building the theoretical framework of the thesis. However, each of the aspects is treated as a separate item with no studies which analyse connection among them. Although this study uses *case study research method*, it should be stressed that it does not stand alone. As stated above, this research is partially based on the work experience of the author, and the definition of its theoretical framework is created on the basis of these experiences. From this point the explanation of a *grounded theory* research method, beside the case study approach, is considered to be the appropriate one. This research method is applicable when existing theories do not address the issues in which the researcher is interested or they address it but its incomplete. Creswell<sup>749</sup> points out that “a key idea is that theory-development does not come “off the Shelf”, but rather is generated or “grounded” in data from participants who have experienced the process”.

Grounded theory was developed by Glaser and Strauss<sup>750</sup> as qualitative method used to generate, in a systematic way, a theory that should explain, at a broad level, process, action or an interaction about substantive topic. They advocate discovering the concept and hypothesis

<sup>748</sup>The famous quote of John F. Kennedy: „Ask not what your country can do for you but what you can do for your country”, said in his Inaugural Address, 1961

<sup>749</sup>Creswell, J. W. (2007): *Qualitative Inquiry and Research Design: Choosing Among Five Approaches*, Sage Publications Inc., p.63

<sup>750</sup>Glaser, B. G. and Strauss, A. L. (1967): *The discovery of grounded theory: strategies for qualitative research*, Chicago: Aldine

based on filed data from participants, rather than verifying and testing theories. This method, called systematic design, assumes detailed and rigorous procedures which include steps of open, axial and selective coding. In the first step, based on the data collected, the researcher forms initial categories about the phenomenon investigated. In the next step, axial coding, he puts one of the categories which is considered central and relates other to it. These categories are: (a) causal conditions, which influence the main one, (b) strategies, action taken in response to the main phenomenon, (c) contextual and intervening conditions, factors that influence strategies and finally (d) consequences, outcomes of the strategies used. The last phase, selective coding, includes writing a theory from the interconnection of the categories defined in the previous step.

The second approach to the grounded theory method, emerging design, was developed by Glaser<sup>751</sup>, who although worked at the beginning with Strauss, criticises further development of the theory by Strauss and Corbin<sup>752</sup> claiming that they overemphasize rules and procedures at the expense of theory generation. For him the connection between categories and emerging theory is more important than categories description because the theory exists in the more abstract level and it should fit well into reality. It should, also, explain behaviour of the participants and if works then it has its validity but even with these characteristics it should be flexible and open to modifications. The third concept of grounded theory, called constructive design, was elaborated by Charmaz<sup>753</sup>, who is more interested in the attitudes, beliefs and values of the examinees than gathering the information and their description. She focuses on the understanding of the individual's views and feelings in experiencing the process and therefore she does not use the diagrams or figures for summarizing the processes but rather narrative discussion. Choosing among the approaches is the researcher's decision and depends. Finally, Clarke<sup>754</sup> extends the idea further claiming that social situations should be involved in creation of the unit of analysis in grounded theorizing and she puts it into the context of "postmodern turn" which is characterized by complexity and heterogeneity.

As explained, the grounded theory method deals with the experiences and opinions of the subjects tested and derives the broader theory from it. During the three-year work experience in one of the ministries in the Republic of Serbia, the researcher had a chance to look closely at the processes and discuss with employees on the variety of issues and topics which are addressed in the previous chapters of this research. From these insights part of the theoretical framework is developed. However, the original method of the grounded theory in this case could not be applied according to the book due to the sensitivity of the topic and not many people are willing to be interviewed. Therefore, the only possible solution for conduction of research was to provide opinions in the anonymous way through questionnaire, which in present circumstances appears to be the most appropriate approach for acquiring the necessary

<sup>751</sup>Glaser, B. G. (1992): *Basics of grounded theory analysis*, Mill Valley, CA: Sociology Press

<sup>752</sup>Strauss, A. L. and Corbin, J. (1990): *Basics of qualitative research: Grounded theory procedures and techniques*, Newbury Park, CA: Sage

<sup>753</sup>Charmaz, K. (2006): *Construction of Grounded Theory: A Practical Guide Through Qualitative Analysis*, Sage Publications Ltd.

<sup>754</sup>Clarke, A. E. (2005): *Situational analysis: Grounded theory after the postmodern turn*, Thousand Oaks, CA: Sage.



information, but to which different rules apply and they will be discussed more in details in the next section.

#### 5.4.2. Case study method

##### 5.4.2.1. General discussion

A previously explained, the aim of this case study was to get some insights in the opinion and attitudes of public servants in the Republic of Serbia regarding the issues discussed in the theoretical part of this thesis. Due to the delicacy of the topics targeted the questionnaire was seen as the only appropriate to achieve this goal. The estimation was that people in the sample would be more willing to participate in this type of examination and the hope that they would answer the questions more honestly if the anonymity was guaranteed. The questionnaire used Likert scale for measuring the attitudes. Measuring character, attitude and personal preferences brings challenge in the procedure which, for the purpose of data measuring, transfers these qualities into a quantitative measure. As a response to this challenge, Likert<sup>755</sup> developed a procedure for measuring the attitudinal scales. The scale that he created is composed of Likert items (questions) to which should be responded by the words (a) strongly approve, (b) approve, (c) undecided/neutral, (d) disapprove and (e) strongly disapprove. In the attempt to replace the sigma method of scoring for the simpler one Likert assigned the values from 1 to 5 to each of the five different positions on the five point statements described above. To the negative end of the sigma scale the ONE end was assigned and to the positive the FIVE end. After this coding of the answers the score for each individual was calculated by finding the average of the numerical values of the positions that he checked. More precisely, since the number of Likert items was the same for all examinees, the sum of the numerical scores rather than the mean was used.<sup>756</sup> Validity of the scale was explained by Likert who claims that scale deals only with verbal reaction and behaviour and it is to be hoped that these expressions and other more overt forms of behaviour may be determined because in many situations it “would seem reasonable to conclude that our daily behaviour in these areas is largely verbal, the verbal responses would be valid indices of other habits”<sup>757</sup>. However, Likert emphasises that situation in which the attitude test that was given is equally important as the reaction on it. If the situation elicits honest cooperation one can feel that the examinee will express his own opinion rather than the one he thinks is expected of him. In that case reliabilities of the scales tend to be higher.

The Likert scale is an instrument widely used in the researches that use questionnaires. The scale is used with different response options for Likert items which can go from 3 to 10. During the time different application and data interpretation emerged and that as a result brought various discussions pointing in two different directions. Without going into deeper argumentation only the essence of it will be presented here. According to Carifio and Rocco<sup>758</sup>

<sup>755</sup>Likert, R. (1932): “A Technique for the Measurement of attitudes“, *Archives of Psychology* 140: 1-55

<sup>756</sup>Ibid

<sup>757</sup>Ibid, p.32

<sup>758</sup>Carifio, J. and Rocco J. P. (2007): “Ten Common Misunderstandings, Misconceptions, Persistent Myths and Urban Legends about Likert Scales and Likert Response Formats and their Antidotes“, *Journal of Social Sciences* 3 (3): 106-116

the main confusion comes because researchers analyse Likert scale item by item and then present this “unorganized laundry list”, which is practice that should be stopped because Likert scale is a composite result which consists certain number of items that make a whole. As van Alphen et al.<sup>759</sup> state, items in Likert scale are equal and highly correlated among each other, more precisely they are assumed to be “the replications of each other .... or parallel instruments”. Carifio and Rocco<sup>760</sup> claim that these two approaches cause all other confusions and differences in data interpretation and application of different statistical tools.

Regardless of the argument expressed in the cited article above, researchers continue using both approaches for attitude measurement. Boone and Boone<sup>761</sup> explain that Likert-type items are single questions which use Likert response alternatives with no intention of combining the responses of items into a composite scale. On the other hand, “a Likert scale is composed of a series of four or more Likert-type items” which are in the analysis combined in a single composite score. This difference reflects in the data analysis procedure because the former are considered as ordinal type of data and the latter as interval. Therefore the different analysis methods apply which are presented in the *Table 5.4*.

*Table 5.4: Differences of the Likert type and Likert scale data*

	<i>Likert type data</i>	<i>Likert scale data</i>
<b>Central Tendency</b>	Median or mode	Mean
<b>Variability</b>	Frequencies	Standard deviation
<b>Associations</b>	Kendall tau B or C	Pearson's <i>r</i>
<b>Other statistics</b>	Chi-square	ANOVA, t-test, regression

Source: Boone and Boone – *Analysing Likert data*

De Winter and Dodou<sup>762</sup> reflect on the discussion on how the Likert-item type data should be analysed, by means of parametric or nonparametric procedures. They compare the *t* and Mann-Wilcoxon (MWW) test and conclude that both tests generally have similar power and there should be no worry that the differences will be found. Clason and Dormody<sup>763</sup> discuss the proper way for analysis of single items from Likert scales and they claim it should acknowledge the discrete nature of the response. More precisely, if the researcher wants to know if the population is different on several measures or if the two or more populations are different and the data collected are Likert-type items “methods focusing on location parameters may oversimplify the analysis”. The statistical procedures should be chosen to answer in the best way the research question.

<sup>759</sup>Van Alphen, A., Halfens, R., Hasman, A. and Imbos, T. (1994): “Likert or Rasch? Nothing is more applicable than good theory“, *Journal of Advanced Nursing*, 20, pp. 296-021

<sup>760</sup>Carifio, J. and Rocco J. P. (2007): “Ten Common Misunderstandings, Misconceptions, Persistent Myths and Urban Legends about Likert Scales and Likert Response Formats and their Antidotes“. *Journal of Social Sciences* 3 (3): 106-116

<sup>761</sup>Boone, H. N. and Boone, D. A. (2012): “Analysing Likert Data“, *Journal of Extension*, Vol. 50, No. 2, Article number 2TOT2

<sup>762</sup>De Winter, J. C. F. and Dodou, D. (2010): “Five-point Likert Items: t test versus Mann-Whitney-Wilcoxon“, *Practical Assessment, Research and Evaluation*, Vol. 15, No. 11, pp.1-14

<sup>763</sup>Clason, D. L. and Dormody, T. J. (1994): “Analysing Data Measured by individual Likert-Type Items“, *Journal of Agricultural Education*, Volume 35, No.4, pp.31-35

Likert scale could be also used in the form of “forced choice” with even number of categories, usually four, in order to eliminate the “neutral” option<sup>764</sup>. This would be done in order to force examinees to express their opinion but, on the other hand, this might reduce the accuracy of the responses. The literature is debating how inclusion of neutral responses affects its distribution, reliability and validity. Regarding the reliability and validity, Tsang<sup>765</sup> claims that the literature review shows that “there is still no conclusion whether the midpoints on Likert scale are desirable or not” and for that reason the epistemological issues should be taken into account. This practically means that, if we have in mind that forcing respondents to choose agree or disagree may bring misleading conclusions, the neutral option is necessary on the scale but one must be careful in using “optional labels” or he has to “define midpoints as clear as possible”. On the other hand, research shows that the neutral option affects the distribution of responses which sometimes lead to different conclusions. For instance, respondents who slightly lean towards one of the ends, agree or disagree may be attracted by neutral option and their sentiments would be masked. Presser and Schuman<sup>766</sup> findings on couple of politically sensitive questions show that between 10-20% of examinees choose the neutral option when provided. However, despite the shifts which appeared when the neutral option was included or excluded, the researcher found that distribution of the responses did not change significantly which, at the end, will bring the researcher to the same conclusion. Presser and Schuman finish their article by citing Stanley Payne’s<sup>767</sup> advice which he gave in the book *The Art of Asking Questions*: “If the direction in which people are leaning on the issue is the type of information wanted, it is better not to suggest the middle ground. . . . If it is desired to sort out those with more definite convictions on the issue, then it is better to suggest the middle-ground”. However, Bishop<sup>768</sup>, in the research on the similarly politically sensitive topics, draws different conclusion which say that type of question does matter and the researcher should take into consideration the context and consequences when deciding on neutral options.

In analysing why respondents choose a neutral option DeMars and Erwin<sup>769</sup> say that unwillingness to “exert the cognitive effort to form an opinion” might be an explanation”. This claim goes in line with Krosnick<sup>770</sup> assertions that answering the question requires a lot of cognitive work and there are various motives which encourage people to put an effort in fulfilling this task. The situation in which all examinees behave like in the described situation is, however, unrealistic and, on the other hand, some other motives can influence the opposite behaviour. Respondents may have no intrinsic motivation to properly involve themselves in the answering process and as a result they might select the first reasonable response to the question rather than thinking of the accurate one, or to choose the safe option by choosing the option “I

<sup>764</sup>Allen, I. E. and Seaman, C. A. (2007): “Likert Scales and Data Analyses“, *Quality Progress* 2007, pp.64-65

<sup>765</sup>Tsang, K. K. (2012): “The use of midpoint on Likert Scale: The implications for educational research”, *Hong Kong Teacher Centre Journal*, Vol. 11, pp.121-130

<sup>766</sup>Presser, S. and Schuman, H. (1980): “The Measurement of a Middle Position in Attitude Surveys“, *Public Opinion Quarterly* (1980) Vol. 44, No. 1, pp. 70-85, Oxford University Press

<sup>767</sup>Payne, S. L. (1951): *The Art of Asking Questions*, Princeton: Princeton University Press., p.64

<sup>768</sup>Bishop, G. F. (1987): "Experiments with the Middle Response Alternatives in Survey Questions", *Public Opinion Quarterly* (1987), Vol. 51(2), pp. 220-232

<sup>769</sup>DeMars, C. E. and Erwin, T. D. (2005): “Scoring Neutral or Unsure on an identity development instrument for higher education”, *Research in Higher Education*, 45, 83-95

<sup>770</sup>Krosnick, J. A. (1999): “Survey research“, *Annual Review of Psychology* 50, pp. 537-567

don't know"/ "I have no opinion", or he could randomly select one response from those offered. He further discusses neutral option choice by saying, that despite lack of information on the issue, people can choose it because of other reasons such as: ambivalent feelings about the topic in the question, they do not understand the question, some think that they need thorough knowledge before giving an opinion, and finally, people avoid honest answers when they are not flattering. According to Krosnick certain types of people usually choose neutral option as an answer, which for instance are: people with limited cognitive skills, people who have no personal interest on the topic or those who feel no ability to give an informed opinion.

The literature also connects the way of answering to cultural characteristics of the respondents. Chen et al.<sup>771</sup> in examining cross-cultural differences in response style regarding the use of rating among students from Japan, Taiwan, USA and Canada find that Asian students were more likely to select midpoints compared to American colleagues. The different practice lay in the different types of culture that they belong to: Asians to collectivistic and American to individualistic. The former chose the answers based on individual preferences and the latter based on group norms. Johnson et al.<sup>772</sup> investigated at the country level the effects of four cultural dimensions defined by Hofstede on two commonly recognized response biases: extreme response style and acquiescent responding. The data were collected from 19 countries on five continents. They found that power distance and masculinity are positively correlated with extreme response style. On the other hand individualism, uncertainty avoidance, power distance and masculinity are negatively associated with acquiescent response behaviour, which has as a main goal maintaining harmony and conveying agreeableness.

When it comes to data analysis some authors suggest that neutral responses should be treated as a missing value. For instance, according to Grichting's<sup>773</sup> research, "I don't know" answers are rather expression of ignorance than indifference and as such should not be used as midpoints in the scales which measure attitudes, opinions and beliefs. He states that researchers should accept this type of answers as valid and relevant and should not be treated as an easy escape from answering the questions honestly. On the other hand, Liao<sup>774</sup> stresses that "I don't know" answers should be taken into account and not treated as missing values because they represent another attitude toward the question in between two options by people with certain demographic characteristics. He claims that all attitudinal questions may generate this type of answer in social science research and therefore should be treated as issue dependent whenever they are present ("as few as about 5%"). Madden and Klopfer<sup>775</sup> concluded that the stronger the intensity of the attitude towards an issue in question the greater is the exactness of the response required by the respondent, which can induce the higher frequency of a neutral options. More precisely, if a certain issue is considered more important by the respondent he

<sup>771</sup>Chen, C., Lee, S. and Stevenson, H. W. (1995): "Response Style and Cross-cultural Comparisons of Rating Scales Among East and North American Students", *American Psychological Society*, Vol. 6, No3, May 1995

<sup>772</sup>Johnson, T., Kulesa, P., Cho, Y. I. and Shavitt, S. (2005): "The Relation Between Culture and Response Styles: evidence from 19 countries", *Journal of Cross-cultural Psychology*, Vol. 36, No. 2, March 2005, pp. 264-277

<sup>773</sup>Grichting, W. L. (1994): "The meaning of "I Don't Know" in opinion surveys: Indifference versus ignorance", *Australian Psychologist* 29(1), pp.71-75

<sup>774</sup>Liao, T. F. (1995): "The non-random selection of don't knows in binary and ordinal responses: Corrections with the bivariate probit model with sample selection", *Quality and Quantity* 29(1), pp.87-110

<sup>775</sup>Madden, T. M. and Klopfer, F. J. (1987): "The "Cannot Decide" option in Turnstone-type attitude scales", *Educational and Psychological Measurement* 38(2), pp. 259-264

will choose the neutral option only if he is really unsure. On the other hand if the issue in question has no significant importance the midpoint option will be chosen as “the easiest response”.

The application of the Likert scale raises lots of issues discussed in the theory. The literature review provided touches upon numerous aspects and leads to the conclusion that depending on the topic and the social context which has been investigated, the researcher has to decide which approach to the analysis of the data he will choose and which type of scale, forced or the regular one, with or without midpoints, and how they will be analysed. The next section explains the application of the Likert scale in this concrete research.

#### 5.4.2.2. Application in the RS case

The study in this thesis focuses on the corruption in central government administration and it included four Serbian ministries and one institute, which operates under the jurisdiction of one of the ministries. In order to provide the higher number of possible examinees, the two approaches were chosen to access ministries. One was direct contacts through private connections and the other, indirect one, was through e-mails sent to the cabinets of the ministers. In the final result the first option was the only successful one and, as mentioned above, the questionnaires were distributed to four ministries and one state institute: Ministry of energy, Development and Environmental Protection (29 questionnaires returned), Ministry of Economy (34), Ministry of Education and Science (32), Ministry of Youth and Sport (29) and Institute for nature conservation of Serbia (26). The subjects were chosen randomly and out of 200 questionnaires given to the ministries 150 were returned filled in. The questionnaire was closed type and it had 37 Likert Items, grouped in a way to create seven Likert scales developed for the purpose of this research. Since these scales are based on the claims made in the theoretical part of the thesis and the personal experience of the author’s work in the public administration of the Republic of Serbia, it was not possible to identify similar scales in the literature. The scales look for the answers in the domain of: PA functioning, mentality of civil servants, transparency, punishing of corrupt civil servants and functioning of ant-corruption framework. The second set of questions referred only to the basic characteristics of the respondents: gender, education, and work experience. The questionnaire is attached to this chapter in the *Appendix 5.4*.

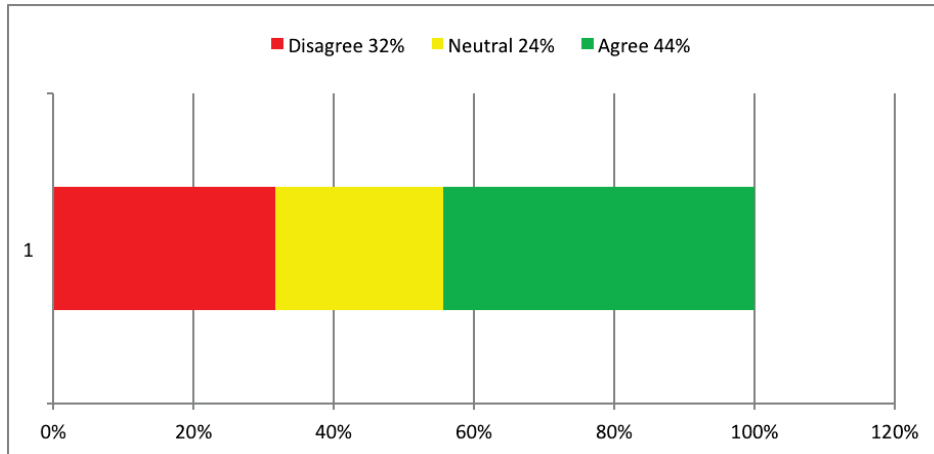
The questionnaires were distributed in paper form because of the specific mentality of the people employed in the ministries who generally express a tendency to think that whatever task is performed using the computer and internet it could be traced back to them and therefore anonymity is not possible to achieve. However, the paper option caused in some cases similar reactions by which the respondents expressed concerns about the anonymity because the questions were qualified as “delicate and potentially dangerous”. Some even refused to fill in the questionnaire. Reflecting on the situation described, in the introduction of the questionnaire it was explained that it was conducted for the scientific purposes and the anonymity of the subjects was guaranteed. Even that was not convincing for some of the examinees and the comment on the explanation was “they all write it is for scientific purposes” meaning that those who run the examinations in the past wrote the same but apparently the results were used for some other purposes. The level of distrust might be described the best way with another two

situations which occurred during the examination. In two of the five institutions examined the researcher was present in the room with the respondents that were leaving the room once they finished the filling in of the questionnaire and the new people were coming in instead. The whole process lasted around one hour and the half. The subjects were usually quiet and had no questions. In one of the ministry, somewhere in the middle of the process, one examinee asked the researcher what is the reason for conducting this survey and after the researcher's reply that it was for her Ph.D. thesis, she said "why did not you tell us, we could have been honest while replying". This, as a possible scenario, was predicted in the preparation stage of the research and the questions, due to its delicacy, were, to a large extent framed in the way to acquire the opinion of civil servants about their colleagues and their behaviour as well as the functioning of the administration as a whole. Due to the characteristics of the mentality of people from socialist countries (*homo sovieticus*, described in Chapter 1) it was estimated that if the questions were asked directly the answers would be framed in the way that leaves positive image of the respondent with the smallest chance of being honest and from these results it would not be possible to draw any conclusions. It is true that all described steps taken might not be enough to convince people to reply absolutely honestly but the hope was that by using this type of examining in measuring attitudes at least some level of honesty might be achieved.

#### 5.4.3. *Results and its interpretation*

The questionnaire had two parts and at the beginning of each of them the method of recording the answers was explained. In the first, Likert-item part, they should have made the comments by choosing one of the answers on the five-point scale: *strongly disagree, disagree, neutral, agree, and strongly agree*. Numbers provided next to every question did not assign any value to the answer but rather they were replacement for the attitude, which was explained to the respondents. This is done only for the practical reasons of printing the questioner. In the second part, examinees had to choose one of the options offered to describe their status. Coding of the answers of Likert-items was done in accordance to the procedure described earlier in the chapter. To each of the different positions of the five-point statement in each item values from 1 to 5 were assigned. The negative end received ONE and the positive FIVE. *Graph 5.6*

Graph 5.6: Distribution of the answers in total



The Graph shows that the final score contains a significant percentage of neutral option, 24%. Discussion, regarding inclusion and exclusion of neutral option is provided in the previous section. In this analysis the third option is included in the questionnaire and in the analysis. The reason for this decision is the claim made in this thesis that people in the post-socialist countries poses specific mind setting characterized by general lack of trust to people and institutions which has numerous consequences to the behaviour of people, described in *Chapter 1*. To recall some of the aspects, the existence of *verbal delict* and its possible severe consequences on people, resulted in the development of “double talk” style and distrust of the governmental institutions. The situation in Yugoslavia is partially presented in the book written by famous Serbian lawyer Rajko Danilovic<sup>776</sup>, who documented various trials which took place during the socialist times. In his book he focuses on the “opinion delict”, described earlier, which, however, should be distinguished from a “verbal delict”, because verbal delict among the other things includes insult and damnation. Danilović explains that in the Criminal law it was written that all critics of scientific, artistic and literary acts, performance of political and other social duties made without intention to humiliate would be exempted from punishing. However, in reality the “opinion delict” covered all the issues exempted from verbal delict and its purpose was to discipline everyone, from ordinary people, political opponents, and journalists to writers, scientist and artists. The book gives the description of trials and court decisions for many distinguished people of that time who were killed, imprisoned or sent to work camps. In 2011 Law on rehabilitation was enacted and numerous processes for rehabilitation of the above mentioned people were initiated by their descendants. On the other hand Serbia still did not open the secret files of people, mostly political opponents, made by the regime and which contained detailed activities collected during the surveillance. If all these facts are taken into account then the high percentage of neutral answers presented in the *Graph*

<sup>776</sup>Danilović, R. (2003): *Upotreba neprijatelja: Politicka sudjenja u Jugoslaviji 1945-1991 (The use of the enemy: Political trials in Yugoslavia 1945-1991)*, Belgrade 2003;

5.6, are less surprising and maybe easier to explain since the questions in the survey were characterized by the respondents as “delicate and potentially dangerous”.

The data were processed in the SPSS programme. This program for the reliability of the scale, more precisely its internal consistency, uses Chronbach coefficient alpha whose minimum recommended level is .7 in the range from 0 to 1.<sup>777</sup> Chronbach alpha value provides the indication of the average correlation among all the items which make up the scale and it is dependent on the number of items in the scale. For testing the assumptions related to each of the scale *t-test* was run. Initially the data were coded according to the researcher’s prediction of the situation and as such analysed statistically. As discussed earlier, t-test is one of the many which could be applied in the case of Likert-scale data. The t-test is applied when two situations are compared. Here it compared the situation depicted by the data with the ideal, theoretically constructed one which expresses the view opposite from those of the researcher’s. Based on the experience gained during the examination, which implied suspicion and lack of trust on the side of civil servants, the null hypothesis for each of the scales was that they will choose the middle option in answering “dangerous questions”. This practically means that if the mean for a certain scale was higher than 3 they tend to agree more or less strongly with the assumption. On the other hand, if the mean was lower than 3 civil servants tend to more or less disagree. The confidence interval for t-test was 95%. The results gained for the 7 scales and their important numbers are provided in the *Tables 5.5 and 5.5*. *Table 5.6* presents the results regarding the public administration and its operation while *Table 5.5* discusses issues regarding corruption. The results of the T-tests run are provided in the *Appendix 5.5* of this chapter. What could be seen is that the mean for each of the scales go slightly above or below the 3. This means that in replying to the questions civil servants in general avoided expressing the opinion, mainly choosing the middle option.

*Table 5.5: Summary of the five scales related to PA operating*

<i>Hypothesis</i>	<i>No. of quest.</i>	<i>Quest.</i>	<i>Cronbach's Alpha</i>	<i>Mean</i>	<i>T-Test</i>
<i>PA is not reformed</i>	14	1, 2, 3, 4, 5, 6, 7, 20, 21, 22, 24, 25, 26, 27	.824	3.38	0.0000
<i>PSM is not the main reason for accepting the job in PA</i>	7	1, 2, 3, 4, 5, 6, 7,	.710	3.3	0.0000
<i>PA is functioning on old way</i>	7	20, 21, 22, 24, 25, 26, 27	.820	3.36	0.0000
<i>Homo Sovieticus is still alive</i>	8	8, 9, 10, 11, 19, 23, 28, 29	.865	2.92	0.8698
<i>PA does not work transparently</i>	7	12, 13, 14, 15, 16, 17, 18	.769	2.75	1.0000

The first scale is made of two composite scales and aims to look closer to the reform of public administration. These questions refer to the ways of the recruitment for the job

<sup>777</sup>Pallant, J. (2010): *SPSS Survival Manual: A step by step guide to data analysis using SPSS*, Open University Press, Mc Graw Hill (4<sup>th</sup> ed), p. 6



(questions: 1, 2, 3), reasons for accepting the job (quest.: 4, 5, 6, 7) and rules of running PA (quest.: 20, 21, 22, 24, 25, 26, 27). *Chapter 2* discusses in details the structure of public administration and effective rules for its operating. An important part in the transformation of transitional countries is abandoning of the socialist rules of PA functioning by implementing the Weberian or Neo-Weberian rules. The assumption in the case of Serbia was that besides the efforts described earlier in this chapter, *the administration is still not reformed*, which is also stated in the literature and in the reports of various international organizations. T-test shows that civil servants slightly tend to support this assumption. In further analysis this group of questions was divided into two subgroups which are analysed separately. One group analyses the motivation for choosing the public serve job and included questions from 1 to 7, and it is presented in the second row in the Table. The assumption was that *public service (intrinsic) motivation is not the main reason for accepting the job in public administration* and it was again slightly supported. The second subscale includes questions from 20 to 27 without 23, and the assumption was that *PA still functions in the old, socialist, way* to which civil servants, again, slightly tend to agree.

Another issue which is considered important in this research is specific mentality of people in post-socialist countries, called in the literature *homo sovieticus*, discussed in the *Chapter 1*. Questions targeted the issues which are considered crucial, and which represent point of divergence between socialist and Weberian type of administration. These issues are: respecting the legality principle, following the merit based criteria for recruitment and promotion, presence of the culture of quasi-activity, care about public interest, taking responsibility for the acts, and independency in making professional decision. The questions that cover them are under the numbers 8, 9, 10, 11, 19, 23, 28, and 29. The assumption in this case was that *people are still operating in the old socialist manner*, or framed to sound catchier, *homo sovieticus is still alive*. However, from the responses collected it could be said that civil servants in this case tend to slightly disagree.

Transparency of PA is considered as one of the important aspects in fight against corruption. The detailed discussion on this issue is presented in *Chapter 3*. In the present study the questions 12, 13, 14, 15, 16, 17, and 18 referred to the transparency of the ministries and civil servants' attitude about it. They were asked to reflect upon the information flow between the colleagues in the same department and in different departments, their familiarity with the Law on Classified Information and compliance with it, the availability of the information to the clients and the role of the Commissioner for Information of Public Importance in the work of PA. The scale actually measure two dimensions of transparency, one internal and one external, related to the outside "watchdog" in the form of Commissioner for information of the public importance. The assumption was that the *public administration work is not transparent* and again, it faced very weak disagreement.

Regarding corruption, the two scales aimed to provide the insights of civil servants regarding two things: punishing of corrupt servants and effectiveness of the anti-corruption framework. The first scale seeks for the opinion on the effectiveness of the anti-corruption framework which is in place in Serbia and included the questions regarding ethical codex, strategy for corruption combat, integrity plan, special units for corruption combat within the institution and finally internal motivation of civil servants for reporting corruption. The assumption was that the anti-corruption framework is not effective to which they tend to agrees

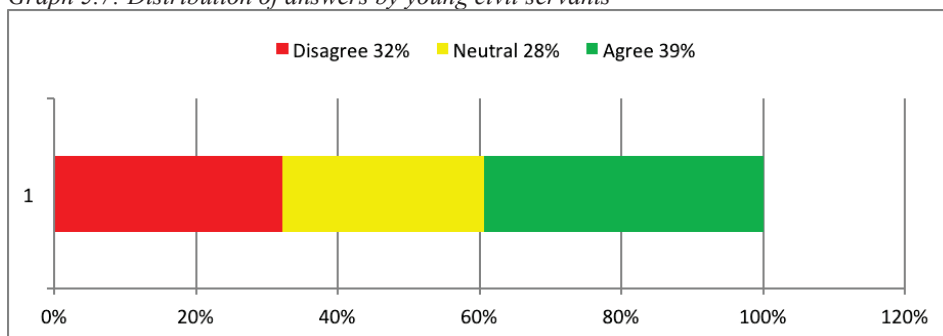
lightly. The second scale asked questions about the existence of clear internal mechanisms for control of the work of civil servants, the punishment of corrupt civil servants, and application of disciplinary administrative measures. The assumption made in this case was that *corrupt civil servants are not internally punished for their misdeeds* and again the answers provided slight agreement with the assumption.

Table 5.6: Summary of the two scales related to corruption

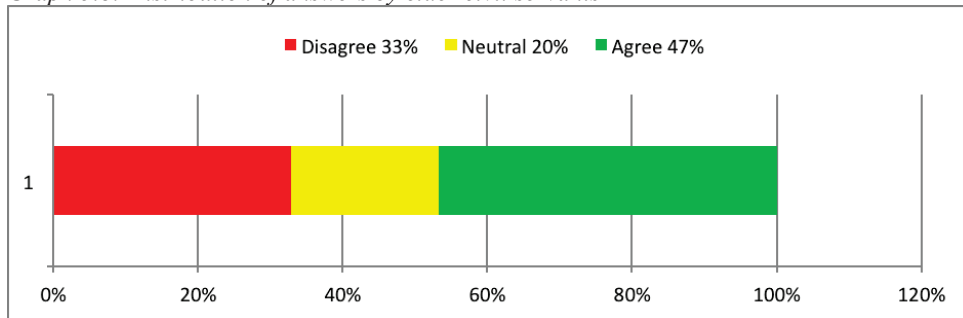
Hypothesis	No. of quest.	Quest.	Cronbach's Alpha	Mean	T-Test
AC framework is not effective	5	32, 33, 34, 35, 36	.703	3.38	0.0000
Corrupt CS are not punished	3	30, 31, 37	.727	3.29	0.0000

The ratio of women and men civil servants is 2:1 and the same is for elder and young civil servants. A couple of respondents, more precisely 7 of them, did not fill in the second part of the questionnaire. The estimation regarding the age was that opinion of young civil servants will defer significantly from those of the elder ones because they should not be influenced by the old way of thinking and regime. However, the average scores of their responses are compared show no difference (*Appendix 5.6*). There are two possible explanations for this result. One is that the situation reflected by civil servants is realistic and the age difference does not influence the view on the issues reflected in the survey. Another possible explanation goes in line with the assumption made earlier that PA is not reformed. In that case since the administration operated in the old way and for instance, the process of recruitment is not transparent and not merit-based the possibility is that candidates are chosen on this basis to fit in the old system and not to change the existing one and therefore their opinion cannot differ significantly from those of their elder colleagues. *Graphs 5.7* and *5.8* present the percentages of the answers distribution. Regarding the gender the data show no difference because the distribution of answers is almost the same. The Graphs are located in the *Appendix 5.7*.

Graph 5.7: Distribution of answers by young civil servants



Graph 5.8: Distribution of answers by elder civil servants



### 5.5. Conclusion

The case study of this chapter was the Republic of Serbia, one of the ex-Yugoslavian countries. Yugoslavia had different approach towards the socialism and, Serbia, as its largest republic is considered representative enough for the study since it shares history but also common problems with the rest of the five republics with which they once created the single country. Yugoslavia had different institutional settings and one which is particularly relevant for this thesis is the setting of public administration. Unlike the other CEE socialist countries, it treated for certain period of time civil servants as special category of people who, according to public opinion, enjoyed respect and whose job was perceived as prestigious. In the later stage the different treatment disappeared but the opinion stayed even until present times since the researches show that 40% of young people in Serbia would accept the job in public service due to its security.

The operation of the administration, besides various attempts of decentralization and reforms, in essence followed very similar patterns like the other socialist countries. Strong hierarchy, centralization and party control, were one of the main characteristics which were fertile ground for the development and operation of *homo sovieticus*. From this starting point, when the socialist system collapsed six countries formed after the breakup of Yugoslavia started their transition. From the year 2000 Serbia introduced “shock therapy” as an economic reform strategy, which in many aspects did not provide desired outcomes. The reform of public administration started four years later with the adoption of various laws and regulations modelled according to the EU requirements, since Serbia as many post-socialist countries on its political agenda has the EU membership as one of the priority goals. From this prospective, the legal framework is in place. However, its enforcement is described by the literature and various researches as problematic because the old socialist practice still prevails in the public administration operating. Merit-based criteria for recruitment and promotion are not followed, transparency and accountability are lacking, and the administrative system is expanded largely by various agencies and other public bodies which reduces coordination capacities and as such efficiency.

In the described situation corruption is perceived as one of the dominant problems for the state functioning. Serbia, like in the previous case, adopted all necessary laws and established various bodies with the main task of fighting corruption. However, the results are

the same like in the case of public administration reform. GCB index of the corruption in public service in Serbia scores 4.2 out of 5 which indicate that it is perceived as highly corrupt. The opinion of civil servants is that institutions do not cooperate enough in the corruption fight and almost 70% of them think that Serbia lacks the will for a serious corruption fight but do not see themselves as part of the “will”. This could be explained by the fact that they still see the outside factors as controlling in the institutions and do not perceive themselves as contributors, which is connected to the previous claims that public administration operates in the old way.

The qualitative research conducted in this thesis, which as a basis had the working experience of the researcher in Serbian public administration and theoretical framework constructed in previous chapters, provided in a way expected results. Civil servants in this case mainly have chosen the neutral option for expressing their opinion. This was not surprising since during the examination process the questions were mainly characterised as potentially dangerous and these comments reflected the high level of suspicion and mistrust which is still present among them. The provided analysis seems to point to the direction of the prevention in terms of education and mentality change as necessary steps for corruption combat improvement. The anti-corruption pyramid suggested in previous chapters provides sound arguments for the involvement of public servants as active participants in the public administration functioning. It aimed first to select people who are willing to pursue public goals and involves them as active part of the state institutions. This means that these people should be prone to follow the values which promote professionalism and in that environment, the enforcement of law should increase and punishment mechanism should improve since corruption would be perceived as a serious problem and as such more detectable because of the willingness of professionals to report misdeeds.

### Appendix 5.1

Table: GDP per capita

Country	1950	1960	1970	1980	1990
Bulgaria	1.651	2.912	4.773	6.044	5.597
Czechoslovakia	3.501	5.108	6.466	7.982	8.513
Hungary	2.480	3.649	5.028	6.306	6.459
Poland	2.447	3.215	4.428	5.740	5.113
Romania	1.182	1.844	2.853	4.135	3.511
Yugoslavia	1.428	2.370	3.945	6.297	5.646
USSR	2.841	3.945	5.575	6.427	6.894
UK	6.939	8.645	10.767	12.931	16.430
France	5.189	7.398	11.410	14.766	17.647
USA	9.561	11.328	15.030	18.577	23.201

Source: Maddison project

### Appendix 5.2

Table: Number of citizen's petitions to the Council per year

Period	Number of citizens petitions
2003	296
2004	572
2005	332
2006	273
2007	252
2008	240
2009	180
2010	202
2011	222
2012	182

Source: The Anti-corruption Council web-site

### Appendix 5.3

Table: Complaints for the access to the information

No./Year	2009	2010	2011	2012	2013
Accepted	619	510	564	894	933
In total	1416	2067	2625	2330	3335
%	44%	25%	21%	38%	28%

Source: Annual report of the Commissioner

## *Appendix 5.4*

### **QUESTIONNAIRE**

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**L part:** On the questions below, please reply by choosing one of the statements provided: *I strongly disagree, I disagree, I have no opinion, I agree and I strongly agree.*

1. In practice a recruitment for a job in public service goes through open competition
2. In practice a recruitment for a job in public service goes through political parties
3. In practice a recruitment for a job in public service goes through family/friendly ties
4. In Serbia, a job in public service is one of the most desired ones
5. A job in public service is desired because of the life tenure
6. A job in public service is desired because of the privileges and prestige associated to it
7. A job in public service is desired because of the opportunity to serve public interest
8. Atmosphere at work stimulates me to work scrupulously
9. Diligent and accountable civil servants' work is adequately rewarded in the Ministry
10. The culture of quasi-activity is present in the Ministry
11. Civil servants care about public interest while performing their job
12. Civil servants are familiar with the Law on Free Access to Information of Public Importance
13. The exchange of the information relevant for work flows without obstacles among the colleagues in the same department
14. The exchange of the information relevant for work flows without obstacles among the colleagues in various departments
15. As confidential is considered only the information which is as such prescribed by the Classified information Law
16. The Commissioner for information of public importance and personal data protection is highly important institution for transparent work of public institutions
17. Clients of the ministry are able to receive from it any information to which they are entitled to by law
18. Civil servants treat clients with respect
19. Civil servant is responsible for his work and potential mistakes made
20. Number of processed files affects the grade which civil servant receives from the direct superior
21. Complexity of the files processes are graded more than the number processed
22. Compliance with the instructions of the superior significantly influences the grade of civil servant
23. Civil servant is independent in decision-making process
24. Civil service is depoliticized/professionalized
25. Managers in the public administration are appointed according to the merit-based criteria as prescribed by the Law on civil servants
26. Managers in the public administration are appointed as party members
27. The work of managers is evaluated in accordance to the established criteria
28. Competence of the candidate is crucial issue for the recruitment in public administration
29. Civil servants respect legality principle in decision-making
30. The ministry has clearly defined criteria for the control of the work of civil servants
31. Corrupt civil servant are punished for their misdeeds
32. Current Code of Ethics which regulates the behaviour of civil servants is clearly defined

33. Special units for corruption combat within the ministries substantially contribute to the fight against corruption
34. Every civil servant is obliged to report cases of corruption that he has knowledge about
35. Strategy for corruption combat clearly defines the ways in which state should approach fight against corruption
36. Ministry Integrity plan, made upon the request of the Anti-corruption agency has correctly detected risks of corruption and as such it has provided adequate solutions for their neutralisation
37. Disciplinary sanctions are always applied when necessary

**II part:** general characteristics of the respondents

1. Gender : male /female
2. Level of education: high school / college / master / magisterium / Ph.D.
3. Age: a) 20-30 б) 30-40 и) 40- 50 д) over 50
4. For how long do you work in public administration: a) up to 5 years б) up to 10 years и) up to 20 д) up to 30 and more

**Appendix 5.5.**

```
. ttest parefav=3
One-sample t test
Variable | Obs   Mean   Std. Err.   Std. Dev.   [95% Conf. Interval]
-----+-----
parefav  | 150  3.380494  .0496903   .6085791   3.282305   3.478682
mean = mean(parefav)          t = 7.6573
Ho: mean = 3                  degrees of freedom = 149
Ha: mean < 3                  Ha: mean != 3                  Ha: mean > 3
Pr(T < t) = 1.0000            Pr(|T| > |t|) = 0.0000        Pr(T > t) = 0.0000
. ttest psmavg=3
One-sample t test
Variable | Obs   Mean   Std. Err.   Std. Dev.   [95% Conf. Interval]
-----+-----
psmavg   | 150  3.302564  .0533022   .6528154   3.197238   3.40789
mean = mean(psmavg)          t = 5.6764
Ho: mean = 3                  degrees of freedom = 149
Ha: mean < 3                  Ha: mean != 3                  Ha: mean > 3
Pr(T < t) = 1.0000            Pr(|T| > |t|) = 0.0000        Pr(T > t) = 0.0000
. ttest pafunavg=3
One-sample t test
Variable | Obs   Mean   Std. Err.   Std. Dev.   [95% Conf. Interval]
-----+-----
pafunavg | 150  3.366667  .0593904   .7273808   3.24931    3.484023
mean = mean(pafunavg)       t = 6.1738
Ho: mean = 3                  degrees of freedom = 149
Ha: mean < 3                  Ha: mean != 3                  Ha: mean > 3
Pr(T < t) = 1.0000            Pr(|T| > |t|) = 0.0000        Pr(T > t) = 0.0000
. ttest hsvg=3
One-sample t test
Variable | Obs   Mean   Std. Err.   Std. Dev.   [95% Conf. Interval]
-----+-----
hsvg     | 150  2.9275    .0641725   .7859491   2.800694   3.054306
mean = mean(hsvg)          t = -1.1298
Ho: mean = 3                  degrees of freedom = 149
Ha: mean < 3                  Ha: mean != 3                  Ha: mean > 3
Pr(T < t) = 0.1302            Pr(|T| > |t|) = 0.2604        Pr(T > t) = 0.8698
. ttest transavg=3
One-sample t test
Variable | Obs   Mean   Std. Err.   Std. Dev.   [95% Conf. Interval]
-----+-----
transavg | 150  2.753333  .057237    .7010073   2.640232   2.866434
mean = mean(transavg)       t = -4.3096
Ho: mean = 3                  degrees of freedom = 149
Ha: mean < 3                  Ha: mean != 3                  Ha: mean > 3
Pr(T < t) = 0.0000            Pr(|T| > |t|) = 0.0000        Pr(T > t) = 1.0000
. ttest acfav=3
One-sample t test
Variable | Obs   Mean   Std. Err.   Std. Dev.   [95% Conf. Interval]
-----+-----
acfav    | 150  3.386667  .0511406   .626342    3.285612   3.487721
mean = mean(acfav)          t = 7.5609
Ho: mean = 3                  degrees of freedom = 149
Ha: mean < 3                  Ha: mean != 3                  Ha: mean > 3
Pr(T < t) = 1.0000            Pr(|T| > |t|) = 0.0000        Pr(T > t) = 0.0000
. ttest corrpavg=3
One-sample t test
Variable | Obs   Mean   Std. Err.   Std. Dev.   [95% Conf. Interval]
-----+-----
corrpavg | 150  3.296     .0604153   .7399329   3.176619   3.415381
mean = mean(corrpuavg)      t = 4.8994
Ho: mean = 3                  degrees of freedom = 149
Ha: mean < 3                  Ha: mean != 3                  Ha: mean > 3
Pr(T < t) = 1.0000            Pr(|T| > |t|) = 0.0000        Pr(T > t) = 0.0000
```



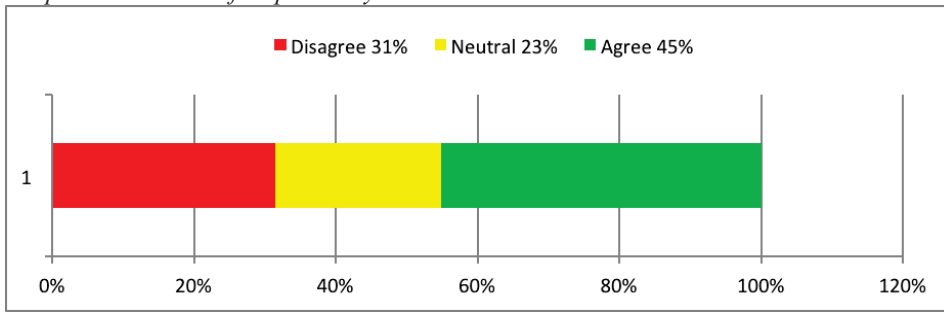
### Appendix 5.6

Table: Age and gender response differences

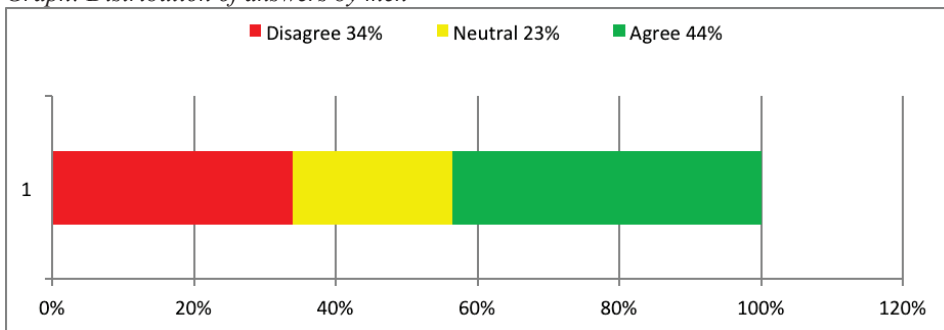
Age/gender	Mean
20-40 (46)	3.17
40-65(97)	3.13
Women (93 )	3.10
Men (50 )	3.21

### Appendix 5.7

Graph: Distribution of responses by women



Graph: Distribution of answers by men



## *Chapter 6: Conclusions and policy implications*

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### 6.1. Introduction

Discussion on corruption draws significant attention in present times, equally among the researchers and ordinary people. This does not come as a surprise since its effects are considered very harmful to society. The increased interest in corruption in last two decades came as a result of couple of changes that happened around the world. Collapse of socialist systems, the increased influence of media and globalization are marked as one of the main causes for a high rank of corruption on the international agenda. The definition of corruption which will be comprehensive enough to include various acts which are considered corrupt still does not exist. However, the one which is widely and commonly used by researcher and policy makers is that it presents a *misuse of public office for private gains*. Various researches show that corruption has harmful effects on the societies, especially on those with weak social institutions. Corruption is therefore seen as a complex phenomenon which should be tackled comprehensively. The discussion of corruption in the law and economics approach is mainly run under the veil of *Public choice theory*. This theory claims that public officials are rational self-maximiser and as such they aim to pursue their own agenda even though they should care for public interest. The closer analysis of the incentive mechanisms is in this respect made within the *principal-agent model*, introduced by Susan Rose-Ackerman in 1978. In this model citizens are seen as principals and public officials as agents. Since an agent is better informed than the principal, the main principal's action is therefore to limit the opportunities which agents can abuse and gain benefits which according to the agreement belong to the principal. This could be achieved through various strategies of monitoring and sanctioning of an agent.

Since corruption is recognised as transnational phenomenon numerous international actors, such as the UN, the OECD and the Council of Europe, took steps which they considered necessary in order to assist countries around the world in fight against it. Their anti-corruption policies adopted the above described principle-agent approach and as such created a *repression-prevention-transparency model* for corruption combat. The dominant aspect of this model presents deterrence since a variety of international conventions insist on criminalisation of various acts of power abuse. Based on this model, countries around the world adopted anti-corruption strategies as part of their legal rules. However, the recent researches on the effects of this move show non impressive results. The argument that "one size does not fit all" is one of the main raised by the critics. The explanation for this claim, according to criticizers, comes from the fact that not all countries are the same because their institutional setting varies. The dominant approach asks for overreliance on the criminal justice system, judiciary and police, taking for granted their impartiality and effectiveness. However, this situation is more the exception than the rule in many countries around the world. The main problem of this approach according to some researcher lies in the fact that in these countries institutions do not function because, even though people condemn corruption, they engage in it because they lack trust in

other citizens and think that all the others are doing the same. This is identified as collective action problem as opposed to the principal-agent model.

Among the countries which experience the problem of corruption, even though they follow the dominant anti-corruption trends, are transitional, post-socialist countries. To this group belong the countries which are emerging from centrally planned to an open market economy. To achieve this change the establishment of new institutions is the main goal and after the state's collapse international financial institutions took the leading advisory role and promoted the immediate implantation of the ideas grounded in the neoclassical economy. However, the results of this approach revealed important shortcomings, of which increased corruption was one. This outcome amplified the voices of institutional economists who from the beginning argued for gradualist approach towards the institutional change. Their claims pointed out that the change of formal institutions is not difficult to achieve. It is enough to change the written laws according to the requirements. However, the informal institutions are those which stay for a long time in people as "mental models" and they could not be changed overnight. These claims ask for deeper analysis of the social systems and their mechanisms before engaging in a design of any reform policy.

Following these claims, the conclusion might be that any sound anti-corruption policy implemented in post-socialist countries should take into account their idiosyncrasies which are the results of the previous regime. The closer look at socialism provides an interesting description in terms of its institutional setting, mentality of the individuals and their interrelation. Although in theory designed as a system which should increase wealth and cooperation among the people, socialism failed to fulfil its promise. In order to cover the failure, the system instead of making people free, imprisoned them figuratively and in large number of cases literally. As a result of the repression and distorted incentives, *homo sovieticus* was born. Imagined as a super hero, he ended up as a sceptical, amoral creature who sees nothing wrong in stealing from the state. In addition he has no trust in people outside its small circle and he has no trust in public authorities. If compared to *homo economicus*, it could be said that they both aim to maximise their wealth but homo economics does that by respecting the institutional framework of the game which channels its behaviour and coordinates it with other players (invisible hand of the market).

This description is here taken as a starting point from which transitional countries departed on their journey. In the last two decades their achievements regarding the change vary. Some of them perform better than the others in many aspects including the fight against corruption as well, which TICPI shows. However, another index, the Global Corruption Barometer, shows that perception of corruption in civil service in these countries is still high. There is an indication that homo sovieticus changed to a certain extent but when all arguments are put together it is highly likely that he still lives in the civil service. Therefore the crucial question is what measures should be employed in order to change him and make him accept the values of the new system. This thesis aimed to answer this question in context of corruption combat improvement. The focus of this research was on the corruption of civil servants in post-socialist countries. Therefore, the main research question posed was: ***What is the optimal enforcement design of anti-corruption policies for corruption combat in public administration of post-socialist countries?*** The answer to this question aimed to suggest the model of anti-corruption policy whose costs and benefits for the society would be balanced

since the current approach has been shown as suboptimal with high costs for society and little benefits. Therefore, this thesis suggests that instead of dominant anti-corruption scheme *repression-prevention-transparency*, in the fight against corruption of civil servants in post-socialist countries the new anti-corruption scheme *structure-conduct-performance* should be employed.

## 6.2. Structure

The first element of the paradigm, *structure* refers to the formal institutional setting of public administration. As described in the *Chapter 2* it varies across societies depending on the general values according to which it operates. Three types of societies and their institutional settings of public administration were analysed in this thesis: socialist, capitalist and transitional. The three types are important for transitional countries in order to depict the whole process through which these countries are going. From socialism as a starting point, in transition their aim is full implementation of formal and informal institutional setting of capitalism. Even though one could think that with defined starting and end points the journey should not be that difficult, the situation of transitional countries provides a different conclusion. Although they all started from the same point, during the transition they took various paths because suggestions coming from a capitalist world differed. This differentiation is reflected in the literature on public administration in capitalist societies and shows a vivid discussion about which option, among the different structural organizations: Weberian bureaucracy, New Public Management, Neo Weberian State and Good governance, is the best solution for the fulfilment of public administration purpose. The variety of options for the final destination brought even more confusion to people in transitional countries who were already confused by the state collapse. Therefore, the conclusions that reform the process of public administration in post-socialist countries did not produce substantial results, comes as no surprise. This brings us again to the claim that before pursuing of any reform, specific characteristic of certain country(ies) should be taken into account. This is especially important for the reform of public administration in post-socialist countries because its meaning during the socialist time was substantially different compared to the one in capitalist societies. Public administration is a very important aspect of the state's organization and its functioning largely affects life of its citizens. In that respect corruption appears as the ultimate proof. In the literature on corruption administration is seen as one of the important sources for its creation. Behaviour of corrupt public administration is in general seen as deviation from the prescribed behaviour and as such should be treated with adequate means. This view is also nowadays widely accepted, at least formally, among transitional countries.

Putting all arguments together the sub-research question of the *Chapter 2* was: ***What is the optimal structure of public administration in post-socialist countries for improving corruption combat?*** In order to answer the question, the research started from the analysis of dominant strategies recommended for corruption combat: privatization, decentralization, deregulation, payment increase and establishment of special anti-corruption bodies. However, various researches show mixed and sometimes unsatisfying results of their implementation especially when applied in the context of post-socialist countries. One of the explanations for this outcome might lie in the fact that the majority of strategies for corruption combat in public

administration are coming from the capitalist societies which have well established public administration and values and in that context corruption presents rather exception than the rule. Principal agent model therefore should work because of principal's ability and willingness to monitor and punish the wrongdoers. In post socialist society history of administration is substantially different as well as its characteristics and values. In that context corruption was rather the rule than the exception and there was no principal willing to monitor and punish. This implies that in these countries the "proper" public administration should be established in the first place. Public administration literature suggests that this could be achieved by implementing the principles of either Weberian bureaucracy or Neo Weberian State. The establishment of proper understanding of the values and the role of public administration should lead to the attitude which condemns corruption and treats it as deviating behaviour.

Another aspect which is also considered crucial here relates to the structure of people employed in public administration. Public service motivation appears to be assumed in discussion about various types of public administration. This might be explained by the fact that in capitalist societies the distinction between public and private sector always existed and people were able to make choice among the two, based on their characteristics and personal preferences. However, socialism had no such distinction. Public administration beside civil service included public companies as well. Practically everybody worked for the state and directly or indirectly for the Socialist/Communist party because of non-existing alternative. From this perspective it appears crucial that in this transitional phase the recruitment and promotion processes should take into account the level of PSM of a particular candidate. This appears important since the first studies show the negative correlation between PSM and corruption.

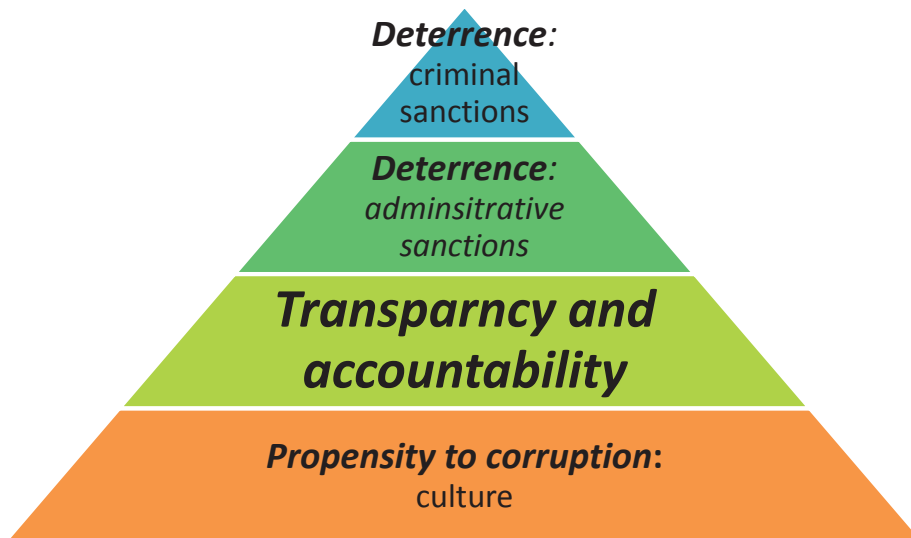
To conclude, the current structure of public administration in post-socialist countries is, according to the Global Corruption Barometer, suboptimal. Even though they all applied many formal changes the citizens still have perception of them as corrupt. In order to improve corruption combat these countries should implement the structure and values of NWS or Weberian bureaucracy. This in general should not induce high costs since majority of transitional countries formally had to comply with the EU requirements and adopt laws which promote merit based criteria for recruitment and promotion, legality as dominant principle of operation and professionalization without political influence. Some costs might be induced regarding the replacement of some of the NPM elements which are not included in the NWS approach. However, this aspect is open for future discussion. Finally, the selection of candidate should aim to employ those with high PSM in order to stress the importance of public goals and the role of public administration in pursuing it. This also should not be too costly for the administrations in post-socialist countries since many of them have established human resource offices and testing for PSM could be added to their task lists. Therefore, NWS or WB plus PSM provide optimal structure for corruption combat in post-socialist countries.

### **6.3. Conduct**

The second element conduct, in the paradigm structure-conduct-performance, is here analysed through two aspects. The first targets the preferences and the second imposes constraints. Departing from the dominant Deterrence approach applied in cases of corruption

this thesis advocates the application of *Responsive Regulation Approach*, which combines Cooperative and Deterrence approach together. More precisely in one strategy, preferences are targeted and constraints are imposed. This mixed strategy is depicted in the *anti-corruption pyramid* constructed here for the post-socialist countries. As previously said this pyramid ranks the elements from the dominant anti-corruption approach repression-prevention-transparency because their values are not the same regarding the corruption combat in transitional countries. The pyramid puts first prevention, than transparency and finally repression.

*Anti-corruption pyramid*



The explanation for this argument lies in the specific characteristic which public administration of these countries possesses. More precisely, the penalties are imposed for the behaviour which deviates from the usual one and their aim is to deter people from committing offences in the future. Deterrence is also expensive method because it requires monitoring and processing wrongdoers in the way by which their rights are respected. If the deterrence approach is put in the context where corruption is not an exception but rather the rule, it is less likely that it might achieve a significant result. Since corruption is not stigmatized, it is more difficult for detection because parties in this secret agreement have no incentives to report it. This further means that without detection the prosecution is not possible as well as sanctions imposition. Therefore, prevention in terms of mentality change should be in the basis of any sound anti-corruption policy designed for post-socialist countries, like in the basis of anti-corruption pyramid. Transparency should be in the middle, again as a soft method for influencing the mental model. Finally, when the necessary ground is established, repression could be used in its capacity and meaning. What could be observed here that the mixed strategy presented in the pyramid demands administration itself to engage in corruption combat, leaving criminal justice system as the ultimate weapon, used only for the very harmful misdeeds. With

this self-control mechanism, administration should be able to build internal coherence and strength. There is no doubt that corruption harms societies in many ways and that policy makers should promote zero tolerance of corruption. However in case of transitional countries instead of the first best, for a while the second best solution should be applied which is suggested by the anti-corruption pyramid(s). Going one step back does not necessarily mean the failure but rather taking a run up for faster improvement.

### 6.3.1. Targeting/Coordinating preferences

Culture represents collective programming of mind of certain group of people according to which they express patterns of feeling, thinking and acting. This further means that culture is learned. In general culture embodies preferences towards certain behaviour. The essential for this thesis is considered the culture of *homo sovieticus*, an imaginary person who represents the personification of the values and ideas of socialist systems. Originally created in theory as a superb human being, during the time it became its antagonism. His characteristics are learned helplessness, amoral familism and culture of quasi-activity. Because of the system's oppression he has no respect or trust in it and develops as a consequence doublethink system of operating. In this context he does not condemn corruption because sometimes it might be the only means of fulfilling his basic needs because of the existence of no others. The relation of *homo sovieticus* and corruption is very intuitive, however literature does not provide closer insights. In order to access its characteristics, some other well-established cultural aspects are employed here such as universalism and particularism, individualism and collectivism and power distance. According to this differentiation, *homo sovieticus* is a particularistic, collectivistic person who accepts power differences, authorities and privileges. On the other hand, dominant anti-corruption strategies assume in their design a person with opposite characteristics, an universalist, individualist who does not accept power difference, authorities and privileges. In general it could be said that people in post-socialist countries are somewhere in between these two extremes. However, it appears that in public administration, due to its specific context in the past, the mentality leans towards the negative end of the line, more precisely towards the *homo sovieticus*.

Regarding the discussion provided above the sub-research question imposed in this case was: ***How the preferences of civil servants should be targeted/coordinated in order to achieve the optimal level of corruption combat in public administration of post-socialist countries.*** The answer lies in the creation of expressive norms which should coordinate civil servants behaviour and adjust it to internalise values of universalism, individualism and low power distance. By shifting the equilibrium to desired behaviour the demand for extensive monitoring should decrease and its costs as well. Alongside the described cultural values the culture of openness and accountability should be promoted. It is essential to convey the message to public servants that any information which they possess is in the ownership of the public for whom they work, and not anymore for the Party and its interests.

Practical implication of the first two layers of the pyramid lie within the structure of the public administration elaborated in the previous chapter. To remind the reader, regarding the values the institutions should be structure according to the Neo Weberian State (NWS) as the first best solution and regarding the structure of the individuals, they should pose Public

Service Motivation (PSM) as a necessary characteristic for high level performance. NWS gathers the best of traditional public administration and the New Public Management and human resource management (HRM) received greater attention under the auspice of the latter<sup>778</sup>. In the implementation of the anti-corruption pyramid they might play a crucial role. Since in the reform of public administration transitional countries followed the trends set by the international actors and mainly established the HRM offices the creation costs would not be induced by this suggestion. The analysis of their performance shows that their more active engagement is required in order to support “financial and social pressures for good governance”<sup>779</sup>. Table 6.1 provides the overview for some of the HRM offices in post socialist countries.

Table 6.1: HRM offices in transitional countries

Country	HRM office name	Jurisdiction over recruitment	Transparency laws	Accountability framework for managers
<i>Albania</i>	Department of Public Administration	decentralised, entrusted to the ministries but slightly more standardized comparing to other Balkan countries	Yes	Yes
<i>Bosnia and Herzegovina</i>	Civil Service Agencies	decentralised, entrusted to the ministries but slightly more standardized comparing to other Balkan countries	Yes	Yes
<i>Croatia</i>	Central State Office for Administration	decentralised, entrusted to the ministries	Yes	Yes
<i>Czech Republic</i>	Department for Effective Public Administration	delegated to ministries with broadly comparable framework across all central government employees	Yes	Yes
<i>Estonia</i>	Department of Public Administration and Public Service, along with other bodies	managed by ministries and units/teams with significant differences across them.	Yes	no general framework exists
<i>Hungary</i>	Centre of Human Resource Management for Public Administration	managed by ministries with broadly comparable framework across all of central government	Yes	no general framework exists
<i>FYR Macedonia</i>	Civil Service Agency	decentralised, entrusted to the ministries but slightly more standardized comparing to other Balkan countries	Yes	Yes
<i>Montenegro</i>	Human Resource Management Authority	recruitment system is decentralised, entrusted to the ministries	Yes	Yes but not implemented
<i>Poland</i>	Head of Civil Service,	delegated to ministries	Yes	Yes

<sup>778</sup>Brown, K. A. (2004): “Human Resource Management in the Public Sector”, *Public Management Review*, Vol. 6, Issue 3, 2004, pp. 303–309

<sup>779</sup>Liebert, S., Condrey, S. E. and Goncharov, D. (eds.) (2013): *Public Administration in Post-Communist Countries*, CRC Press, 2013, pp. 350



	supported by the Department of Civil Service	with significant differences across them		
<b>Serbia</b>	Human Resource Management Service	recruitment system is decentralised, entrusted to the ministries	Yes	Yes
<b>Slovenia</b>	Directorate for Public Sector	decentralised, entrusted to the ministries with significant differences across them.		no general framework exists
<b>Slovakia</b>	No central HR body exists	decentralised, entrusted to the ministries but with comparable framework across all central government	Yes	no general framework exists
<b>Romania</b>	National Agency of Civil Servants	Employment issues managed by ministries	Yes	
<b>Russia</b>	Ministry of Labour and Social Development	decentralised, entrusted to the ministries with significant differences across them	Yes	does not exist

Source: OECD HRM country profile and SIGMA report for 2012

The reports<sup>780</sup> show that HRM offices mainly have coordination and legislative role but the process of selection and recruitment is in large part delegated to the individual ministries, which as a consequence shows different practice regarding the standardization of employment conditions, performance appraisal and equal opportunities. Since they mainly have jurisdiction over the rules enactments, such as code of conduct, they might also take part in the designing of a cultural test on the values discussed in this thesis, which should assist ministries in the selection of candidates. One of the limitations mentioned regarding the cultural models is that one should not assume that in one country all people are the same. Therefore the system which targets those who pose the values opposite from ones promoted by the old system, should be promoted. However, these tests should be used only together with the tests which assess the knowledge and skills of the candidate required for the position that he applies to. Of course, this approach assumes implementation of merit-based criteria for the recruitment and promotion. All these factors combined together might be able to provide competent people with the values which support enforcement of public goals rather than individual interests. By promoting these values and introducing new people into the institutions their behaviour might affect those who are already employed and change their habits and perception of the work.

Transparency and accountability of public administration in post socialist countries has had a difficult past. They started their journey from complete denial with the aim to reach the level of implementation necessary for good governance. This means that civil servants in these countries have to learn the real meaning of these terms and comply with them. In theory, people selected on the way in the first pyramid layer people should work transparently and poses the accountability as virtue. However, external mechanisms for control are necessary to be in place. The third column in the Table shows that all observed countries have in place necessary

<sup>780</sup>Source: OECD Management Country Profile, available at: <http://www.oecd.org/gov/pem/hrpractices.htm> and Meyer-Sahling, J. (2012): "Civil Service Professionalization in the Western Balkans", *SIGMA Papers*, No. 48, OECD

legal framework for improving transparency<sup>781</sup>. However, the implementation is mainly questionable. It is not realistic in this moment to provide an overview of the transparency mechanisms of the administration for each transitional country, this might be a subject of another research, but in the IT era variety of software are available which are able to provide better insights into the “black box” of civil service administration. For instance, if colleagues in particular sector are able to observe basic facts of the files which are processed in the department, the respected deadlines established by the law for decision making and so on, it would be easier to assess formal performance of each employee. Regular staff meetings should also contribute to the creation of the environment of openness and transparency. In this environment the accountability should be perceived as logical consequence and not terrifying and severe acts like the one conducted in the past mainly caused by the violation of ideological rules. The approach towards the accounting and accountability also has a cultural aspect. According to Hofstede<sup>782</sup> accounting and management control systems are “manifestations of culture and reflect basic cultural assumptions”. He claims that his analysis is based on “impressions and conjectures” since they were not extensively studied in cultural context. Accountants are unlikely to “become heroes” in organizations but they have an important role because they determine the good and the bad guys by using device called “accountability” to hold someone personally responsible for the results. For instance, in individualistic cultures the information in the accounting system is taken more seriously than in collectivistic ones. In large power distance societies accounting systems are often used for the purpose of justifying the top power holders’ decisions. The system is also more detailed and theoretically based “pretending to derive from consistent general economic principles. This view supports previous suggestions for the necessity of creation of cultural environment which would promote universal values and care for public good.

In the discussion on the first pyramid layer it was pointed out that cultural aspects should be taken into account in the recruitment process and that “new people” might bring new values to confront the old behaviour. However, in general the percentage of new people is usually small and therefore their behaviour should be supported by the incentive system which could be applied to all workers in order to successfully confront the old values. For this purpose the reward mechanisms might be established to promote the desired behaviour described in the two anti-corruption pyramid layers. Nevertheless, this system should be clearly defined and transparent in order to avoid any misuse.

### 6.3.2. *Putting constraints*

Another aspect of conduct element, besides coordinating preference, includes imposing constraints on human behaviour. In the anti-corruption pyramid they are located in the two top layers. In dominant anti-corruption framework, repression-prevention-transparency, the first component weighs more compared to two others. International conventions insist on criminalisation of various corrupt acts which countries signatures are expected to comply with. These requirements are understandable from the point of policy makers who usually declare

<sup>781</sup>Source: *freedominfo.org*, available at: <http://www.freedominfo.org/about-us/>

<sup>782</sup>Ibid, pp.155-158

zero tolerance of corruption since it imposes severe consequences on societies impeding their development and living standard of citizens. However, using a criminal justice system is costly for the society and in some countries is hampered by corruption as well like the other institutions in the society. This practically means that even though it is formally in charged for corruption combat, in reality is less likely that it actually complete its job. Transitional countries with weak economies and in general present systemic corruption fit to this description. Law and economics literature provides wide discussion on optimality of enforcement systems. Looking into this literature this thesis aimed to answer another sub-research question: *How constrains should be imposed in order to achieve the optimal level of corruption combat in public administration of post-socialist countries.*

Human beings behave as rational actors when deciding to commit a crime. They calculate benefits and costs of it, by taking into account probability of detection and conviction and severity of sanction. More precisely, when a civil servant in a post-socialist country engages in bribery he takes into account how likely would be the situation of the detection of his crime, would he be convicted and what would be the punishment. According to the current situation in majority of transitional countries accepting and giving bribe is prescribed as criminal sanction with mainly imprisonment sanction, although alternative exists which are aimed to apply in particular cases. The corrupt act in essence presents a secret agreement which parties have no incentives to revile due to the possibility of being criminally punished. The difficulty of detection might be even higher in post-socialist environment in which in the past corruption was not perceived as serious misconduct or deviation from the rules. Furthermore, even when it reaches the criminal court the safeguards of human rights imposed on the criminal justice system ask that act should be proved beyond reasonable doubt, which might be problematic in particular case since usually type of evidence used in investigation are not applicable here. For a more sophisticated investigation additional material resources might be required which usually transitional countries are not able to provide. Finally, if imprisonment as dominantly prescribed sanction is mainly imposed on a wrongdoer, society, already burdened with his act, now adds one more costs to the list. This description holds for a well-functioning criminal justice system. However, the situation becomes even more difficult if it is itself burdened with corruption which is detected as a problem in many transitional countries. All these obstacles ask different approach than the internationally advocated one.

In that respect it should be said that not all bribery acts are the same and civil servants have more characteristics of white collar criminals than the blue ones. These two facts are important for the designing of sound anti-corruption policy in post socialist countries. Bribe might be paid for two main reasons. In one a client has according to the law certain right but pays the bribe in order speed up the process and in another he pays to obtain the right to which he is not entitled to. The former case is here called legal bribery and the latter illegal. If costs of two are observed it could be seen that in legal bribery the bearer of the extra fee paid for corruption is client itself since the legal act produced upon his request in general has not negative consequences for the rest of the society. In a case of illegal bribery the situation is opposite. The beneficiaries are the parties involved in bribery and the cost bearer is society. In this case is sometimes even difficult to assess the total amount of costs because of no existence of a concrete victim. Transitional countries make no distinction in this regards but treat all acts from the perspective of giving and receiving bribes.

In order to improve corruption combat the suggestion for transitional countries is that cases of legal bribery should be sanctioned with administrative disciplinary sanction while illegal should be treated with criminal ones. The purpose of running an administrative procedure has goals of internalising costs and making people to comply with the rules. Criminal law has dominantly punitive character and aims to deter people from committing offences in the future. The former one compared to the latter has less strict procedural requirements, such as lower level of burden of proof which as a result simplifies procedure and less severe sanctions whose imposition is therefore less costly. These characteristic if applied to the context of post-socialist countries are likely to improve corruption combat for couple of reasons. Public administration in the past had specific meaning and corruption was highly tolerated, and therefore punishing corruption with administrative disciplinary sanctions for cases of legal corruption may serve the very important goal of conveying the message that the values system changed and that corruption is no longer *modus operandi*. Furthermore, punishing only civil servants and letting the other party free, the secrecy of agreement might be substantially disturbed which should as a result increase the detection of the bribery cases. Regarding costs, the whole procedure in this case would be run within the institution with no or very little costly sanctions. The range of the sanctions which could be employed is presented in the *disciplinary anti-corruption pyramid*. The idea here is that gradual application of disciplinary sanctions, which should correspond to the act committed besides punishing has an educational role for civil servants in post-socialist countries. This educational role is stressed with the application of shaming penalties which should improve the effects of administrative sanctions.

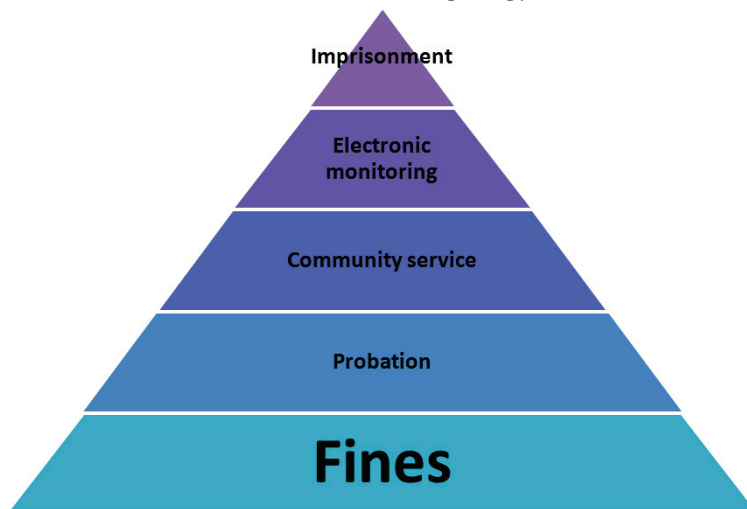
*Disciplinary anti-corruption pyramid*



Cases of illegal corruption based on the decision which breaks the law and which might produce large harm to the society should be criminalised. Since the agreement among the

parties is stronger in this case, the level of detection is even lower which also reduces the probability of sanctioning. In this case costs of criminal law enforcement might be sufficiently low compared to the costs induced by the act. However, in this case imprisonment should be, as the most expensive sanction, used as the last resort. The gradation of sanction in *criminal anti-corruption pyramid* goes from sanctions which are less expensive and provide higher returns to the society, to the more costly with lower or no returns. It was previously argued that civil servants possess characteristics of white collar criminals in terms of education, age and having a job. As such it would be more beneficiary for society to use their abilities for paying the damages instead of incarcerating them. Imprisonment is in cases, in which criminals should be removed from the society, like killers or rapists, besides its costs beneficial for the society. However, in cases of corruption, and particularly in non-wealthy countries often prescription and use of imprisonment in cases of bribery might be more costly than beneficial. Therefore, on a case by case basis, regarding the parties involved and the harm caused, the variety of sanctions from the pyramid, which in particular case might be efficient and effective, could be used. Another suggestion here is that the agreement among the parties could be broken by unequal penalties or providing an immunity for a bribe-giver.

*Criminal anti-corruption pyramid*



In conclusion, the answer to the sub-research question: ***How constraints should be imposed in order to achieve the optimal level of corruption combat in public administration of post-socialist countries*** is by differentiating the cases of bribery, to legal and illegal, and by applying two type of procedures, administrative and criminal, for punishing them.

## 6.4. Performance

### 6.4.1. *Current performance: Case study of the Republic of Serbia*

For the case study in the qualitative research conducted in this thesis, the Republic of Serbia was taken since in the past was part of the Socialist Federal Republic of Yugoslavia. Yugoslavia followed the different path of socialism than the Soviet type. In the international arena it included neutrality in the Cold War and promotion of cooperation with everybody. In internal policy it promoted decentralisation, on political and industrial level, private ownership in agricultural and small business area and, important for this thesis, it for a while treated public servants as a special group compared to the other workers. The proclaimed openness and decentralisation diluted the fact that in the essence the system was authoritarian which broke up like all the other Soviet socialist systems. After the break up six countries were created which as republics were constituents of Yugoslavia: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. Their economic performance in transition is graded differently from the external international factors, such as EU, which causes different status and treatment for the each of them. However, when public administration is observed the six countries show similar results. More precisely, the Global Corruption Barometer which measures perception of corruption in public administration shows that in all countries it is perceived as corrupt. Therefore, specific type of socialism and common problem of public administration, which for a while had special treatment as part of specificity of the socialist system, put Yugoslavia in the focus of this research. However, the single case study approach was chosen because of the assumption that common history and culture that countries shared in general provide similar mentality of civil servants in all countries. Serbia was selected based on the two facts: first, the whole administration of socialist regime had its headquarters in Belgrade, which back then was the capital of Yugoslavia and is now the capital of Serbia; and second, it is the largest country among the others and as such might be more representative.

Serbia started transition in 1990's but formal removal of socialist regime happened ten years later in "5<sup>th</sup> October Revolution". After 2000 the Shock Therapy strategy was implemented in the reform of economic system. Public administration reform started as well at the same time and it followed international requirements and standards. This means that Weberian elements as well as NPM were implemented but not as a part of Neo Weberian State approach. It appears that Serbian policy makers just followed the trends promoted by international institutions whose views are in general influenced by the strongest states and their perception of the issues and practice. In this case some countries follow Weberian administration some other New Public Management, and in order to provide the all necessary help to societies which are going through a transformation they offer solutions which, according to their practice show results. However, it seems that sometimes the lack of knowledge of the specific characteristic and culture of particular countries or type of countries produces unexpected and unwanted results. This in the first place happened to the highly advocated Shock Therapy, which produced unpredicted outcomes even though the intentions of the proponents are made in a good faith. In this context, the applied reforms in transitional countries in the domain of public administration came as no surprise since many studies show, again, unsatisfying results. Finally, the same model and following story apply for the anti-

corruption framework. In all three cases the results of the reforms applied in all three areas in Serbia are not an exception.

Regarding the fight against corruption studies show that citizens in Serbia see corruption as *modus operandi* of public administration. When civil servants are asked, they see themselves as generators of corruption but also they blame on the system and its structure. What is interesting is that they do not see themselves as part of the “will”, which should change the situation, but rather the “will” is located outside. When methods for corruption combat are discussed the two groups, citizens and civil servants, give different answers. The former argue for harsh penalties, while the latter argue for prevention. In a qualitative study run for the purpose of this research result, tie in in a way with some theoretical claims made. In the responses civil servants expressed mistrust and scepticism for the research because the questions asked were characterised as “delicate and potentially dangerous”. Therefore, they suspected that their replies might be used against them in the future. Even though the replies cannot be used for the strong support for the assumptions made, they still provide valuable information that trust in civil service in Serbia is missing which is in the context of reducing corruption one of the crucial elements. Therefore, the application of *anti-corruption pyramid* seems justified here since it first argues for capacity building and trust increase through prevention and transparency and in the second instance application of sanctioning system as a corrective measure for unwanted behaviour. These conclusions in general could be stretched to the countries of ex-Yugoslavia since public opinion in each of them regarding corruption and public administration is very similar and it is expressed through mass media, newspapers, television and internet, and in personal communication among people as well.

#### 6.4.2. *Limitations and suggestions for further research*

One of the limitations of this study is that it discusses countries which beside their similar socialist past have actuality in which the relics of socialism in general vary. This implies particularly to the group of countries who are already members of the EU and those whose aim is to one day become part of that community. However, in the list of transitional countries are also those who have no such aspirations, such as Russia or Belarus who are also part of this research. Another important fact is also that the analyses made here not always had the same pool of countries because the data in some cases were missing and in some were difficult to obtain due to the language barrier since no English translation could be found. Therefore, the applicability of the theoretical framework may vary from country to country based on its particular circumstances and *anti-corruption pyramids* should be seen rather as a mechanism which is cost efficient and aimed to be effective in improving corruption combat. For instance some countries can recognize other cultural aspects as important in particular case, than those discussed here in the first layer of pyramid. Furthermore, some other administrative sanctions could be found more applicable than those suggested. In sum, the main message is that culture and informal institutions matter and their change do not follow the change of formal institutions. This should be kept in mind in designing of anti-corruption policies.

Another limitation of this study is the use of one case study method. The main argument in that sense questions the application of the results gained in one study to the other cases which are considered similar. The main argument in that sense is that the attempt here

was to make a first step towards the research of the “black box” of post-socialist administration and to identify those elements which might be important for understanding causes of corruption. Consequently the knowledge gained should cause the finding of cure easier. This study should be interpreted in terms of Grounded theory which implies that further research is necessary for the creation of more accurate image.

This thesis raised some issues and tried to connect various aspects relevant for corruption combat in post-socialist countries. Many claims demand more investigation in the future since their basis is either in the issues which are emerging in the literature, such as relation of the administration type and corruption, or are mentioned for the first time here, like punishment of certain types of corruption with administrative disciplinary sanctions. Economists usually do not like to go into the culture and preferences and are prone to criticize their use. However, lawyers tend to emphasize them as important aspects of human behaviour. As usual, the truth must be somewhere in between. This thesis has attempted to reconcile the two approaches in terms of corruption and further research is seen as necessary for argument support.



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## SUMMARY

Corruption is, in the last two decades, considered as one of the biggest problems within the international community, which harms not only a particular state or society but the whole world. The discussion on corruption in law and economics approach is mainly run under the veil of *Public choice theory* and principal-agent model. This theory sees agents, politicians and bureaucrats, as rational self-maximisers who disregard public goals and as such should be monitored and sanctioned accordingly by the principal. In this context the policy makers should create incentive mechanism which imposes obstacles to corrupt behaviour. Based on this approach the strong international initiatives taken by the UN, the OECD and the Council of Europe, provided various measures and tools in order to support and guide countries in their combat against corruption. These anti-corruption policies created a *repression -prevention-transparency model* for corruption combat. The dominant aspect of this model presents deterrence since variety of international convention insists on criminalisation of various acts of power abuse. Based on this model, countries around the world adopted anti-corruption strategies as part of their legal rules. Nevertheless, the recent researches on the effects of this move show non impressive results. The argument that “one size does not fit all” is one of the main raised by the critics. The explanation for this claim, according to criticizers, comes from the fact that not all countries are the same because their institutional setting varies. The dominant approach asks for overreliance on the criminal justice system, judiciary and police, taking for granted their impartiality and effectiveness. However, this situation is more exception than the rule in many countries around the world. The main problem of this approach according to some researcher lays in the fact that in these countries institution do not function because, even though people condemn corruption, they engage in it because they lack trust in other citizens and think that all the others are doing the same. This is identified as collective action problem as opposed to the principal-agent model.

Among the countries which experience problems of corruption, even though they follow the dominant anti-corruption trends, are transitional, post-socialist countries. To this group belong the countries which are emerging from centrally planned to an open market economy. To achieve this change the establishment of new institutions is the main goal. After the state’s collapse international financial institutions took the leading advisory role and promoted the immediate implantation of the ideas grounded in the neoclassical economy. However, the results of this approach revealed important shortcomings, of which increased corruption was one. This outcome amplified the voices of institutional economists who from the beginning argued for gradualist approach towards the institutional change. Their claims pointed out that the change of formal institutions is not difficult to achieve. It is enough to change the written laws according to the requirements. However, the informal institutions are those which stay for a long time in people as “mental models” and they could not be changed overnight. These claims demand a deeper analysis of the social systems and their mechanisms before engaging in a design of any reform policy.

Following these claims, the conclusion might be that any sound anti-corruption policy implemented in post-socialist countries should take into account their idiosyncrasies which are the results of the previous regime. The closer look to socialism provides an interesting

description in terms of its institutional setting, mentality of the individuals and their interrelation. Although in theory designed as a system which should increase wealth and cooperation among the people, socialism failed to fulfil its promise. In order to cover the failure, the system instead of making people free, imprisoned them figuratively and in large number of cases literally. As a result of the repression and distorted incentives, *homo sovieticus* was born. Imagined as a super hero, he ended up as a sceptical, amoral creature who sees nothing wrong in stealing from the state. In addition he has no trust in people outside its small circle and he has no trust in public authorities. If compared to *homo economicus*, it could be said that they both aim to maximise their wealth but homo economics does that by respecting the institutional framework of the game which channels its behaviour and coordinates it with other players (invisible hand of the market). This description is here taken as a starting point from which transitional countries departed on their journey. In the last two decades their achievements regarding the change vary. Some of them perform better than others in many aspects including the fight against corruption as well, which TICPI shows. However, another index, the Global Corruption Barometer, shows that perception of corruption in civil service in these countries is still high. There is an indication that homo sovieticus changed to a certain extent but when all arguments are put together it is highly likely that he still lives in civil service.

If this idiosyncrasy is taken into account the suggestion in this thesis is that in the cases of corruption combat in public administration in post-socialist countries, instead of dominant anti-corruption scheme *repression-prevention-transparency*, corruption combat should be improved through the implementation of a new one, *structure-conduct-performance*. This scheme in its first element, *the structure*, includes the type of public administration which should be implemented because it curbs corruption the best way. Analysis provided a view which puts the *Neo Weberian State* as the first best and *Weberian administration* as the second best solution. The second element, *the conduct*, should be treated according to the *Responsive Regulationtheory*. This theory says that the regulators are more able to speak softly when they carry big sticks. More precisely, the more sanctions can be kept in the background, the more regulation can be transacted through moral suasion, and the more effective the regulation will be. Based on it an *anti-corruption pyramid* if implemented might provide the optimal results. This pyramid aims to coordinate human's preferences, propensity to corruption based in cultural specificities and transparency and accountability, and to put constraints on unwanted behavior by imposing administrative and criminal sanctions. Regarding relevant cultural aspects pyramid addresses: universalism and particularism, individualism and collectivism, and power distance. The imposition of sanctions is further regulated by *disciplinary anti-corruption pyramid* and *criminal anti-corruption pyramid* whose implementation is based on the type of the corrupt act in question: if it is "*legal*" then the former pyramid should be applied and if it is "*illegal*" the latter one. Finally, if the first two elements are implemented the anti-corruption *performance* should be improved. This new "pyramid approach", suggested to post-socialist countries, asks public administration itself to engage in corruption combat, leaving criminal justice system as the ultimate weapon, used only for the very harmful misdeeds. With this self-control mechanism, administration should be able to build internal coherence and strength. There is no doubt that corruption harms societies in many ways and that policy makers should promote zero tolerance to corruption. However in the case of transitional countries instead of

the first best, for a while the second best solution should be applied which is suggested by the anti-corruption pyramid(s). Going one step back does not necessarily mean failure but rather taking a run at faster improvement.

## Samenvatting

In de laatste twintig jaar wordt corruptie tot een van de grootste problemen in de internationale gemeenschap gerekend, omdat dit niet alleen schade toebrengt aan één bepaalde staat maar aan de hele wereld. De discussie over de rechtseconomische benadering van wetgeving ter bestrijding van corruptie wordt voornamelijk onder de paraplu van de *Public choice* theorie gevoerd en vanuit het *principal agent* model. Deze theorie ziet agent, politici en bureaucraten als rationele actoren belust op hun eigenbelang nastreven en die het algemeen belang negeren en derhalve zouden moeten worden controleerd en vervolgens bestraft door de principaal. In deze context zouden beleidsmakers prikkels moeten ontwikkelen die een barrière vormen voor corrupt gedrag. Gebaseerd op deze benadering leverden de sterke internationale initiatieven van de VN, de OECD en de Raad van Europa verscheidene maatregelen en middelen om landen te ondersteunen en te sturen in hun strijd tegen corruptie. Dit anti-corruptiebeleid resulteerde in een *repressie-preventie-transparantie model* voor de strijd tegen corruptie. Het belangrijkste aspect van dit model bestaat uit afschrikking, aangezien verschillende internationale conventies er op staan dat verschillende vormen van machtsmisbruik worden gecriminaliseerd. Gebaseerd op dit model hebben landen verspreid over de hele wereld anti-corruptie strategieën opgenomen in hun regelgeving. Toch blijkt uit recent onderzoek naar het effect hiervan dat de resultaten tegenvallen. Het meest gehoorde argument van de critici is dat één standaardaanpak niet werkt. De verklaring hiervoor komt, volgens de critici, vanuit het feit dat niet alle landen hetzelfde zijn omdat hun institutionele kader verschillend is. De dominante benadering vraagt om een buitensporig vertrouwen in het strafrechtstelsel, de rechterlijke macht en de politie, uitgaande van hun onpartijdigheid en doeltreffendheid. Deze situatie is in veel landen ter wereld echter meer uitzondering dan regel. Volgens sommige onderzoekers is het grootste probleem gelegen in het feit dat in deze landen instituties niet werken omdat, zelfs als mensen corruptie veroordelen, zij hierin mee moeten gaan omdat ze geen vertrouwen hebben in andere burgers en denken dat alle

anderen hetzelfde doen. Dit wordt een 'collectief actie' probleem genoemd in tegenstelling tot het principal agent model.

Onder de landen die te maken hebben met het probleem van corruptie, zelfs als ze de belangrijkste anti-corruptie trends volgen, zijn post-socialistische landen in transitie. Tot deze groep behoren de landen die van een centraal geleide naar een open markt economie zijn overgegaan. Om deze verandering te kunnen bereiken is het van groot belang dat nieuwe instituties worden opgezet. Na de ondergang van de staat hebben internationale financiële instellingen een leidende adviserende rol op zich genomen en bevorderden zij de onmiddellijke implementatie van ideeën gestoeld op de neoklassieke economie. De resultaten van deze benadering lieten echter belangrijke tekortkomingen zien, waarvan een toename van corruptie er één was. Deze uitkomst versterkte de roep van institutionele economen die vanaf het begin hadden gepleit voor een geleidelijke benadering van institutionele verandering. Volgens hen zou de verandering van officiële instituties niet moeilijk te verwezenlijken zijn. Het zou voldoende zijn om de geschreven wetten aan te passen. Informele instituties blijven echter veel langer in het 'mentale model' van de mensen hangen en zijn niet zomaar te veranderen. Dat vraagt om een diepere analyse van de sociale systemen en hun mechanismen alvorens een ontwerp voor een herziening van het beleid te maken.

Deze argumenten volgend zou de conclusie zijn dat elke verstandige anti-corruptie beleidsmaatregel die in post-socialistische landen wordt ingevoerd rekening zou moeten houden met de eigenaardigheden die het resultaat zijn van het vorige regime. Een nadere kijk op socialisme geeft een interessant beschrijving voor wat betreft de institutionele setting, de individuele mentaliteit en hun samenhang. Ondanks dat socialisme in theorie was ontwikkeld als een systeem dat de welvaart en samenwerking tussen mensen zou moeten bevorderen, heeft het deze belofte niet kunnen waarmaken. Om deze tekortkoming niet naar buiten te laten komen heeft het systeem, in plaats van de mensen vrij te maken, hen figuurlijk gevangen gezet en in een groot aantal gevallen zelfs letterlijk. Het resultaat van deze repressie en negatieve prikkels was de geboorte van de *homo sovieticus*. Voorgesteld als een superheld is hij verworpen tot een sceptisch, amoreel creatuur die er geen kwaad in ziet om van de staat te stelen. Daarnaast heeft hij geen vertrouwen in mensen buiten zijn eigen kleine kring en heeft hij geen vertrouwen in de

overheid. Als je hem vergelijkt met de *homo economicus* zou kunnen worden gezegd dat zij beiden proberen hun welvaart te maximaliseren, maar *homo economicus* doet dat door het institutionele raamwerk van het spel te respecteren dat zijn gedrag stuurt en met andere spelers coördineert (de onzichtbare hand van de markt). Deze beschrijving is genomen als startpunt van waar landen in transitie aan hun reis begonnen. Het verschilt per land wat zij in de laatste twee decennia hebben bereikt. Sommige van hen presteren op vele terreinen beter dan andere, ook in hun strijd tegen corruptie, hetgeen blijkt uit bepaalde indicatoren voor corruptie. Echter, een andere index, the ‘Global Corruption Barometer’, laat zien dat in deze landen in de beleving er nog steeds veel corruptie is. Er is een aanwijzing dat de *homo sovieticus* in zekere mate is veranderd, maar als alle argumenten naast elkaar worden gelegd is het zeer waarschijnlijk dat hij nog steeds bestaat in het ambtenarenapparaat.

Hiermee rekening houdend, wordt in dit proefschrift gesteld dat in het geval van de strijd tegen corruptie binnen de overheid in post-socialistische landen, in plaats van een dominant anti-corruptiebeleid, de strijd tegen corruptie zou moeten worden verbeterd door de implementatie van een nieuw beleid, gebaseerd op: *structuur-gedrag-prestatie*. In dit schema is in het eerste element, *structuur*, het type overheid begrepen dat corruptie op de beste manier aan banden legt. Uit de analyse komt de *Neo Weberiaanse Staat* als beste optie naar voren en als een na beste de *Weberiaanse administratie*. Het tweede element, *gedrag*, zou moeten worden behandeld volgens de *Responsive Regulation theorie*. Volgens deze theorie zouden regelgevers zachter kunnen optreden als ze grote stokken zouden hebben. Oftewel, des te meer sancties er in de achtergrond kunnen worden gehouden, des te meer kan regulering worden uitgevoerd via morele overtuiging en des te effectiever kan regulering zijn. Hierop gebaseerd zou een anti-corruptie piramide, indien geïmplementeerd, tot het beste resultaat kunnen leiden. Deze piramide richt zich op het coördineren van menselijke voorkeuren, de ontvankelijkheid tot corruptie, geworteld in culturele specificiteiten, transparantie en verantwoordelijkheid, en om beperkingen te leggen aan ongewenst gedrag door administratieve en strafrechtelijke sancties. Met betrekking tot relevante culturele aspecten houdt de piramide rekening met universaliteit en particularisme, individualisme en collectivisme en machtsverschil. Het opleggen van sancties wordt verder

gereguleerd door de *disciplinaire anti-corruptie piramide* en de *strafrechtelijke anti-corruptie piramide*, wiens implementatie is gebaseerd op het type van de onderhavige corruptiedaad: is het 'legaal' dan moet de eerste piramide worden toegepast en is het 'illegaal' de tweede. Tenslotte, wanneer de eerste twee elementen zijn geïmplementeerd moet de anti-corruptie *prestatie* worden verbeterd. Deze nieuwe 'piramide benadering', die voor post-socialistische landen wordt voorgesteld, vraagt de overheid om zelf betrokken te raken bij de strijd tegen corruptie, daarbij het strafrechtelijke systeem als laatste wapen te gebruiken, voor alleen de zeer schadelijke misstappen. Door dit mechanisme van zelfcontrole zou de overheid kunnen bouwen aan interne samenhang en kracht. Er bestaat geen twijfel dat corruptie samenlevingen op vele wijze schade berokkent en dat beleidsmakers een 'zero tolerance' beleid moeten voeren ten opzichte van corruptie.

Voor landen in transitie zou de een na beste benadering, en voor een beperkte periode zelfs de twee na beste oplossing, moeten worden toegepast zoals voorgesteld in de anti-corruptie piramide(s). Het doen van een stap terug betekent niet noodzakelijkerwijs mislukking, maar eerder een aanloop voor snellere verbetering.