This note contains Slovenia’s response to the questionnaire to non-members seeking participation in the Working Group and the Convention [DAFFE/IME/BR/WD(99)30/REV2].

It is submitted for delegates’ consideration under Agenda Item 9(a).
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1. **SLOVENIA’S PARTICIPATION IN INTERNATIONAL TRADE AND INVESTMENT**

1. Please indicate the share of international trade in goods and services as a percentage of GDP?

Export and import of goods and services accounted for 114.8% of GDP in 1998.

2. What were annual foreign direct investment (FDI) inflows/outflows (for past five years, if relevant) FDI stocks?

Table 1: FDI in Slovenia and Slovene DI abroad 1994-1998 in million USD

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FDI (stock)</td>
<td>1,325.6</td>
<td>1,758.6</td>
<td>2,069.4</td>
<td>2,297.0</td>
<td>2,907.3</td>
</tr>
<tr>
<td>annual inflow</td>
<td>128.1</td>
<td>176.0</td>
<td>185.5</td>
<td>320.8</td>
<td>165.4</td>
</tr>
<tr>
<td>Slovene DI abroad (stock)</td>
<td>352.4</td>
<td>504.0</td>
<td>469.1</td>
<td>428.8</td>
<td>563.4</td>
</tr>
</tbody>
</table>

3. Please provide information on the geographical and sectoral pattern of both international trade and FDI (inward and outward). What percentage of inter-regional trade does your country account for? In what sector(s) is FDI (inward and outward) most prevalent?

Geographical distribution:

a. International Trade

![Slovene Import in 1999](image)
As shown in diagrams, Slovene most important trade partner are countries of the European Union, among them especially Germany, Austria, Italy and France. Imports from EU accounted for 68.6% of total Slovene import in 1999, whereas exports to EU represented 66.1% of the total Slovene export that year. Countries of former Yugoslavia remain important trade partners (5.7% of total imports and 15.2 % of total Slovene exports). Imports from CEFTA countries accounted for 8.5 % of total Slovene imports, Slovenia however exported to these countries 7.3% of its exports.

b. Investment
Slovene Direct Investment in 1998

Sectoral distribution:

a. International trade

Sectoral pattern is a reflection of the most significant export activities. In 1999 those were: manufacturing of machinery and equipment (14.2% of total export), manufacturing of transport equipment (13.7%), manufacturing of basic metals and fabricated products (11.4%), manufacturing of chemicals and chemical products (11%), manufacturing of electrical and optical equipment (10.7%), manufacturing of furniture (8%), manufacturing of pulp, paper and paper products (5%), manufacturing of rubber and plastic products (4.5%). In the same period most of the imports were from manufacturing of transport equipment (14.9% of total imports), manufacturing of electrical and optical equipment (13.2%), manufacturing of basic metals and fabricated products (12.4%), manufacturing of chemicals and chemical products (11.5%), manufacturing of machinery and equipment (10.7%), manufacturing of textiles and textile products (7.3%), manufacturing of food, beverages and tobacco (4.7%), manufacturing of coke and petroleum products (4.4%).

b. Investment

- FDI in Slovenia: distribution of the foreign direct investment in Slovenia in 1998 by industry was as follows: financial intermediation accounted for 15% of total FDI, other business activities for 10%, manufacturing of pulp and paper products for 10%, wholesale and commission trade for 8%, manufacturing of chemicals and chemical products represents 7.6% of total FDI, manufacturing of motor vehicles and trailers for 7%.

- Slovene direct investment abroad in 1998: financial intermediation (not insurance) represented 15.6% of total Slovene direct investment abroad, manufacturing of chemicals and chemical products 155, other business activities 12.4%, electricity, gas, steam and hot water 9.6%, wholesale, commission (not motors) 8.4%, manufacturing of food products and beverages 6.5%, water transport 3.6%.
II. CORRUPTION IN THE REPUBLIC OF SLOVENIA

The Republic of Slovenia does not have the definition of corruption laid down in its regulations or in its theoretical literature. As criminal offences of corruption we process 7 criminal offences, which are regarded as corruption in the narrow sense of the word. Statistically those offences do not represent a big problem and no serious increase can be perceived long term, although general data on the total number of all criminal offences in Slovenia do indicate their increase. Below we are listing statistical data on the number of criminal offences of corruption detected in Slovenia from 1991 and for comparison also the total number of all criminal offences in the same period as well as their clear-up rate.

<table>
<thead>
<tr>
<th>Year</th>
<th>Crim. offences of corrup.</th>
<th>All crim. offences</th>
<th>Clear-up rate (in %)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>21</td>
<td>42 250</td>
<td>54.3</td>
</tr>
<tr>
<td>1992</td>
<td>39</td>
<td>54 085</td>
<td>55.5</td>
</tr>
<tr>
<td>1993</td>
<td>51</td>
<td>44 278</td>
<td>57.5</td>
</tr>
<tr>
<td>1994</td>
<td>55</td>
<td>43 635</td>
<td>57.5</td>
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<tr>
<td>1995</td>
<td>35</td>
<td>38 178</td>
<td>60.4</td>
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<tr>
<td>1996</td>
<td>32</td>
<td>36 587</td>
<td>65.4</td>
</tr>
<tr>
<td>1997</td>
<td>19</td>
<td>37 173</td>
<td>64.5</td>
</tr>
<tr>
<td>1998</td>
<td>33</td>
<td>55 473</td>
<td>52.9</td>
</tr>
<tr>
<td>1999</td>
<td>56</td>
<td>62 836</td>
<td>46.6</td>
</tr>
</tbody>
</table>

The number of criminal offences of corruption is very low, which is the very reason for concern. The change of property ownership after the independence of Slovenia – privatization – namely brought along a large number of irregularities detected in the changed property ownership, which has however not been reflected in the increased number of detected offences of corruption. Most probably this is the consequence of very liberal economic legislation and lack of practice.

As regards its structure, corruption does not represent a major problem either – the greatest portion belongs to the so called road corruption – bribing of state officials on the lowest levels (traffic and border police officers, customs officers), yearly we only record a couple of cases where bribing of state officials of a higher rank is involved (so far the highest level has been the fourth rank), and here the most exposed fields are certainly the field of public procurement (especially construction work) and medical care. So far operative data have not given us too big a reason for concern either, as on their basis it can not be inferred that the problem of corruption is great or important.

Already in its basic characteristics corruption is an act that in its most serious forms has all the features of organized crime and is therefore only one of its phenomena. So far Slovenia cannot claim that organized criminal associations who deal with other criminal offences as their basic activities also deal with corruption. It would be more accurate to say that groups of perpetrators that associate in order to perpetrate the offences of corruption increasingly operate according to the principles that apply to organized criminal associations. This is also why we have placed the newly established police units for the fight against corruption within wider units dealing with the repression of organized crime. Namely, the methods, means, procedures and way of the fight against both phenomena are identical and their closer connection in future inevitable.
III. SLOVENIA'S ANTI-CORRUPTION LEGISLATION

1. Basic provisions

In the Slovenian legal order there are, after last amendments, seven criminal offences of corruption laid down in the Penal Code (the Official Gazette of the Republic of Slovenia, no. 63/94 and 23/99 – hereinafter referred to as OG RS), which cover unjustified acceptance and giving of gifts in the performance of economic activity, acceptance of bribe by official persons and giving of bribe to official persons, acceptance of bribe at the election or ballot, influencing free decision-making by the voters by bribing and trading in influence. Below we quote the legal wording of the mentioned criminal offences of corruption:

Unjustified Acceptance of Gifts
(Art. 247)

(1) Whoever, in the performance of economic activity, requests or agrees to accept a disproportionate award, gift or any other benefit in order to neglect the interests of an organization or to cause damage to the same when concluding a contract or performing a service, shall be punished by a fine or sentenced to imprisonment for not more than three years.

(2) The perpetrator of the offence under the preceding paragraph of the present Art., who requests or agrees to accept a disproportionate award, gift or other benefit for himself or any third person in exchange for making a contract or performing a service, shall be sentenced to imprisonment for not more than three years.

(3) The perpetrator of the offence under the first paragraph of the present Art. who requests or agrees to accept an award, gift or other benefit, shall be sentenced to imprisonment for not more than one year.

(4) The accepted gift or award shall be seized.

Unjustified Giving of Gifts
(Art. 248)

(1) Whoever gives, attempts to give or promises to give a disproportionate award, gift or any other benefit to a person performing an economic activity with a view to obtaining any unjustified favour in the making of a contract under Art. 247 of the present Code, shall be sentenced to imprisonment for not more than three years.

(2) Whoever gives, attempts to give or promises a disproportionate award, gift or other property or non-material benefit to a person performing an economic activity in exchange for making a contract or performing a service shall be sentenced to imprisonment for not more than one year.
If the perpetrator under the preceding paragraphs declares the offence before it was detected or he knew it had been detected, his punishment may be remitted.

The given award or gift shall be seized, while in the case under the preceding paragraph the same may be returned to the person who gave it.

### Acceptance of Bribe
(Art. 267)

(1) An official who requests or agrees to accept a gift or other favour or who accepts the promise of the same in order either to perform an official act within the scope of his official duties which should not be performed or not to perform an official act which should or may be performed, shall be sentenced to imprisonment for not less than one and not more than five years.

(2) An official who requests or agrees to accept a gift or other favour or who accepts the promise of the same in other either to perform an official act within the scope of his official duties which he should or may perform in any case or not to perform an official act which he should not perform in any case, shall be sentenced to imprisonment for not more than three years.

(3) An official who requests or accepts a gift or other favour with respect to the performance of the official act under the first or second paragraphs of the present Art. after the official act is actually performed or omitted, shall be punished by a fine or sentenced to imprisonment for not more than one year.

(4) The accepted gift shall be seized.

### Giving of Bribe
(Art. 268)

(1) Whoever gives, attempts to give or promises a gift to an official in order for him either to perform an official act within the scope of his official duties which should not be performed or not to perform an official act which should or may be performed, or whoever serves as an agent for the purpose of bribing an official, shall be sentenced to imprisonment for not more than three years.

(2) Whoever gives, attempts to give or promises a gift to an official in order for him either to perform an official act within the scope of his official duties which he should or may perform an any case or not to perform an official act which he should not perform in any case, shall be sentenced to imprisonment for not more than one year.

(3) If the perpetrator under the previous paragraph had declared such an offence before it was detected or he knew it had been detected, his punishment may be remitted.

(4) The give gift shall be seized while in the case of the preceding paragraph the same may be returned to the person who gave it.
Trading in Influence  
(Art. 269)

(1) Whoever accepts a gift or any other favour in order to use his official or social rank and influence to intervene so that a certain official act be or not be performed, shall be punished by a fine or sentenced to imprisonment for not more than one year.

(2) Whoever uses his official or social rank or influence to intercede either for the performance of a certain official act which should not be performed or for the non-performance of an official act which should be performed, shall be punished to the same extent.

(3) If the perpetrator accepts any gift or other favour in exchange for his intervention, he shall be sentenced to imprisonment from not more than three years.

(4) The above mentioned gift shall be seized.

Acceptance of Bribe at the Election or Ballot  
(Art. 168)

(1) Whoever requires or accepts any award, gift or other material or non-material gain for himself or a third person for voting or not voting, or for casting his vote in favour of or against a certain proposal, or for casting an invalid vote, shall be punished by a fine or sentenced to imprisonment for not more than one year.

(2) The accepted award, gift or other material or non-material gain shall be seized.

Obstruction of Freedom of Choice  
(Art. 126)

(1) Whoever, at an election or ballot, compels another person to vote, or not to vote, or to cast a void vote, or to vote in favour of or against a particular proposal by means of force, serious threat, bribery, deception or in any other unlawful manner shall be punished by a fine or sentenced to imprisonment for not more than one year.

(2) If the offence under the preceding paragraph is committed by an official through the abuse of his function relating to the election or ballot, such an official shall be sentenced to imprisonment for not more than two years.

(3) The bribe which has been given shall be seized.

In order to understand the legal description of the mentioned criminal offences, Art. 126 of the Penal Code is also very important as it defines the concept of an official, of economic activity and of election or ballot.

According to this Art., an official may be:

1) a representative in the State Chamber and a member of the State Council;
2) any person carrying out official duties in the state bodies or exercising a public function;
3) any other person performing official duties authorized by virtue of law;
4) a member of the military appointed under special regulations regarding special criminal offences which involve military personnel but which are not prescribed as criminal offences against military duties;

5) a person with official status accorded by a foreign state and who meets the conditions under items one, two or three of this paragraph;

6) a person with official status accorded by an international organization whose member is also the Republic of Slovenia, and who meets the conditions under items one, two or three of this paragraph;

7) a person performing the duty of a judge, prosecutor or another official duty or function at the international court whose jurisdiction is acknowledged by the Republic of Slovenia.

"Economic activity" means the production and trade of goods, the performance of market activity, banking and other operations, and management services as well as participation in the management, representation and supervision of the above mentioned activities, while elections, ballots and voting mean presidential, parliamentary and municipal elections as well as referenda on the adoption of legislation, the confirmation of amendments to the Constitution and the establishment of a municipality.

It can be seen from the above text that the Penal Code covers both active (with the exception of trading in influence) and passive forms of criminal offences of corruption, which comprise the operation of domestic and foreign officials as well as authorities performing economic activities, regardless of whether those authorities are domestic or foreign. Bribe as a subject of a criminal offence is envisaged as a property and non-property benefit, and in this regard both the permitted and non-permitted acts by officials are punishable, including official acts of discretion.

Slovenia has already ratified the Criminal Law Convention on Corruption, while the Civil Law Convention on Corruption and the OECD Convention on the Repression of Corruption in International Business Transactions are in the signing procedure.

2. **Penal legislation in the field of corruption**

Perpetration of criminal offences in an organized manner is not stipulated in the law as a special aggravating circumstance and therefore the judge has to take this fact into account in the framework of general rules for the penalty and the rules on merger of criminal offences. Namely, in the Slovenian legal order criminal association is incriminated as an independent criminal offence under which the founder and the members of a group are punished who intend to commit criminal offences for which a punishment exceeding five years of imprisonment may be applied (Art. 297 of the Penal Code).

**Art. 297 of the Penal Code**

(Criminal Association)

(1) Whoever establishes a group for the purposes of perpetrating criminal offences for which a punishment exceeding five years of imprisonment may be applied, shall be sentenced to imprisonment for not more than three years.

(2) Whoever joins the group under the preceding Art., shall be sentenced to imprisonment for not more than one year.
(3) If the perpetrator of the offence under the first and second paragraphs of the present Art. has prevented the committing of a criminal offence under the first paragraph or has provided information about it, thus enabling the offence to be prevented, or has disclosed a group or its leading members, his punishment for these offences shall be remitted.

The Law on Amendments and Additions to the State Prosecutor Act (OG RS, no. 59/99) in Art. 1 defines organized crime as officially prosecutable criminal offences committed within the framework of an organized association with internal rules of operation, which operates in an entrepreneurial manner and as a rule uses violence and/or corruption with the purpose of gaining illegal property benefit or social power. Those are mainly offences in the field of money laundering, corruption, manufacture and trade of drugs and weapons, white slavery market, procurement and prostitution, criminal association and criminal offences with an international element.

Participation in criminal offences of corruption is punishable according to the provisions of the general part of the Penal Code which define the institute of complicity, criminal solicitation and criminal support. If two or more persons are engaged jointly in the committing of a criminal offence by collaborating in the execution thereof or by the performance of any act representing a decisive part of the committing of the offence in question, each of these persons shall be punished according to the limits set down in the statutes for the offence in question (Complicity). Criminal support in the committing of a criminal offence is deemed to be constituted also by a priori promises to conceal the crime or any traces thereof, to conceal the perpetrator, instruments of crime, etc. Any person who intentionally supports another person in the committing of a criminal offence is punished as if he himself had committed it or his sentence may be reduced, as the case may be. The Penal Code also incriminates as an independent criminal offence concealment of the property gained through criminal offences (Art. 221), which is distinguished from money laundering (Art. 252), as the object of penal protection in the latter is financial or other economic system whereas with the incrimination of concealment the law protects private or other property that has been taken unlawfully.

The legal wording of the criminal offence of concealment is as follows:

Art. 221
(Concealment)

(1) Whoever purchases, takes as a pledge or otherwise acquires, conceals or disposes either of the property which he knows to have been gained unlawfully or of the property acquired through the sale of the latter or in exchange for it shall be sentenced to imprisonment for not more than two years.

(2) Whoever commits the offence under the preceding paragraph and who should and could have known that the property had been gained unlawfully shall be punished by a fine or sentenced to imprisonment for not more than one year.

(3) If the property under the first or second paragraph of the present Art. is of considerable value or of special cultural or historical significance, or is natural curiosity, the perpetrator shall be sentenced to imprisonment for not more than three years for the offence under the first paragraph and for not more than two years for the offence under the second paragraph.

(4) If the concealed property has been obtained from a criminal offence for which the perpetrator is prosecuted by private action or complaint, the prosecution regarding offences under the first and second paragraph shall be initiated upon a private action or a complaint respectively.
As regards document falsification it has to be mentioned that the Penal Code incriminates as a criminal offence any abuse of office and of rights, both in cases of officials (Art. 261) and in performing economic activity (Art. 244). Likewise, it defines special cases of abuse, which include forgery of documents (Art. 256), certification of untrue matter (Art. 258) and forgery or destruction of official book, document or file (Art. 265). A document is deemed to be any writing, any carrier of information or another object that is suitable and meant to prove any fact which has a value for legal relations.

The legal wording of the mentioned Art.s is as follows:

**Forgery**

Art. 256

(1) Whoever draws up a false document or alters a genuine document with the intention of using such a document as genuine or whoever uses a false or altered document as genuine, shall be sentenced to imprisonment for not more than two years.

(2) Any attempt to commit the offence under the preceding paragraph shall be punishable.

(3) Whoever draws up a false public document, will, public or official book or any other book which has to be kept under the terms of the law, alters a genuine document of this kind, or puts into circulation or stores such a false or altered document with the purpose of using it or uses it as a genuine document, shall be sentenced to imprisonment for not more than three years.

**Certification of Untrue Matter**

Art. 258

(1) Whoever deceives a competent authority so as to certify any untrue matter in a public document, record, book or official book which is intended to serve as evidence in legal transactions, shall be sentenced to imprisonment for not more than three years.

(2) Whoever uses a public document, record, book or official book under the preceding paragraph though he knows that to be false, shall be punished to the same extent.

**Forgery or Destruction of Official Book, Document or File**

Art. 265

(1) An official who enters false information or fails to enter any relevant information into an official book, document or file, or certifies such a book, document or file containing false information with his signature or renders the creation of such a book, document or file possible, shall be sentenced to imprisonment for not more than three years.

(2) An official who uses a false official book, document or file as genuine or who destroys or hides books, documents, files under the preceding paragraph or substantially damages or renders the same useless, shall be punished to the same extent.

(3) Any attempt to commit the offence under the first or the second paragraphs of the present Art. shall be punishable.
3. **Bank secrecy**

In Art. 156 in the Law on Changes and Amendments to the Criminal Procedure Act (Official Gazette of the Republic of Slovenia No. 72/98, which entered into force on 23 January 1999) the judicial and law enforcement authorities find their powers to lift the veil of banking secrecy:

"If justified grounds exist for the suspicion that a particular person has committed a criminal offence which is prosecuted ex officio and which is linked to the acquisition of property benefits, the investigating judge may, based on a reasoned proposal by the public prosecutor, order banks, savings banks or savings-credit services to report information about the deposits, accounts and other transactions of this person and of other persons for whom it is possible to reasonably conclude that they are participants in the financial transactions or other deals of the person committing the offence, if this information could constitute important evidence in the criminal procedure."

The provision above shows that the criminal offences for which courts may obtain confidential bank information are limited by two conditions:
- that the criminal offences committed are of the category of offences that are prosecuted ex officio,
- that the criminal offences are linked to the acquisition of property benefits.

In addition to the Law on Criminal Procedure, access to confidential bank information was regulated in 1994 also by the Law on Money Laundering Prevention (Official Gazette of the Republic of Slovenia No. 36/94 and 63/95; this law entered into force on 7 July 1995 and its amendments on 7 November 1995). This law determined, inter alia, also the obligations of the banks and other financial and non-financial organisations to report certain information to the Office for money Laundering Prevention. On the basis of this law banks and other financial and non-financial institutions must report to the Office the following information:

- all cash transactions that exceed the amount of SIT 4,600,000,
- several connected cash transactions which together exceed the amount of SIT 4,600,000,
- all transactions (cash and other) for which reasons exist to suspect money laundering activity.

The Office may demand from the banks certain information in two cases:

**a)** If the Office judges, in connection with certain transactions or particular persons, that there are reasons to suspect money laundering activity, the banks must, on the basis of the Art. 14, submit to the Office the following:
- all the information which the banks are required to gather and keep record of in accordance with Art. 26,
- information about assets and bank accounts of the persons referred to above,
- other data and information which is necessary for the detection of money laundering and
- all the necessary documentation.

**b)** In the performance of the control function the office may, on the basis of the mentioned Art., demand from the banks also written information and documentation related to the banks’ performance of duties as required by the Law on Money Laundering Prevention.
Both of the above described provisions apply equally in the framework of investigations and court procedures on corruption cases.

4. Money laundering

Money laundering is a separate criminal offence as described in Art. 252 of the Penal Code (in force since 23/04-1999, OG RS, no. 23/99) and reads as follows:

(1) A person who accepts, exchanges, keeps, handles, uses for a commercial activity or in any other way determined by the law, with money laundering conceals or tries to conceal the source of money or property in the knowledge that it was obtained by the commission of a criminal offence, shall be punished with up to three years of imprisonment.

(2) The same punishment shall be inflicted upon a person who commits the offence referred to in the preceding paragraph and who is, at the same time, the perpetrator of or party to the criminal offence by which the money or property referred to in the preceding paragraph was obtained.

(3) If the money or property referred to in the first or second paragraph of this Art. is of a great value, the perpetrator shall be punished with up to eight years of imprisonment and a fine.

(4) If the offence referred to in the preceding paragraphs is committed by a number of people, who have united themselves with the purpose of committing such criminal offences, shall be punished with from one year and up to ten years of imprisonment and a fine.

(5) A person who commits the offence referred to in the first, second or third paragraph of this Art., who should and could have known, that money or property was obtained by a commission of a criminal offence, shall be punished up to two years of imprisonment.

(6) The money or property referred to in the preceding paragraphs shall be confiscated.

All criminal offences are the predicate offences in Slovenia, including the criminal offence of corruption. The attempt is the same as the performance of the criminal offence itself. The perpetrator of the predicate offence can also be the perpetrator of the criminal offence of money laundering. Negligent money laundering and conspiracy to launder money are also covered. The Slovenian legislation in this area is all harmonised and sufficiently clear as well as in conformity with the provisions of international conventions and directives relating to bank secrecy and money laundering.

5. Liability of legal persons

Legal persons are held responsible for all criminal offences of corruption, mentioned in the answer to question 2.1, except for the criminal offences under Art. 168 (Acceptance of Bribe at the Election or Ballot) and Art. 267 (Acceptance of Bribe), due to their special nature. Namely, the Republic of Slovenia and local self-government units as legal persons are not held responsible for criminal offences and the right to vote is a right that only applies to natural persons. Legal persons are also held responsible for the criminal offence of money laundering.
The liability of legal persons for criminal offence is governed by the Liability of Legal Persons for Criminal Offence Act (OG RS, no. 59/99), hereinafter referred to as LLPCOA, which is based on Art. 33 of the Penal Code, which reads as follows:

(1) The criminal liability of a legal person for criminal offences which the perpetrator commits in his name, on his behalf or in his favour shall be provided for by the statute.

(2) Sentences, admonitory sanctions and safety measures, as well as the legal consequences of the conviction with respect to a legal person, shall be provided for by the statute.

(3) Criminal offences, for the committing of which a legal person may be liable, shall be defined by the statute.

(4) Special provisions governing the initiation of criminal procedures against a legal person shall be prescribed by the statute.

The liability of a legal person is criminal liability, the basis of which is defined in Art. 4 of LLPCOA, which reads:

Grounds for the Liability of a Legal Person

Art. 4

A legal person shall be liable for a criminal offence committed by the perpetrator in the name of, on behalf of or in favour of the legal person:
1. if the committed criminal offence means carrying out an illegal resolution, order or endorsement of its management or supervisory bodies;
2. if its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence;
3. if it has at its disposal illegally obtained property gains or uses objects gained through a criminal offence;
4. if its management or supervisory bodies have omitted obligatory supervision of the legality of the actions of employees subordinate to them.

Domestic and foreign legal persons are liable also for the criminal offences committed abroad, under the conditions stipulated in Art. 3, Paragraph 2 of LLPCOA, which reads:

(1) Domestic and foreign legal persons shall under this Act also be liable for criminal offences committed abroad if the legal person has its head office in the territory of the Republic of Slovenia or exercises its activity therein and the criminal offence was committed against the Republic of Slovenia, a citizen thereof, or a domestic legal person.

Art. 3, Paragraph 3 of LLPCOA, which defines the liability of domestic persons for criminal offences committed abroad against a foreign country, foreign citizen or a foreign person, reads as follows:

(3) Domestic legal persons shall under this Act also be liable for criminal offences committed abroad against a foreign state, foreign citizen or foreign legal person, where the liability of the legal person is not dependent on the conditions set out in Art. 122 and the second paragraph of Art. 123 of the Penal Code and
the special conditions for the prosecution of a perpetrator under Art. 124 of the Penal Code, except the conditions under the third and fifth paragraphs of this Art..

This means that in such a case a domestic legal person can only be prosecuted for a criminal offence that is also punishable under the law of the country in which it was committed. If this is not the case, special permission by the Minister of Justice is necessary for prosecution, which is issued on condition that the offence at the time of the commission was regarded as a criminal offence according to the general legal principles acknowledged by the international community.

6. Fiscal treatment of bribes

Article 9 of the Personal Income Tax (Official Gazette of the RS, no. 71/93), which is the principal act determining tax liability of natural persons in Slovenia, lays down the reasons for which the base for tax assessment can be abated. These reasons do not include bribes or similar payments. The Act explicitly defines in the same article for all the reasons which can be used for tax abatement that the assets had to be used for the taxpayer personally, which has to be proved by documents in the taxpayer's name.

Personal Income Tax, Article 9 states:

"The income tax base shall be reduced by:

1. assets invested in securities issued by the Republic of Slovenia for longer than a 12-month redemption period

2. assets invested by the taxpayer in the purchase of a dwelling or a flat for solving the housing problem, and resources for the maintenance of such housing units and for the removal of architectural or communication obstacles to the disabled living in those houses or flats

3. assets which the owner of a natural landmark or a cultural monument has invested in the maintenance of those objects in the year for which the income tax is assessed, on the basis of the contractor's documentation approved by the organisation for nature conservation and cultural property protection, and on the basis of an opinion of that organisation that the executed works have contributed to the conservation of natural or monumental properties of real estate, and assets invested in the purchase of works of art, works of fiction and records of artistic value; if the tax authority is in doubt about the value of those objects, the competent opinion shall be given by the minister of culture

4. contributions and premiums destined to enhance the social security of the taxpayer in the domains of old-age pension and disability insurance, health protection and employment, paid to legal persons in the territory of the Republic of Slovenia, and funds used for the purchase of medication and medical and orthopedic aids

5. assets used for the purchase of textbooks and other professional literature designed for education

6. amounts paid as tuition fees (e.g. musical, language, postgraduate and similar education)

7. paid cash contributions and the value of gifts in kind volunteered for humanitarian, cultural, educational, scientific, sporting, ecological and religious purposes, if paid to persons whom, under special regulations, are authorised for the performance of such activities, and the aforementioned contributions or gifts volunteered to organisations for disabled persons
8. amounts paid by the taxpayer under a contract on additional contribution within the price of a telephones, water-supply, sewerage, gas-supply, heat-supply or cable IV connection, built entirely or partially from voluntary financial contributions

9. amounts paid in voluntary financial contribution introduced in accordance with voluntary tax regulations

10. membership fees paid to political parties or trade unions

11. assets invested in the purchase of shares of private or government funds and earmarked exclusively for the advancement of science and technology

12. assets invested by the owner in the reconstruction of denationalised property up to the level of the valorised reduced value of denationalised property relative to the value of that property at the time of nationalisation.

The reduction of the base under points 1 and 11 of the preceding paragraph shall be allowed only once for each individual security.

The tax base reduction for purposes cited in this Article may amount to at most 3% of the income tax base referred to in Article 6 of the present Law, expect for the reduction under point 9 of the first paragraph of this Article.

The taxpayer shall be entitled to a reduction of the base for purposes cited in this Article on the condition that the assets were used for the taxpayer personally and were accounted for by documents made out in the taxpayer's name."

Corporate Profit Tax Act (Official Gazette of the RS, no. 72/93) governs the payment of tax on the profit of corporate bodies and among the reasons for the abatement of the tax base or tax allowances does not include bribes or similar payments, while the stating of false data in the tax return is considered to be an economic offence (Art. 56).

Corporate Profit Act, Article 56:

"A legal entity liable to tax which, contrary to the provisions of this Act on the determination of the tax base (Art. 7 to 36 and Art. 47) and tax relief (Art. 39 to 44), states in the tax computation false data, causing thereby a reduction of the tax base or the amount of the computed tax, shall be fined up to five times the amount of the evaded tax and not less than 1,500,000 tolaris for this economic offence.

The responsible person of the legal entity liable to tax who commits the offence referred to in the preceding paragraph shall be fined no less than 100,000 tolaris."

Accountancy Act (Official Gazette of the RS, no. 23/99) determines in Art. 4 that the manner of putting together bookkeeping documents (i.e. documents which under Personal Income Tax can be evidence for tax abatement of natural persons and under Corporate Profit Tax Act evidence for tax abatement of legal persons) is governed by Slovenian accountancy standards, while the truthfulness and authenticity of these documents are under Art. 3 of the Accountancy Act guaranteed by the persons who sign them.
Accountancy Act

Article 3

"Legal entities shall be responsible for drawing up book-keeping documents.

The authorised person of a legal entity or the person to whom powers have been delegated shall, by signing a book-keeping document, guarantee that it is authentic and that it gives a true and fair view of data on business events."

Article 4

"Legal entities shall lay down detailed rules with regard to the drawing-up of book-keeping documents, the types of book-keeping documents, and responsibilities concerning the compilation, movement, inspection and retention of book-keeping documents pursuant to this Act and the accounting standards."

Slovenian accounting standards include among the obligatory constituent part of documents the data on the issuer, date and place of issue of the document, names of participants in a business events, the basis and accurate description of the business event and signatures of authorised persons.

Slovenian Penal Code in its Art. 240 criminalizes forgery or destruction of business documents, with the imposed penalty of up to two years of imprisonment for the entering of false data in business documents or their destruction.

From the above it can be concluded that Slovenian legislation governs, by a number of regulations, the fields of bookkeeping of business events and tax liabilities in such a way that any possibility of paid bribes to be claimed as tax allowances is excluded; should it happen anyway, it would be a violation of positive regulations and under a threat of rather severe penalties.

7. International Anti-Corruption Instruments

Slovenia has ratified Criminal Law Convention on Corruption of the Council of Europe on March 25, 2000. At its 22 nd session (October 26, 2000) Slovenian Government has agreed on the text of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and has sent it to the Parliament for the adoption (ratification).

IV. INSTITUTIONS FIGHTING CORRUPTION

In the field of detection, prevention and repression of corruption we can speak about the authorities that deal with it in the narrow sense and about the authorities that deal with it in the wider sense. In Slovenia, the police, the public prosecutor’s office and the judiciary can be classified among the former.

1. Authorities for the repression of corruption in the narrow sense

In Slovenia there is only one authority that has police powers in detection and prevention of corruption. This is the Police, as an autonomous body within the framework of the Ministry of the Interior. According
to Art. 3 of the Police Act one of its tasks is also “the prevention, disclosure and investigation of criminal offences and misdemeanours, the disclosure and arrest of perpetrators of criminal offences and misdemeanours, the implementation of searches for wanted persons and their hand-over to the proper authorities”.

The police is organized on state, regional and local level.

At the state level there is the General Police Directorate, which is divided into a number of Directorates, one of which also being the Criminal Police Directorate. This directorate is composed of sections, one of which is also the Organized Crime section, which comprises 5 smaller units – divisions. One of those divisions is also Corruption Division. The tasks of this division are listed in Point 2.3.3.4 of the Regulation on Organization and Systemization of Working Places at the Ministry of the Interior and the Police, according to which this division “plans, organizes, directs and supervises activities in the following fields:
- corruption in state authorities,
- corruption in authorities and organizations with public authorizations,
- corruption in obtaining and granting public investment works, investments purchases, concessions, financial subsidies and credits,
- trading in influence,
- other crimes of corruption.”

At the regional level there are 11 Regional Police Directorates, within which there are Criminal Police Offices, which are divided into divisions or groups, depending on the size of the individual regional police directorate. One of such divisions (or groups) is also Organized Crime Division (or Group), which, among other, “directly carries out criminal investigation in the following fields:
- corruption in state authorities,
- corruption in authorities and organizations with public authorizations,
- corruption in obtaining and granting public investment works, investments purchases, concessions, financial subsidies and credits,
- trading in influence,
- other crimes of corruption.”

Thus at the state level co-ordinating, supervisory and planning function is carried out while at the regional level the basic investigative activities are carried out.

At the local level police stations are organized, whose task is also the prevention, detection and investigation of all criminal offences, including corruption, as well as detection, apprehension of perpetrators and their handing over to the competent authorities. The local level deals with the simplest forms of criminal offences.

In the performance of their work police officers can use the following most important police powers, which are listed in:
- Art. 33 of the Police Act: warning, giving orders, determining a person’s identity and carrying out identification procedures, making a security check on a person, issuing summons, performing a safety check, denying entry to a certain territory, arresting and bringing in a person, detaining a person, carrying out strict police surveillance, confiscating items, entering a private residence, making use of transportation and communication means, applying undercover police coercive and any other measures authorised by law.
- Art. 49 of the Police Act: surveillance and tailing with the use of technical equipment for the purposes of documentation, undercover work, undercover co-operation, altered documentation and identification insignia.
- Art. 50 of the Police Act: instruments of constraint (from handcuffs to firearms).
Art. 148 of the Criminal Procedure Act (hereinafter referred to as the CPA): collection of information, inspection of means of transportation, passengers and their luggage, restriction of movement in a certain area, establishing the identity of persons and objects, issuing of searches for persons and objects, examinations of certain objects and premises in enterprises and other legal entities as well as their documentation.

Art. 149 of the CPA: sending to the investigating judge, detention at the scene of the offence, photographing and publishing of photographs of suspects, taking of fingerprints and of an oral mucous membrane swab.

Art. 150 of the CPA: monitoring of telecommunications through bugging and recording, control of letters and other parcels, control of the computer systems of banks or other legal entities which perform financial or other commercial activities, bugging and recording of conversations with the permission of at least one person participating in the conversation – all by court order.

Art. 151 of the CPA: bugging and surveillance in another person’s home or in other areas with the use of technical means and where necessary secret entrance into the apartment – by court order.

Art. 155 of the CPA: feigned purchase, feigned acceptance or giving of bribery – by the order of the public prosecutor.

Art. 214 of the CPA: house and body search – by court order.

Art. 218 of the CPA: entrance into another person’s apartment.

The authority for criminal prosecution in the Republic of Slovenia is the Public Prosecutor’s Office, whose position is governed by the State Prosecutor Act and the Criminal Procedure Act. The latter stipulates in its Art. 45 that the tasks of the public prosecutor in the prosecution of the perpetrators of criminal offences are as follows: Paragraph 45, Paragraph 2 of the CPA:

(1) In respect of criminal offences prosecuted ex officio, the public prosecutor shall have the jurisdiction:

1) to take the necessary steps concerning the detection of criminal offences, tracing of perpetrators and directing of preliminary criminal proceedings;

2) to request that investigations be undertaken;

3) to prefer and press an indictment or a charge sheet before the competent court;

4) to file complaints against judgements that have not become final and apply extraordinary legal remedies against finally binding judicial decisions.

In Slovenia there are the Public Prosecutor’s Office of the Republic of Slovenia, four higher public prosecutor’s offices and 11 district public prosecutor’s offices. District prosecutor’s offices are the basic authorities for prosecution dealing with all the crime, although within the larger among them specialization has already taken place, while higher public prosecutor’s offices are instance authorities. The head of the Public Prosecutor’s Office of the Republic of Slovenia is the General Public Prosecutor of the Republic of Slovenia.

With the amendments to the State Prosecutor Act of 1999 the legal base for the Group of Public Prosecutors for Special tasks was laid down, which since 1995 has been dealing with organized crime and in this context also with some kinds of offences among which corruption is explicitly mentioned. The mentioned group operates for the whole Slovenian territory in such a way that district public prosecutor’s offices that have territorial jurisdiction have the duty to inform the group on matters from its jurisdiction as soon as they find out about them. As regards other matters the competencies of prosecutors from this group are the same as prosecutors’ general competencies.

Criminal offences of corruption are judged by the courts:
Local courts (there are 44 in the country) administer justice in procedures for criminal offences where pecuniary penalty or imprisonment for not more than three years is prescribed. Thus out of criminal offences of corruption those courts process Obstruction of Freedom of Choice under Art. 162 of the Penal Code, Acceptance of Bribe at the Election or Ballot under Art. 168, Unjustified Acceptance of Gifts under Art. 247, Unjustified Giving of Gifts under Art. 248, Giving of Bribe under Art. 168, Trading in Influence under Art. 169, Acceptance of Bribe under Art. 267, Paragraph 2 and 3 of the Penal Code.

District Courts (there are 11 in the country) among other judge in procedures for the criminal offence of Acceptance of Bribe under Art. 267, Paragraph 1 of the Penal Code.

Higher courts (there are 4) administer justice in appellate procedures.

The Supreme Court of the Republic of Slovenia is the last instance in court procedures and passes judgement in filed extraordinary appeals.

Criminal matters are judged by the criminal departments of the courts, within which there is a certain specialization of judges. Slovenia also has the institute of the investigating judge, who carries out the investigation against a certain person if there is grounded suspicion that the person has committed a criminal offence, but he also issues orders for the encroachment upon the rights and freedoms of suspects in cases where court decision is envisaged by the Constitution of the Republic of Slovenia and the laws.

Considering the identical territory covered by the regional police directorates, district public prosecutor’s offices and district courts the very necessary co-operation between all the three authorities in the prosecution of corruption is ensured.

2. Slovenian penal jurisdiction

The rules determining applicability of the Penal Code are defined in its Chapter 13. In accordance with this chapter the Penal Code is applicable to every person who commits a criminal offence in the territory of the Republic of Slovenia. Likewise, it can be applied, on certain conditions, also for the offences of corruption committed abroad both by domestic nationals and foreigners against the Republic of Slovenia and its national or against a foreign country and a foreign person.

The legal wording of the provisions governing the applicability of the Penal Code in the case of criminal offences mentioned in the answer to question 2.1 is as follows:

Applicability to Persons for Criminal Offences Committed in the Territory of the Republic of Slovenia
Art. 120

(1) The Penal Code of the Republic of Slovenia shall apply to any person who commits a criminal offence in the territory of the Republic of Slovenia.

(2) The Penal Code of the Republic of Slovenia shall also apply to any person who commits a criminal offence on a domestic vessel regardless of its location at the time of the committing of the offence.

(3) The Penal Code of the Republic of Slovenia shall apply to any person who commits a criminal offence either on a domestic civil aircraft in flight or on a domestic military aircraft irrespective of its location at the time of committing of the criminal offence.
Applicability to Citizens of the Republic of Slovenia for Criminal Offences Committed Abroad

Art. 122

The Penal Code of the Republic of Slovenia shall be applicable to any citizen of the Republic of Slovenia who commits any criminal offence abroad other than those specified in the preceding Art. and who has been apprehended in or extradited to the Republic of Slovenia.

Applicability to Foreign Citizens for Criminal Offences Committed Abroad

Art. 123

(1) The Penal Code of the Republic of Slovenia shall apply to any foreign citizen who has, in a foreign country, committed a criminal offence against the Republic of Slovenia or any of its citizens and who has been apprehended in the territory of the Republic of Slovenia or has been extradited, even though the offences in question are not covered by Art. 121 of the Present Code.

(2) The Penal Code of the Republic of Slovenia shall also be applicable to any foreign citizen who has, in a foreign country, committed a criminal offence against a third country or any of its citizens and has been apprehended in or extradited to the Republic of Slovenia. In such cases, the court shall not impose a sentence on the perpetrator heavier than the sentence prescribed by the law of the country in which the offence was committed.

Special Conditions for Prosecution

Art. 124

(1) If, in cases under Art. 120 of the Present Code, the criminal procedure has been initiated or discontinued in a foreign country, the perpetrator may be prosecuted in the Republic of Slovenia only by permission of the Ministry of Justice of the Republic of Slovenia.

(2) In cases under Art.s 122 and 123 of the Present Code, the perpetrator shall be prosecuted:

1) if he has served the sentence imposed on him in the foreign country or if it was decided in accordance with an international agreement that the sentence imposed in the foreign country is to be served in the Republic of Slovenia;
2) if he has been acquitted by a foreign court or if his sentence has been remitted or the execution of the sentence has fallen under the statute of limitations;
3) if, according to foreign law, the criminal offence concerned may only be prosecuted upon the complaint of the injured party and the latter has not been filed.

(1) In cases under Art.s 122 and 123 the perpetrator shall be prosecuted only insofar as his conduct constitutes a criminal offence in the country where it was committed.

(2) If, in the case under Art. 122, the criminal offence committed against the Republic of Slovenia or the citizen thereof does not constitute a criminal offence under the law of the country where it was committed, the perpetrator of such an offence may be prosecuted only by permission of the Ministry of Justice of the Republic of Slovenia.
(3) If, in the case under the preceding Art., the criminal offence is not punished in the country where it was committed, the perpetrator may be prosecuted only by permission of the Ministry of Justice and with the proviso that, according to the general principles of law recognized by the international community, the offence in question was constituted a criminal act at the time it was committed.

(4) In the case under Art. 120, the prosecution of a foreign person may be transferred to another country under conditions provided by the statute.

3. International legal assistance

International legal assistance in criminal matters is governed by the Criminal Procedure Act (OG RS) in Articles 514 – 520, if an international treaty does not stipulate otherwise.

Below we quote the legal wording of the mentioned Articles:

Art. 514

International aid in criminal matters shall be administered pursuant to the provisions of the present Code unless provided otherwise by international agreements.

Art. 515

(1) Petitions of domestic courts for legal aid in criminal matters shall be transmitted to foreign agencies through diplomatic channels. Foreign petitions for legal aid from domestic courts shall be transmitted in the same manner.

(2) In emergency cases and on condition of reciprocity, requests for legal assistance may be sent through the ministry of internal affairs, or in instances of criminal offences of money laundering or criminal offences connected to the criminal offence of money laundering, also to the body responsible for the prevention of money laundering.

(3) If reciprocity applies or if so determined by an international treaty, international criminal-legal help may be exchanged directly between the Slovene and foreign bodies which participate in the pre-criminal and criminal proceedings, wherein modern technical assets, in particular computer networks and aids for the transmission of pictures, speech and electronic impulses may be used.

Art. 516

(1) The Ministry of Foreign Affairs shall send petitions for legal aid received from foreign agencies to the Ministry of Justice which shall forward them for consideration to the circuit court in whose territory resides the person who should be served with a document, or interrogated, or confronted, or in whose territory an investigative act should be conducted. In instances referred to in the second paragraph of Art. 515 of the present Code petitions shall be transmitted to the court by the Ministry of the Interior.
(2) The permissibility and the manner of performance of an act requested by a foreign agency shall be decided by the court pursuant to domestic regulations.

(3) If a petition relates to a criminal offence for which no extradition is provided by domestic regulations the court shall consult the Ministry of Justice as to whether to grant the request or not.

Art. 517

(1) Domestic courts may grant the request of a foreign agency for execution of a judgement of conviction passed by a foreign court if so provided by the international agreement or if reciprocity exists.

(2) In the instance referred to in the preceding paragraph the domestic court shall execute punishment imposed by a final judgement of a foreign court by imposing sanction in accordance with the legislation of the Republic of Slovenia.

(3) The court of jurisdiction shall pass judgement in the panel of judges referred to in the sixth paragraph of Art. 25 of the present Code. The public prosecutor and defence counsel shall be informed about the session of the panel.

(4) Territorial jurisdiction of the court shall be determined according to the last permanent residence of a convicted person in the Republic of Slovenia. If a convicted person had no permanent residence in the Republic of Slovenia territorial jurisdiction shall be determined according to his place of birth. If a convicted person neither had permanent residence nor was born in the Republic of Slovenia the supreme court shall assign the conduct of proceedings to one of the courts of real jurisdiction.

(5) In the enacting terms of the judgement from paragraph three of this Art. the court shall enter in full the enacting terms of the judgement of the foreign court and the name of the foreign court and shall pronounce sanction. In the statement of reasons the court shall state the grounds for the sanction which it has passed.

(6) An appeal may be lodged against the judgement by the public prosecutor, the convicted person and his defence counsel.

(7) If an alien sentenced by a domestic court, or a person authorised under a contract, files with the court of first instance petition for the convicted person to serve the sentence in his country, the court shall be entitled to grant petition if so provided by the international agreement or if reciprocity exists.

Art. 518

In the case of criminal offences of counterfeiting money and putting it into circulation, illicit production, processing and sale of narcotics and poisons, white slavery, production and dissemination of pornographic material or some other criminal offence for which centralisation of data has been provided under international agreements, the agency which conducts criminal proceedings shall be bound immediately to send to the Ministry of the Interior data about the criminal offence and its perpetrator, and the court of first instance shall in addition send the finally binding judgement. Whenever the criminal offence of money laundering or a criminal offence connected to money laundering is involved, the data shall be sent without delay to the body responsible for the prevention of money laundering.
Art. 519

(1) If an alien who permanently resides in a foreign country commits a criminal offence in the territory of the Republic of Slovenia all files for criminal prosecution and adjudication may, beside conditions specified in Art. 522 of the present Code, be surrendered to the foreign country if it agrees to receive them.

(2) The decision on the surrender of files shall before the ruling on investigation has been rendered lie with the competent public prosecutor. During the investigation the surrender shall be decided by the investigating judge upon motion of the public prosecutor, and until the opening of the main hearing it shall be disposed of by the panel (sixth paragraph, Art. 25) who shall also handle matters from the jurisdiction of the district court.

(3) The surrender of criminal files may be allowed where criminal offences punishable by up to ten years imprisonment are involved, as well as in case of criminal offence against safety of public transport.

(4) The surrender of criminal files shall not be allowed if the injured party is a citizen of the Republic of Slovenia who opposes it, except where his indemnification claim has been secured.

(5) If the defendant is in remand the foreign country shall be requested through the shortest possible channels to report within fifteen days if it assumes prosecution.

Art. 520

(1) The request of a foreign country to the Republic of Slovenia to assume prosecution of a citizen of the Republic of Slovenia, or a person with permanent residence in the Republic of Slovenia, for a criminal offence committed abroad shall be transmitted, together with the files, to the competent public prosecutor in whose territory that person has permanent residence.

(2) Indemnification claims filed with the competent agency of a foreign country shall be treated as if they have been filed with the court of jurisdiction.

(3) Information about the refusal to assume criminal prosecution and the final decision thereon shall be sent to the foreign country which requested that the Republic of Slovenia assume prosecution.

4. **Authorities for the prosecution of corruption in the wider sense**

Authorities dealing with corruption in the wider sense are the Court of Auditors, the Mandate and Immunity Commission of the National Assembly and the Commission under the Act on Incompatibility of Holding Public Office with a Profit-Making Activity.

There is a high possibility for the Court of Auditors in the course of its work to encounter cases of criminal offences and misdemeanours (including those that could contain elements of corruption or indicate that there is a background of corruption). When an auditor of the Court of Auditors in the course of his work finds out (suspects) that a criminal offence or a misdemeanor has been committed, the Court of Auditors acts in one of the following ways:

- notifies the Minister of the Interior about the criminal offence,
- proposes the institution of a misdemeanour procedure at the competent Misdemeanour Judge,
- informs in writing the authority that is competent to act against such misdemeanours (competent inspection services) about the misdemeanour or the irregularity,
- informs the management of the suspected person about the suspicion of a criminal offence or misdemeanour.

In their work the Court of Auditors uses INTOSAI standards and the European guidelines for the implementation of international auditing standards issued on their basis. The European guideline no. 52 – irregularities, includes guidelines to plan auditing, auditing procedures where there is alleged fraud or other irregularities, and the responsibilities to report on fraud or irregularities. This guideline gives instructions to the auditor on planning, implementation of procedures and reporting on eventual illegalities.

The legal regulation of public procurement and its consistent application can contribute greatly to the prevention of corruption in public sector and in public administration. This is why the Court of Auditors in performing its audits also regularly supervises the granted public orders. It dedicates individual audits to finding out about the regularity of granting public orders.

In the past the Court of Auditors has established a number of irregularities in the field of public procurement. Until 1997 this field was governed by the Governmental Order on the Procedure of Invitations for Public Tenders in Public Procurement, which had substantive deficiencies. In 1997 a new act on public procurement came into force, which regulated this field in detail. This year a new act has been adopted and will come into force in November 2000. It is completely harmonized with the EU acquis and will not bring about any greater substantive changes in the field of public procurement. The Court of Auditors estimates that the situation has substantially improved since the adoption of the act in 1997.

In the procedure of public orders itself, legal security to tenderers is guaranteed, which is carried out by the State Audit Commission for the Audit of Procedures of Granting Public Orders. The work of this Commission greatly affects the regularity of the implementation of individual procedures of public procurement, as in the case of established irregularities the commission partly or wholly annuls the procedure of granting the public order.

The Mandate and Immunity Commission is a working body of the National Assembly of the Republic of Slovenia. It is established on the basis of the ordinance on the composition and election of a Mandate and Immunity Commission of the National Assembly of the Republic of Slovenia (OG RS, no. 5/97). The Commission is composed by the president, vice-president and eight members, who are deputies in the National Assembly. The Commission performs work related to confirming the terms of office of deputies, studies questions in connection of the immunity of deputies and judges of the constitutional court and notified the assembly on cases that result in the termination of a deputy’s term of office (far example: if he is sentenced with a final non-conditional sentence to imprisonment longer than 6 months, if in three years from the confirmation of his term of office as a deputy he has not stopped performing the activity which is not compatible with holding a public office, or if he starts to hold a function or to perform an activity which is not compatible with the function of deputy).

Following the information by the Commission under the Incompatibilities of Holding Public Office with a Profit-Making Activity Act, the Mandate and Immunity Commission proposes to the National Assembly to establish whether a deputy has accepted gifts or gained benefits that affected the performance of his function and to initiate the procedure for the termination of his term of office and/or dismissal in accordance with the constitution and the law.

The Commission under the Incompatibilities of Holding Public Office with a Profit-Making Activity Act is established on the basis of the Incompatibilities of Holding Public Office with a Profit-Making Activity
Act (OG RS, no. 49/92 and 50/92). The Commission has been established by the National Assembly of the Republic of Slovenia. It is composed of seven members: the president and four members are elected by the National Assembly of the Republic of Slovenia while two members are elected by the National Council of the Republic of Slovenia. The Commission is established to perform tasks related to the restrictions regarding the performance of a profit-making activity to private ends for persons performing representative and executive function in the national bodies and bodies of local communities (officials) and supervision of their property situation. It decides on matter within its competence on a session, adopting decisions with the majority of votes of all members.

V. SITUATION REGARDING EXPOSED PROFESSIONS

1. Public officials

The Act on Incompatibility of Holding Public Office with a Profit-Making Activity (OG RS, no. 49/1992 of 10 October 1992) is one of the fundamental regulations in this field. The provisions of this law refer to all persons who perform representative or executive functions in state bodies and bodies of local communities in Slovenia. It therefore binds the President of the Republic, the President of the Government and ministers, as well as state secretaries and all other officials in the state administration, as well as delegates to both “houses” of the Slovenian Parliament. In addition, it applies also to the mayors of Slovene municipalities and to other officials on a local or regional level.

The Act on Incompatibility of Holding Public Office with a Profit-Making Activity stipulates that during his function an official can not perform a profit-making activity, which under this act is incompatible with his office. An official can not receive gifts in relation with the performance of his office; during the time of his office he can not obtain any advantages that could affect his actions. The prohibition of receiving gifts and obtaining advantages is also in force for the official’s spouse or the person he is living with in a joint household, as well as for his children and his adopted children, parents, grandchildren, brothers and sisters living with him in a joint household. An official who performs his office professionally can not perform any profit-making activity during the time of his office that could affect objective performance of his duties that is not influenced by any external factors. An official who does not perform his office professionally can perform a profit-making activity to private ends if this does not affect the performance of his functions and if the nature of the profit-making activity does not affect objective performance of his function. The official has to inform the commission about the data on his financial situation immediately after his office starts or terminates or within one month at the latest. During his term of office the official has the duty to report about his assets every two years and upon the request of the commission also one year after his office is terminated.

Apart from the Act on Incompatibility of Holding Public Office with a Profit-Making Activity (limitations regarding the performance of profit-making activity to private ends for persons performing representative and executive functions in state bodies and bodies of local authorities and supervision of their financial situation), two other acts are in force: the Court of Auditors Act (OG RS, no. 48/94), which stipulates that upon their appointment the members of the Court of Auditors have to submit a written statements on their financial situation, and the Act on Social Attorney of the Republic of Slovenia (OG RS, no. 69/95), which stipulates that the National Assembly can dismiss a social attorney and his deputy if he damages the reputation of the office with his work and his actions.

Supervision of the implementation of the cited provisions is entrusted to a special commission which is founded and operates within the framework of the National Assembly. This collects and analyses above all
data on the financial situation of officials and their spouses, who are bound to communicate these to the commission every two years. The cited data, with the exception of salaries which are paid from the budget, are public.

If the commission estimates that an official has received gifts or acquired benefits that affected the performance of his functions, it notifies the body whose member is the official in question or the body that is competent for the election and appointment of the official. If that body establishes that the official has received gifts or acquired benefits affecting the performance of his functions, it initiates the procedure for the termination of his term of office and for dismissal pursuant to the constitution and the law. If on the basis of the data on his financial situation or on the basis of other data the commission establishes that the financial situation of the official and/or of his family members living in the same household as he has increased exceptionally, it has to notify the body whose member is the official or the body that is competent for the election or the appointment of the official. The body that is competent for the election or the appointment of the official can demand such a report from the competent authority at any time.

2. Other professions

The Constitution of the Republic of Slovenia in its Art. 120 stipulates that the authorities of public administration perform their duties and functions independently and pursuant to the Constitution and the law. Judicial protection of the rights and legal entitlements of individuals and organizations against the decisions and acts of the administrative bodies and statutory authorities is guaranteed.

The Act on State Employees (OG RS, no. 15/90, 5/91, 18/91, 22/91, 2/91-I, 4/93, 7/97 and 38/99) in Art. 45 among other stipulates as a serious violation of working obligations (which can also be corruption) an act that means a criminal offence against official duty, another criminal offence perpetrated during work or related to work or perpetrated out of dishonourable impulse or a misdemeanour that affects the reputation of the state authority as well as abuse of position or of authorization.

For the mentioned serious violations of the working obligation the obligatory measure of termination of labour relations is envisaged.

In Art. 27 this Act stipulates that an official employed in a state body, except higher administrative officials (secretary general, state undersecretary, counsellor to the government, undersecretary, assistant head, counsellor to the head,…) can, beside his own work, perform activities in economic associations or perform work similar to the one he performs in his office for another body or organization only on the basis of a written permit by his head, except in cases of independent scientific, pedagogical, cultural, artistic, sports, humanitarian or journalist activity. The violation of this provision is listed among the more serious violations of working duties and obligations, where also belong: non-performance, non-conscientious, untimely or negligent performance of work, abuse of position or of authorization, illegal disposing with social means, violation of regulations on the protection of official secrets, act obstructing the customers in exercising their rights and interests at a state body. For some of these violations the mandatory measure of termination of labour relations is envisaged and for others this measure is facultative.

The quoted act in Art. 51 further regulated the liability for damages. An employee has liability for the damages he has caused during his work or in relation to his work in a state body to that state body on purpose or out of gross negligence.

The draft Public Officials Act, which is envisaged to be adopted in 2001, also contains the adoption of an ethical code for public officials. Further, commissions for personnel affairs are envisaged which will
decide on employee complaints, while the establishment of the institute of the nullity of the act on the
gained position or of the concluded employment contract for individual cases of the most serious violations
of legal provisions violating the basic principles and damaging a quality and efficient performance of
public functions and by that an adequate level of services to the users. A public official has to act in
accordance with the principles of performing public duties and to refuse to carry out orders if by doing so
he would commit an anti-constitutional or illegal act. The draft act also introduces the obligation of acting
and behaving in the interest of the office. An employee should call the attention of his head, his superiors
or the competent inspector to irregularities in the actions of the employees. A new institute in the draft act
is also taking of an oath in order to ensure personal suitability and honourability of the performance of
public functions and to protect the employer and the public official.

Slovenia also knows statutory rules and codes of conduct in force for individual professions that are
exposed to corruption. Although the provisions of both kinds of instruments are different, the following
points in common can be established:

a) Codes of conduct

Police officers, prosecutors and judges, lawyers, officials in the service for the execution of penal
sanctions, tax officials, accountants all have their codes of conduct. Military personnel and politicians so
not have their codes of conduct. Codes of ethical conduct ensure the application of the following
principles: loyalty, efficiency, effectivesness, integrity, fairness, impartiality, prohibition of discrimination,
prohibition of undue preferential treatment for any group of individuals, prohibition of abuse of position,
prohibition of receiving of gifts and advantages.

Most codes envisage sanctions in case of violations. Professional associations are usually competent for the
pronouncing of sanctions, although such cases rarely occur.

b) Statutory rules

A number of statutory rules are in force for public officials, prosecutors and judges, and their points in
common are:

they require substantive argumentation of the decisions taken, they establish responsibility for decisions
taken, they prohibit removal or destruction of official property, they prohibit the abuse of, and any illegal
manipulation with, the resources that the office has entrusted to the individuals, they prohibit the abuse of
confidential information, they prohibit the receiving of any gifts that would represent for the officials an
obligation to return the favour or to grant a special procedure to the donor, they prohibit the unsuitable
exploitation of the official position, influence or knowledge, they prohibit gaining financial benefits
through activities outside the office, competition clauses (after the termination of labour relations certain
professions such as customs officers, police officers, deputies, prosecutors, judges, officials cannot perform
for a certain period work similar to what they performed during their office), obligation to protect
confidential information also after termination of their office,…

In the case of violations of statutory provisions disciplinary sanctions apply, which are pronounces by the
authorities in two instances.

VI. PREVENTION OF UNFAIR COMPETITION

In the field of unfair competition two acts are in force: The Protection of Competition Act (OG RS, no.
18/93, 56/99) and the Prevention of Restriction of Competition Act (OG RS, no. 56/99).
The former prohibits all actions which contrary to the law restrict competition on the market, are contrary to good business practice in appearing on the market or represent illicit speculation and mainly unfair competition (actions of an enterprise on the market which are contrary to good business practice and could cause or are causing damage to other participants on the market). As forms of unfair competition the following practices are listed as well:

- giving or promising of gifts, property or other benefit to another company, its employee or a person working for another company, in order to enable the donor to have an advantage to the detriment of a company or consumers,

- unlawful obtaining of confidential information from another company or unauthorized exploitation of an obtained confidential information of another company.

The implementation of the act is supervised by the Office for the Protection of Competition, and the parties injured in the acts of unfair competition can in a civil procedure demand the prohibition of further acts of unfair competition and the reestablishment of the situation as it was before, and in case of damages also their compensation. An act of unfair competition represents also a misdemeanour for the legal person and its responsible person.

The Prevention of Restriction of Competition Act governs the prohibited restrictions of competition, protection and measures if such restrictions appear, bodies for the protection of competition, their competencies and procedures of state authorities and parties in relation with restriction of competition.

The act stipulates that the Government of the Republic of Slovenia, state authorities, the authorities of local authorities, companies, organisations and individuals performing public authorizations should not restrict free appearance of companies on the market. As restriction of free appearance on the market are considered also all acts and actions which

- unlawfully delay a procedure to issue of a permit,

- unfoundedly guarantee to a company a privileged position in business on the market.

In such cases and in accordance with the substantive law, legal remedies in the administrative procedure are allowed and in any case administrative dispute is allowed, while the responsible person of the state authorities is punished for such an act as for a misdemeanour.

The independent and autonomous Office for the Protection of Competition takes care for the implementation of the act.

VII. PREVENTION OF UNLAWFUL USE OF PUBLIC FINANCE

In Slovenia we have in general two main measures which prevent the unlawful use of public finances, and can be combined with other mechanisms due to specific circumstances.

1. Control and at the same time prevention over the regular use of public funds is established within various state agencies as a system of internal supervisions according to the Law on Public Finance (Official Gazette of the Republic of Slovenia No. 79-3758/1999).
Financial supervision of direct users of the State Budget is a system of internal controls and audit. The system of internal controls is organized as a system of procedures and responsibilities of employees within each specific direct user of the budget on a regular basis.

Supervision of the State Budget falls within the competence of Ministry of Finance, which is obliged to make a report about executed control, findings and decisions to the Government and the Court of Audit of the Republic of Slovenia. The Government, based on the mentioned findings, presents a report to the National Assembly every six months.

2. In general, according to the Article No. 21 of Act of the Court of Audit of the Republic of Slovenia (valid since 20.08.1994 Official Gazette of the Republic of Slovenia No. 48/94), the Court of Audit carries out:
   - control over regularity, intended purpose, and economic and effective use of public funds;
   - control over the regularity of individual enactment on the execution of budgets and financial plans;
   - pre-audits and audits of financial statements of budgets and other users of public funds;
   - control over collection of public duties;
   - advising public administration;
   - other tasks, provided for by other acts.

The Court of Audit co-operates in establishing methods for presenting accounting statements and records, as well as in setting the standards for public sector consumption.

For reasons of control over their business operation, the entities referred to in paragraph (1) of Article 19 yearly submit to the Court of Audit their budget plans and other acts determined by the Court of Audit, as well as their annual business reports.

Audits of financial statements are mandatory carried out once a year for the State Budget, the Funds established by the Republic of Slovenia and for the Pension and Disability insurance Agency of Slovenia, the Employment Office of Slovenia and the Health insurance Agency of Slovenia. The audit is carried out prior to the discussion about business reports before the authorities defined by law or other enactment.

The Court of Audit exercises control over the lending relations of the Bank of Slovenia to the State Budgets and over other transactions which the Bank of Slovenia provides for the Republic of Slovenia pursuant to the law.

The Court of Audit also may control and/or audit financial statements at the request of the National Assembly, Government, competent ministries and local government bodies.

Audits of financial statements in other controlled entities, with the exception of those mentioned in paragraph 4 hereof are performed in accordance with the annual programme of the Court of Audit and decisions made by the President of the Court of Audit as regards the frequency of controls.

The Court of Audit of the Republic of Slovenia began to operate on 01.01.1995. It is the body with the ultimate responsibility for auditing State finances, the State Budget and monies expended for public purposes. Officers of the Auditor General's Office are appointed by the National Assembly.
The work of the Court of Audit is public. It is independent in the performance of its functions and subject to the Constitution and law as described in Act of the Court of Audit of the Republic of Slovenia (valid since 20.08.1994 Official Gazette of the Republic of Slovenia No. 48/94).

VIII. PUBLIC PROCUREMENT

The Republic of Slovenia passed two acts covering the field of public procurement:

1. Public Procurement Act (PPA), published in the Official Gazette of the R.S. No. 24/97, valid since 01.07.1997;

The Slovenian Parliament already passed the new Public Procurement Act, published in the Official gazette of the R.S. No. 39/2000, which will replace the existing act on public procurements from 1997. This act will become valid on 13.11.2000.

Both Public Procurement Acts, the previous still valid one and the new one, contain provisions on prohibition of unfair competition, define the transparency of placing an order and the prohibition of discrimination of bidders.

Both Public Procurement Acts contain the provision in art. 9 and 10 (PPA 1997) and in art.14 (PPA 2000) respectively which demands from the person placing an order to reject the offer, if the bidder that submitted it, gives or is ready to give to an employee of the person placing an order, a customer or similar, any kind of gift or is ready to carry out a favour as an attempt to influence the act or decision or further procedure of placing a public procurement. The attempt of the criminal offence of bribery or its completion must be reported in accordance with the provisions of the Penal Code and the Penal Procedure Act. The criminal offence of giving or taking the bribe is prosecuted under official duty.

Whoever has the interest to obtain a public contract, may request the revision of procedure of submission of a public contract if he/she thinks that the person hat placed an order, violated the regulations about public procurement. Once the demand for the revision has been submitted it shall automatically stop further activities of the person that placed the order (temporary suspension) until the decision on the revision demand has been reached. The demands for revision shall be decided upon by the independent State body, the Commission for Revisions under the Public Procurement Act, whose decision is final. It is, nevertheless, possible to continue the procedure at the regular court under the rules of civil law procedures, however, entering a lawsuit shall have no suspensive effect.

IX. FUNDING OF POLITICAL PARTIES

I. General provisions ruling political party financing

The funding of political parties is regulated by the Act on Political Parties (APP), Official Gazette of R.S. No. 62/94, 13/98, 1/99 and 24/99. It is also necessary to take in consideration the Act on Electoral Campaign (AEC), O.G. of R.S. No. 62/94 and 17/97 which regulates the funding of electoral campaigns, and the Act on Members of Parliament (AMP), o.g. No. 48/92, 15/94, 19/94 and 44/99, which indirectly regulates the funding of political parties.
Political party may acquire funds from the following:

- membership fees;
- contributions from individual, legal and natural persons;
- incomes from property;
- donations;
- legacies;
- budget;
- profit from the income of the company whose owner it is.

A company which is owned by a political party may perform only cultural or editorial activities.

Yearly income of a party from its property or from the profit of its own company can not exceed 20% of the amount of total yearly incomes of a party. The surplus of incomes above the cited amount must be donated by the party to charity.

Parties which members were elected to the Parliament (National Assembly) during the last elections have the right to obtain means from the budget in relation to votes obtained in all electoral units during the last election to the Parliament. Any party has the right to obtain 30 Slovenian tolers (SIT) from the State budget for each vote acquired.

2. **Prohibition of acquisition of means from certain sources:**

It is prohibited that the party would acquire means from:
- contributions from foreign individuals, natural and legal persons,
- incomes from party’s property abroad,
- donations and legacies from abroad,
- or any other acquisition of means from abroad or performing services abroad respectively.

Political parties are also prohibited to acquire funds from:
- state authorities,
- public institutions,
- public companies,
- authorities of local communities,
- humanitarian organisations,
- religious communities,
- business societies in which at least 50% of public capital has been invested.

3. **Limitations of funding**

The contribution of legal of natural persons to a party must not exceed the amount equivalent to ten times of the average monthly wage of a worker in Republic of Slovenia as calculated by the Statistical Bureau of the Republic of Slovenia for the running year.

If the contributions of legal or natural persons exceed in their total yearly amount the three times average monthly wage, then the report must include data about the company, its seat or name, family name and address of natural person or individual and name of his/hers company and the amount of total yearly contribution that he/she gave.
Political parties may be funded with the same amount also from municipal budgets, for each vote acquired at the elections for mayor or municipal council.

4. Reports of political parties

The keeping of business books of political parties is regulated by the Accountancy Act. Special provision about financial reports is included also in the Act on Political Parties.

The parties are obliged to submit to the Parliament until March 31st of the running year their financial report on operations of the party during the past year, which must include all incomes and expenses of the party and especially the sources of party’s income in accordance with the accountancy regulations. This report must separately show data about natural and legal persons which contributions exceeded the amount of three times of average wage and data about election expenditures. In the report the property of the party must be cited as well, all changes of property must be noted separately, including the citing of sources for increase of property, if such increase exceeded the total amount of five average wages for the reported year.

This report must be reviewed and evaluated by the Court of Auditors of the Republic of Slovenia before its submission to the Parliament. The note of this review must be attached as an enclosure to cited report.

The financial report must be published in the Parliamentary Bulletin.

5. Control over the political parties

The control of implementation of provisions of the Act on Political Parties shall be carried out by the ministry competent for administration (Ministry of the Interior) except if otherwise defined by the law.

6. Funding of the electoral campaign

The funding of political parties is regulated also by the Act on Electoral Campaign, which otherwise regulates the issues regarding the electoral campaign for election of members of parliament, of President of the Republic and of members of municipal councils and mayors, however, the organisers are first of all the political parties or third natural or legal persons which carry out the electoral campaign by order from political parties.

For funding of electoral campaign the provisions of the act that regulates the funding of parties shall be sued (Act on Political Parties), if it is not otherwise defined by the Act on Electoral Campaign.

The expenses of an electoral campaign are those expenses which are necessary for carrying out an electoral campaign for an individual list of candidates or for an individual candidate and are the following:

- expenses for printing and hanging of posters,
- expenses for publishing of pre-election advertisements and notices in public media,
- expenses for organisation and performing of pre-election rallies and
- expenses for printing, reproduction and mailing of pre-election material that shall be sent directly to voters.

The expenditures of the electoral campaign for election in Parliament should not exceed 60 SIT per individual qualified voter in constituency or electoral unit in which the candidate list has been submitted or in which an individual candidate stands as candidate. For election of the President of the Republic the expenses must not exceed 40 SIT per individual qualified voter in the State, these expenses may be increased by 20 SIT in case of additional voting. The same proportion is valid also for the elections of members of municipal councils or mayors.

The organiser of the electoral campaign must open at least 45 days before the elections a special giro account titled “for electoral campaign”. The organiser must collect all financial means, dedicated by himself or received from other legal or natural persons for funding of the electoral campaign on this special account. The organiser shall cover all the expenses for the electoral campaign solely from this giro account.

Any organiser of an electoral campaign who is not a political party, must transfer any surplus of collected means for humanitarian purposes.

7. Report by the organiser of the electoral campaign

The organiser of the electoral campaign shall present to the Parliament on the eleventh day before the election day an intermediate report of expenses occurred for the electoral campaign and of all other events which have registered on the special giro account.

The organiser of the electoral campaign for election in Parliament or for the President is obliged, 30 days after the election at the latest, to submit a report to the Parliament and to the Court of Auditors about the following:

- the amount of means collected or used for the electoral campaign,
- of all contributions to the organiser of the electoral campaign, which exceeded the three times amount of average monthly wage,
- of all loans granted to the organiser of the electoral campaign, if the amount of the loan granted exceeded the amount cited in previous paragraph,
- of all postponed payments to the organiser of electoral campaign, if the amount of the payment exceeds the amount of funds collected and used, including the quoting of the legal or natural person that approved the postponement of the payment.

In case if the political party or any other organiser of the electoral campaign transferred to the special account under art. 18 of the cited law, also funds from any other own account, it must submit also the report about transactions carried out from the accounts, from which the means were transferred to the special account, for the period of six months before the election day.

The organiser of the electoral campaign for members of municipal council or for the mayor must send to the municipal council or to the Court of Auditors a report on all funds collected or used for the electoral campaign within 60 days after the election day.

Reports about funds collected and used for the electoral campaign are public.
8. Partial reimbursement of expenses for organisation and funding of an electoral campaign

The organiser of an electoral campaign whose lists got the mandates for deputies in the Parliament, have the right to claim the reimbursement of election expenses in the amount of 60 SIT per vote acquired, however, the total amount of funds reimbursed must not exceed the amount of means used as it could be seen from the report by the Court of Auditors.

The organiser of the electoral campaign whose list of candidates received at least 6% of the all given votes in an electoral unit or at least 2% of all given votes throughout the country, has the right to obtain partial reimbursement of expenses for electoral campaign in the amount of 30 SIT for each vote acquired.

The right to get partial reimbursement of expenses for an electoral campaign have also the organisers of electoral campaign or candidates for the President of the Republic, who obtained at least 10% of total number of votes of qualified voters that cast their votes.. The organiser shall receive a reimbursement in the amount of 20 SIT per vote.

The municipalities may through an adequate act define partial reimbursement of electoral expenses also for the organisers or the candidates respectively which participated at the elections for members of municipal councils or for mayors.

9. Control of funding of an electoral campaign

Three months after the election day the Court of Auditors shall carry out a revision with all organisers of the electoral campaign for elections of members of Parliament and for the elections of the President of the Republic, who have the right under this law, to claim the partial reimbursement of expenses for an electoral campaign.

The Court of Auditors shall carry out a revision within six months after the election day for all those organisers of electoral campaign that have no right under this law to claim the reimbursement of electoral expenses.

Should the Court of Auditors discover during the review of the reports any irregularities with the funding of an electoral campaign, it shall carry out a revision also for the organiser of an electoral campaign for elections of members of municipal councils or for mayors.

Through the revision the Court of Auditors shall verify:
- the amount of funds collected and used during the campaign;
- if the organiser of an electoral campaign obtained and used the means for an electoral campaign in accordance with the law;
- if the data submitted by the organiser of an electoral campaign are accurate and
- the amount of partial reimbursement of expenses that occurred during the campaign to which the organiser of electoral campaign has the right under this law.

The final report of the Court of Auditors shall be published in the Parliamentary Bulletin.

10. Act on Members of Parliament

The Act on Members of Parliament regulates the funding of political parties indirectly. It regulates the issues regarding the ensuring of conditions for work of the M.P’s and groups of deputies which occur
during the performance of their functions and with the related expenses, born directly by the State or certain means dedicated to groups of deputies for this purpose. Through this political parties are partially relieved from certain expenses which would otherwise occur to them because of performance of the functions of their representatives with implementation of the power.

11. The problems regarding the funding of political parties

The Court of Auditors discovered during the review of the reports that some of the provisions of the Act on Political Parties, concerning the funding of the political parties, caused certain problems in practice. Also on the base of proposals and recommendations by the Court of Auditors the Draft law on changes and supplements of Act on Political Parties (currently going through the first reading in the Parliament) some necessary changes have been proposed of those provisions that regard the funding of political parties.

Mainly the corrections are the following: with definition of the upper still admissible financing of the party by legal, natural persons or individual entrepreneurs it was necessary to establish the criteria which could be objectively considered, namely the data about the average monthly wage for the past year and not only for the year in which such contributions were given. It was also necessary to supplement the provisions about the composition and submission and publishing of yearly reports of the parties, since the existing provisions were not uniformly interpreted and used. Thus it will become obligatory for each party that received budget funds to publish a brief yearly report in the Official Gazette of the Republic of Slovenia. The sanction envisioned for any party that will not submit or publish its yearly report in the Official Gazette is the cessation of funding from State or local budget.

X. RIGHTS OF THE VICTIMS OF CORRUPTION

The victim of corruption who obtained, because of any criminal offence that could be cited among the so-called corruption criminal offences, a financial legal request (because, e.g. a damage has been caused to it) may assert its right already during the penal procedure running against the perpetrator of the offence or it may do so through a lawsuit procedure (the rightful claimant has a possibility to choose). The request may regard either the compensation of the damage, restitution of things or annulment of certain legal procedure (Art.100, par.2, Criminal Procedure Act - CPA). However, the condition is that the financial legal request during the criminal procedure could be entered only by the person that is a rightful claimant that can assert such demand during the lawsuit (Art. 101 of CPA). This demand could be directed also against a third person as a liable person and not only against the defendant – the perpetrator of the criminal offence (Art.111 of the CPA).

The court shall decide on financial legal request in criminal procedure under the rules of the civil law, using as a general material regulations the Act on Obligation Relations (AOR). The rightful claimants may (Art.101 of the CPA) at the same time propose also temporary protection of their demand, which was caused by the criminal offence, under the provisions valid for the executive procedure (Art. 109 , par.1 of the CPA). Concretely this means the possibility to protect the demand with mortgage rights on real estate, with mortgage rights on movable property, with mortgage rights based on the agreement between parties, with issue of a preliminary or temporary decree (Art. 240 of the Act on Execution and Insurance – AEI).

Concerning the annulment of a lawsuit the art.107 of the CPA defines that the court shall state in case, when it recognises such a request as grounded, that such a lawsuit is completely or partially annulled with all the consequences deriving from it, without prejudice to other persons rights. Under the provisions of the AOR the annulment of a contract could be, among others, the consequence of a situation, if there were mistakes done during its making concerning the will of the parties (Art. 111 of the AOR). This means that,
if one of the parties concluded a contract, e.g., under the influence of a threat, in essential error, under the influence of a fraud (Art. 65 of the AOR), which could all be a consequence of a bribe to the opposite party from a third party, the first party may impugn such contract and demand its annulment. The error of the will is possible in case of corruption when one of the parties (the corrupted one) caused a mistake by the other one (the wronged party) or keeps it in error with the intention to lead it to concluding of a contract (Art. 65, par. 1 of the AOR). The party which concluded a contract while under deception has the right to demand the reimbursement of the damage sustained (Art. 65, par.2 of the AOR).

By rule the victim of the corruption shall remain outside the frame of the contracting parties. In such a case it won’t be able to demand the annulment of the contract but it will have the possibility, under certain conditions, to enforce the nullity of the contract, the contents of which were influenced by the corruption. The nullity of a contract is a more serious form of voidness of contract. Among others, the contract shall be null and void, if it is contrary to the Constitutional principles of the social system or to the compulsory regulations when the intention of the rule breached does not show any other sanction or if the law does not regulate something else in certain case. This means that if one of the essential compounds of the contract has been made in a manner which is contrary to compulsory regulations, the provision of essential element of the contract shall be null and void, which means that the entire contract is null and void in such a case. In case of corruption (bribery) the reason for nullity of the contract lies in the fact that it was concluded contrary to the provisions of the art. 247 (unjustified accepting of gifts) and 248 (unjustified giving of gifts) of the Penal Code of the Republic of Slovenia.

The court is taking care of nullity by official duty and any interested person may refer to it (Art. 109 of the AOR). Such a person may enter a civil lawsuit to ascertain the nullity of the contract (declaratory action) and at the same time also the request for reimbursement of the damage under the general principles of the law of damages regulated by the AOR. It is first necessary to establish – specially in the case when the declaratory demand has been entered without a performance or constitutive demand – if the plaintiff shall obtain legal benefit from ascertaining the existence or non-existence of certain right or legal relation or if if the plaintiff shall have any other legal right from entering such legal action (Art. 181, par.2 of the Civil Procedure Act – CIPA). Both under the provisions of the art. 109 of the AOR as under the quoted provision of the CIPA the victim of the corruption must prove as a plaintiff that the ascertaining of the voidness of contract would enable hem/her, either in court or any other procedure (e.g.: procedure for obtaining public contract), to enforce the rights or benefits ensured by the law.

XI. GENERAL PERCEPTION OF CORRUPTION IN SLOVENIA

In analysing the perception of corruption we limited ourselves to data acquired during period 1990 - 1999 in surveys of public opinion such that certain data was accessed in two, three or even more points in time. In this it is necessary to understand that a) corruption is a very illusive phenomena, that is difficult to define and changes with time, social class, region and culture; b) media coverage and its stand against corruption in general and specifically can distort perception; c) the use of many expressions (such as bribery and corruption) influences responses to differing amounts in transactions; d) there can be underreporting or overreporting. We would, therefore, propose developing the proxy method to overcome these shortcomings. As public survey analyses do not contain the proxy approach 1, our report is principally founded on a survey of perception, standpoints and tolerance to the phenomenon of corruption present over the last 10 years in Slovenia.

1 The only proxy method was used in question of where the person was forced to pay money or to give gifts in order to obtain certain medical treatment sooner than official period in the last 12 months. Positive answer didn’t overwhelm 3% of total number.
a) Indirect technique applied to a representative sample of the population

One indirect perception of corruption was measured in levels of trust in social institutions. Annual 10-year measurements of trust in 15 institutions show that trust in 5 (the parliament, the president, the government, political parties and the police) has fallen quite significantly; that trust in 3 (the church, the media and neighbours) has fallen; that trust remained at equal levels in 4 institutions (the currency, trade unions, the army and God) and that trust has increased in the prime minister and even strengthened with respect to the family. For the first time trust has also been measured in work colleagues and superiors at work. This indicator does not reflect a lack of trust in these institutions that have become more corruptive but that an individual has to rely more on his or her own social networking in problem-solving, and perhaps even join in corruptive practices to achieve his or her goals.

Another indirect perception of corruption is the standpoint of the general public with respect to the lawfulness in society. 36.7% of respondents in 1988 thought that the position with respect to lawfulness in society had worsened in the previous 5 years and only 11.6% believed it had improved. This indicator also speaks in favour of the individual applying different (not only legal) methods in realising his or her own interests.

Both these perceptions could be said to reflect a social-networking orientated society.

b) Direct techniques of measuring the perception of corruption on a representative sample of the population

At two points in time (1995 and 1997) we measured what place the criminal had and corruption in public awareness in Slovenia. Among 37 problems listed, criminals and corruption were in the lower third of urgent problems in 1995, whereas in 1997 they were at the bottom of the list. Such ranking shows that corruption was a small problem in public awareness, especially when it applied to petty corruption that included corruption present in companies.

Political corruption was assessed very differently in 1995. With respect to the breadth of political corruption, 51.1% of respondents believed certain politicians were involved in bribery and corruption, 37.8% thought the majority of politicians, if not all, were involved in bribery and corruption.

In the 1998 survey of public opinion, people were asked whether they thought a person in Slovenia could reach the top of society with corruption alone. 40.2% of respondents firmly agreed with this and 28.4% disagreed. In 1999 61.8% of respondents assessed corruption in Slovenia to be increasing and 20% thought it was remaining at the same level.

We can interpret the data as meaning that Slovenian public awareness with respect to grand corruption is higher than with respect to petty corruption.

c) Level of tolerance of the Slovenian public to the presence of corruption in society

Large-scale corruption is mostly, though not always, reported by the media as scandals. In the first half of the 1990s many such scandals were reported which involved corruptive practices in political and commercial circles in Slovenian society (HIT, the intelligence service, arms, etc.) In 1993 we surveyed the Slovenian public as to the reasons for the media reporting on scandals. 16.7% believed them to be political fabrications, 2.8% thought it was media sensationalism, 24.3% of respondents were convinced criminals were behind the scandals and 20.7% believed they were the result of the transition of society
from one system to another. The responses show a very benevolent attitude and high level of tolerance towards corruptive practices, even large-scale corruption.

In 1990 the question how much people were disturbed by the exploitation of a person’s position for personal benefit was answered by a sample of the public. 20.2% of respondents reported that they were not disturbed by this or only a little disturbed. 63.9% stated they were very upset by it. In the same manner 17.1% stated they were not disturbed or only a little disturbed by a person getting his or her way by bribery. This upset 69.2% of respondents.

The following data from three measuring years – 1992, 1995 and 1999 – go to show the different levels of tolerance the Slovenian public had towards petty and grand corruption. As an indicator of tolerance towards petty corruption, we used the questions, »can you accept or not someone not paying their bus fare?« and »can you accept or not someone getting away with not paying taxes where given the chance?«. As a relative indicator of grand corruption, we used the question, »can you accept or not someone in a position of trust accepting bribes?«. 59.9% of respondents to the first question in 1992 could not forgive not paying one’s bus fare. In 1995 this figure had dropped to 54%. In 1992, 66.5% could not forgive people not paying their taxes. In 1995 this figure had fallen to 53.9% but in 1999 had risen again to 59.5% of respondents.

The acceptance of a bribe by a person in a position of trust is an indirect indicator of potential grand corruption so the tolerance to this is probably a good measure of the level of corruption in society. Responses were as follows: In 1992 76.8% of respondents stated they could never forgive such a deed. In 1995 73.9% of respondents were of this opinion and in 1999 73%. It could be concluded that tolerance towards grand corruption was lower than that towards petty corruption. Levels of tolerance in both cases increased over the years.

Data showed trends that were not favourable with respect to the public’s perception, tolerance and resulting spreading of corruption in Slovenian society. Measures must not only be taken against instances of corruption itself but to raise the awareness of the public and reduce its tolerance towards it. There appears to be a particular problem with respect to the high level of tolerance towards petty corruption.

XII. CORRUPTION AND THE MEDIA

The Public Media Act (Art. 24) stipulates: “

“State authorities, the authorities of the local communities, individuals performing public functions, public institutions and public companies, as well as other persons performing public services (hereinafter referred to as: sources of information), have to ensure the public nature of their work by giving timely, complete and true information on the issues in their working sphere.

Subjects from the previous paragraph with their acts regulate the way of ensuring the public nature of their work, the way of giving information for the public and appoint the person who is responsible for the insurance of the public nature of their work.

Journalists have the right of access to information under the same conditions. The giving of information can only be refused in cases when the information is defined in the prescribed way as state, military or official secret or if by giving information they would violate the confidentiality of personal data or prejudice the court procedure. In case of refusal of giving information it is necessary to explain in writing the reasons for refusal within eight days, if the journalist demands it.
The source of information can claim compensation for actual costs of the transcript of the required information which comprises five typewritten pages.

The source of information is responsible for the authenticity and accuracy of information he is giving for the public.

The journalist who has obtained a piece of information from a responsible person from Paragraph 2 of the present Art., is not criminally liable if he has published the information with accurate contents in a public media.

If a public medium publishes a piece of information in summary or completely that has been published in another (domestic or foreign) public medium, it has to state the name of the public medium from which it has taken the information. Cases of contractual relations between public media are an exception.”

A problem arises when official sources of information distance themselves with various degrees of confidentiality of information. In spite of this journalists quite often violate the prescribed confidentiality. In doing this they refer to the public interest and so far nobody has suffered any serious consequence because of this. Unfortunately such “investigative journalism” is normally very one-sided and dependent on a single source, which has an interest to “disclose” information which is most often connected to political reasons. On account of limited material resources a journalist as a rule does not have a possibility to dedicate himself to real investigative work.

In order to understand the work of Slovenian journalists one should also be familiar with the situation in mass medial and among the journalists:

Code of Ethical Conduct of the Slovenian Journalists (adopted at the general meeting of the Association of Journalists of Slovenia on 29/11-1991) was modified and amended on the basis of experiences and codes of other West European journalist associations. In relation to corruption the following provisions are relevant:

The first obligation of journalists is “truthful and authentic informing of the public”, while truthfulness is the basis professional orientation. With this are connected the demand for accuracy, authenticity and completeness of information. Deviations from these guidelines are possible in theory and happen in practice because of:

− ignorance and bad education, negligence, inadequate working conditions,
− explicit corruption (promises, expectations and offers of material or another benefit),
− fear from unwanted consequences of honourable actions, which we could call “negative corruption” (pressures by authorities in power and political authorities, by family, friends and acquaintances, threats by the individuals journalists are working on).

The code explicitly prescribes: “Accepting of bribe or publishing information to the benefit of an external orderer is incompatible with the journalists’ code of ethical conduct.”

Corruption of journalists is most often connected to the so called covert publicity – even though the code prescribes that the “publicity messages and advertisements have to be unambiguously and recognizably distinguished from journalistic messages” and even though also the Public Media Act prescribes clear and visible indication of advertisements. Here mainly journalists reporting about tourism, car industry and computer science are exposed. Apart from travels free of charge the “favourable reporting” is linked to a
more advantageous purchase of products, their long-lasting “testing” and similar advantages. No cases are known where corruption among journalists would be connected to payoffs of larger cash amounts. The Court of Honour of Journalists has not processed any case of corruption at all, as there have been no adequate complaints. However, there have been some professional discussions, especially on the relation towards the public relations. But in any case the most serious sanction for corruptibility is eventual editor’s criticism and derision of the colleagues. On the other hand journalists complain that due to commercial interests the management forces them into work which is close to publicity.

The limited market in Slovenia is another reason that practice of journalists’ bribing their informants is not very common. “Check-book journalism”, where the editors pay large amounts for exclusive stories, is unknown as well. The code explicitly stipulates that “the public interest does not excuse punishable and immoral forms of journalistic investigation”.

Of course, the universal dilemma remains open: where is the borderline between bribe, gift and a token of attention. We should also mention that top-level journalism is not adequately paid in Slovenia and that due to that fact journalists are – potentially, of course – even more susceptible to various forms of bribes.