

Corruption in public companies – case Slovenia

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ABSTRACT

Public companies are rarely included in studies that analyze corruption in the public sector. These very companies are a vital component of almost every local community or state: they operate with big budgets derived from local communities and payments are made by locals for different services. Politicians can have a great influence on these companies, impacting the everyday life of people. Where money lies, there is an influence and a potential for corruption. Corruption can happen on multiple levels: between states and public companies, public companies and local communities, public companies and suppliers and others. Types of corruption existing between these levels are in a certain way similar, however distinct in the way they operate. Legislation regarding these is very broad, allowing for many grey areas which can result in the abuse of it. Unfortunately, all the events (especially daily political ones) and people's attitudes point toward the fact that Slovenia has neither the right will nor the energy to fight corruption. Individuals are powerless in the fight against corruption, especially against corruption, which is taking on epidemic proportions and is already turning into systemic corruption.

Keywords: *Corruption, Local community, Political influence, Public companies, State.*

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Highlights of this paper

- The paper describes corruption risks and types and forms of corruption in Public Companies in Slovenia.
- The paper suggests possible solutions in the fight against corruption in Public Companies.
- The findings in this paper are based on several years of research on corruption in Public Companies.

1. INTRODUCTION

Corruption is always a multi-directional process. At one end of the stick, someone is offering a certain benefit, on the other, someone is taking it. They are both aware of the action, however, it stays undiscovered. The third part of this process is everyone around it that is being negatively affected by it (a lot of times they are not even aware of the action taking place). Not all corruption is illegal, but it certainly is unethical and it overall damages and suppresses the process of political and economic development. The core of corruption is that someone breaks the rules of the game in a way that others do not expect, and as a result, the use of corruption, partial or full anticipation models, justification of expectations, competition on a level playing field and similar models are no longer possible. In essence, it plunges participants into an unequal position.

Corruption has shown to have long-term negative effects and implications, making it more salient. Precisely, because it has so many negative effects, countries apply different measures which strive to eliminate it as much as possible. Corruption is present almost everywhere and at all times where there is money and an option for the personal benefit of individuals, communities or companies. Corruption shows in the forms of bribery, clientelism, special relationships, nepotism and privileges. It is generally hard to discover. It has many negative consequences such as decreased economic growth, increased poverty, lowering the level of services, extraction of public resources and others. Corruption consequentially minimizes the legitimacy of politics and politicians it influences decision-making and destabilizes democratic systems (Dobovšek, 2005).

The easiest and the most interesting definition of corruption is the one shown by a mathematical equation (Fitzsimons, 2007). Corruption in this case takes up the position of the dependent variable, which is influenced by three different independent variables. The equation strives to provide the most concise definition of its process of it.

$$\text{CORRUPTION} = \text{A MONOPOLY} + \text{DICRETIONARY POWER} - \text{RESPONSIBILITY}$$

If we apply that equation to the matter of our research: technical monopoly held by public companies and discretionary power, held by local communities in relation to public companies (the power to appoint directors, change prices or influence business decisions and others) leads to less responsibility and more room for corruption.

Both public companies and local communities (or the state) fall under the category of the public sector. There is an unbalanced relationship between them since more or less, local communities (usually in the form of municipalities) own them and consequentially in one way or another influence the decision-making process. Public companies usually deal with public infrastructure projects and later take on a role of a caretaker of the infrastructure they have built (water supplies, sewerage, sewage treatment plants). Managing these projects and infrastructure requires big investments, employment of labour, ordering goods and other necessary activities needed for the infrastructure or service to function properly. Along the way, many feel the temptation to personally benefit from the big budgets involved.

Public companies being similar to parastatal institutions, just like states and local institutions play an important role in local environments and often influence the quality of life in them (including the price of living in them). Following that, any acts of corruption in them, present a huge problem, since they may potentially drive up the price of living in local environments. On one hand, these companies usually in one way or another benefit from the budgetary resources of municipalities, therefore they might be involved in the corruption with them. On the other

hand, average people pay for services provided by them, mostly not being aware of the fact that they are being overcharged as a result of past acts of corruption.

2. CORRUPTION RISK IN PUBLIC COMPANIES

To understand corruption and corruption risks in public companies one has to first understand what public companies are and how they operate. A public company is a company that primarily performs public utility services (exceptionally also a market activity). Public companies are usually utility service providers making them a part of the economy in terms of their position however, they hold special legally regulated relations with their users and state bodies and are part of the state administration (Ivanjko, 2003). PUA says that "the public utility service is performed in a public company, when it involves the provision of one or more large-scale public utilities or when dictated by the nature of monopoly or an activity that is defined as a public utility service, but it is an activity that can be performed as a profit" (Žagar, 2013).

The biggest difference between companies that provide services on the market and public companies formed by institutions that are the providers of public utilities (hereinafter PPU) is that companies on the free market are profit-driven, making certain services sometimes unable to perform because they are too costly for them to do so. We are left with the situation where the free market system cannot or does not want to provide us with certain modes of operations due to too low profit or non-profit, but these modes are necessary for the functioning of the local environments.

Vague legislation makes the corruption risk greater. Currently, Public Utilities Act (hereinafter PUA) is very sparse in determining the legal regime of public companies, because for all issues related to the position of public companies not listed or regulated by the PUA, the current law refers us to regulations in place that normal companies (who operate under the Companies Act) which may raise doubts about its correctness. This raises further questions regarding public law entities, as in matters of legal status, management and operation of public companies and others. Article 28 of the PUA currently completely equates the business of public companies with other companies. As already mentioned, this shows a significant shortcoming in the current regulation of public companies (Brezovnik, 2009) in the dual role of the state (or local communities) in public companies. On one hand, local communities act as regulators of the public service activity performed by a public company, on the other hand as the owners of capital shares in a public company and in the "sui generis" organizational form of a public company, which calls for arbitrary interpretation of laws and consequently corruption.

Public companies are and are not part of the public sector, as these companies are, according to their status, dual. Due to the provision of public utilities, they are subject to the PUA, but due to their structure (being a publicly limited company or limited liability company), they are characterized as a subject of the Common Utilities Act. At the same time, due to their importance in a local environment, they are even sometimes a subject of the Local-Self Governance Act. The interpretations of individual laws are often arbitrary (without taking into account the influence of the other two), making exploitation a more possible outcome. It is important to mention the fourth law, which defines mandatory public utility services for environmental protection, namely the Environmental Protection Act, which has no impact on the management of a public company but has a great impact on the operation of a public company and as such is one of the perpetrators of the corruption risk.

It is expected from PPU's to operate with zero or minimal profit (by the law if a public company operates with a loss, its founder, a local community usually in the form of a local municipality has to bear the cost that law). Following that the prices are not set by the free market, they are artificially set by the state or local communities.

Prices are therefore often dependent on political or even partial, private interests (such are, but are not limited to: freezing prices at the state level to stop inflation, and not voting for price increases in municipal councils due to populism and liking). If we can say that one of the characteristics or special features of companies providing public sector services is a privilege (guaranteed market and customers), we could be able to say that they are in a way a monopoly. However, a major obstacle to their operation is the dependence on both state and local political structures and their impact on the management or business policies of public companies such as investment policies, new employment and others (Sumah, 2013).

Due to the very nature of the owners of these companies, who unlike the ones in normal companies do not focus on making a profit, they often face pressure (especially in the pre-election era) to serve some other (usually private interests). The board of these companies must therefore often resort to pure Machiavellianism¹, and set compromises for the sake of their survival. All too often, public company executives are the scapegoats for the failures of the local authorities (especially mayors and municipal officials). The directors of public companies quickly find themselves on the chopping list, especially if they have disregarded hints, wishes or direct orders imposed by the leaders of the local communities, which way too often go against the logic of economic rationality. Situations like these, unfortunately, can lead to morally controversial, if not corrupt, acts.

It should also be emphasized that public companies, especially the ones in the field of public utility services for environmental protection, often monitor and evaluate the performance of environmental protection tasks (as opposed to business supervision, where the risk of corruption is much higher). That presents us with another situation that has a high corruption risk. There is a wide variety of legislation available, which can be a bit confusing for the public, as the field of environmental protection is divided into many smaller areas. In some places, the text is explained in a very long, complex and overly detailed way. Perhaps this is good because of the regulation itself, but the regulations could be written in a more dumbed-down way (Vojnović, 2011). It should be added, however, that the legislation in some areas is very inconsistent and vague, which allows for discretion and different interpretations.

Research on the history of public services by Troesken (2006) showed the development of corruption in public companies at the local level in the United States in the late 19th and early 20th as a means to win the local elections. In cities where public utilities (water, sanitation and others) were publicly owned (by cities or other local communities) workers earned up to 40 per cent more per hour and worked up to 17 per cent fewer hours compared to workers in the private sector. Employees in these companies, however, often had to make contributions to cover election campaigns at the local level. The size of the "voluntary" contribution was usually between 2 and 4 per cent of the employee's annual salary, depending on the employee's employment. Politicians often hired more workers in public companies than needed to secure more support during the election period(s). The prices of services were, of course, lower than where these services were provided by a private company. In the long run, processes like these endangered the financial capacity of public services and also local communities and further suppressed the necessary improvement of infrastructure.

However, the impact of corruption on public infrastructure or public infrastructure activities cannot be measured but can be assessed through its direct impact on its users of it. An example of that would be: restricting users' access to basic services such as water and sanitation by increasing the costs of public services or by lowering their quality. Processes like this one usually further impact by tightening the budgets for other programmes (by diverting the funds) such as the ones aiming to reduce poverty. However, users can sometimes also use corruption to their advantage. For example, users may bribe officials to be able to access services or improve the quantity or quality of

¹ Machiavellianism: the view that politics is amoral and that any means however unscrupulous can justifiably be used in achieving political power.

services. They may even be involved in corruption and fraud in different development projects. In these cases, users may opt for corrupt policies because of promises of water supply or other benefits they would get from them (Sumah & Mahić, 2016a). Due to these acts, public services still often result in poorer overall quality and are also more expensive than they would be in the absence of corruption.

Corruption also makes infrastructure projects themselves more expensive, since way too often bidders are not selected in a public tender(s) but are selected "under the table" in a corrupt way. This results in infrastructure projects on a smaller scale or of inadequate quality compared to the ones that would result through monitored public tender(s). This further leads to negative consequences for the public budget due to an increase in public consumption or a smaller volume of public services.

Many researchers in this field advocate for privatization as one of the most effective measures in the fight against corruption. However, Kenny and Søreide (2008) research on corruption in public services shows that things are not so clear-cut. Even private companies that provide public services usually either try to win public tenders or try to get more financing from them. This type of corruption is characterized by corruption before the announcement of public tenders, to adjust the rules of the game, which provide the desired results in advance and even make them seem legitimate. This form of corruption is also characterized by renegotiation (perhaps about a year after the conclusion of the concession agreement) to gain better positions or achieve a higher price.

Private companies tend to have lower operating costs than public ones, but in the case of Latin American countries (Martimort & Straub, 2006), the privatization of public companies also encourages corrupt policies, where politicians and local officials try to in one way or another benefit from the act of privatization itself. If corruption is present in these cases, privatization itself also does not reduce corruption levels, it only changes its forms. Taxpayers and public funds can thus also suffer from corruption when companies are publicly owned (mainly due to corrupt politicians and company management), while consumers suffer from corruption in the case of private companies (mainly at the expense of higher service prices). The evidence shows that a change of ownership alone does not bring about a change for the better. Furthermore, privatization of public companies usually brings higher levels of dissatisfaction since it brings higher prices or worse service for its' consumers (optimization in the direction of increasing profits and less in the direction of lowering the prices with the same quality of services for its' users).

3. DESCRIPTION AND EXPLANATION OF TYPES OF CORRUPTION IN PUBLIC COMPANIES

There are several areas of corruption risk in public companies, as they are conditioned by who are the actors that enter into a corrupt relationship with a public company. Actors entering into a corrupt relationship (in the areas of business, ownership, legislation, and supervision) with a public company² are local communities (as owners and users of public company services), states³ (as the owners, but more often through regulations - laws and regulations, supervisions, inspections or other means, and sometimes even as users), subcontractors and service providers (when

² Local community as a term used in the text is meant more broadly than the local community is normally understood. Here, the local community is meant at the same time as the local community and the local influencers that make up this local community: officials (mayor, municipal councilors, municipal officials), influential party members, influential businessmen and also informal local networks.

³ The state as a *concept* is also understood more broadly than the concept of the state is normally understood. The term state means ministries and various state services (agencies, inspections, police and others) or, more precisely, employees in these services (those who are either the bearers of influence and decision-making or those who perform controls).

public services become means to their profit), suppliers of goods and services to a public company and of course service users (as natural persons).

However, often other actors appear in the relationship as well (third parties). They usually appear in it as subcontractors, suppliers, clubs or even associations. In that case, three or more parties are involved, making the corruption risk between them even greater. A third party can also enter into a relationship between a public company and the state, or contractors and suppliers, making relationships that may result in an act of corruption or risk of corruption very complex.

Corruption, regardless of its type, rarely consists of a single person from a public company, as most corrupt practices result due to internal control (which is quite complex and precise, determined by the internal law and internal regulations). Because of different supervisions, and reports, defined by the law, an act of corruption can only be done in a group or at least with the tactical consent of others. Often, the line between corruption and economic crime is blurred, as crimes often contain the elements of both[†]. Acts that are not on the list of crimes often occur, the so-called "soft form of corruption", which, both in the wider and narrower environment, is not recognized as corrupt at all or is unfortunately too often even approved as a general practice.

Informal networks between political and economic entities at the local community level, in which public enterprises are involved, conditionally speaking as political-economic entities, also have a significant impact on corruption in public enterprises. According to [Dobovšek \(2002\)](#), corruption in the public sector is determined by the following elements:

- Corruption is a process involving at least two people, where at least one is employed in the public sector.
- Corruption is always purposeful.
- Corruption is an illicit abuse of the public interest for private gain.
- Corruption is a violation of a moral norm.
- Corruption is a violation of the law.
- Corruption hinders democratic development and undermines the rule of law.

The operation of local informal networks »meets« all of the criteria that [Dobovšek \(2005\)](#) lists as elements of corruption in the public sector. Corruption is the basic link between local informal networks, and this network has detrimental consequences for the local community as a whole, as the network works in the public interest only as much as it benefits the private interests of its members ([Tonin, 2009](#)). It could be expected that in the case of a public company that there is only passive corruption. Getting all kinds of benefits is wrong but there are many relations where a public corporation acts as an active activist in corruption. In some, there are both kinds of corruption present, active and passive corruption. However, the corruption between a public company and a local community could be better hidden, if it took place between a public company and the municipal men of wealth. It could be often socially acceptable if getting benefits concerns sports cultural societies. There is a big question however about how this kind of corruption in the relationship between local communities and public companies influences the prices of services. This, however, needs its own extended research ([Suman & Mahic, 2016b](#)).

3.1. Corruption and Corruption Risks in the Relationship: Public Company-Local Community

Local communities usually have a rather complex relationship with public companies. On one hand, they are usually the owners of them, they have the right to control them as well as holding limited decision-making rights.

[†] Police in these cases reclassifies acts, even if they initially treat them as corruption offenses, as economic crime offenses.

On the other hand, they often order services from public companies. Also, local communities appoint and dismiss the management (mainly the director)⁵ and give consent to change the prices of services of compulsory public utilities or refuse to change them and by ordering services affect the operation of these companies (Sumah & Mahić, 2016a).

Corruption risks arise in relation to a public company and the local community for the following reasons: (1) because the local community has a significant influence on staffing (appointment and removal of management)⁶, (2) because it accepts prices and thus affects the business (good or bad), (3) because it often tries to influence the business (choice of subcontractors, suppliers or employment) as well as other decisions (sponsorship, donations). Precisely because of influences, the leadership in relation to the local community is often forced to make certain decisions, which can only be morally contentious, bordering corruption (the border is often very thin) or even corrupt. There may be blackmailing involved when appointing management, accepting prices, ordering services and even friendly "hints" about new employment in the company. Similarly, there is blackmailing present when a local community is legally responsible to uphold certain regulations or activities. Many times, a public company then becomes responsible for preparing the projects for a local community and also bears all costs (especially documentation costs). The local community thus avoids the costs of the projects, and many times passes them onto the users of the service(s) provided by a public company. In addition, costs for which there is no basis in the current budget of a local community are passed onto a public company, making the situation even more problematic.⁷

In this relationship, a public company (the management of a public company) is an actor indulged in active corruption, as it often provides local communities or individuals (municipal officials) with both material and non-material benefits.⁸ The requirements with which they are conditioned (for example director's position, consent to change prices, ordering certain works and others) can be set by a local community or individuals in the form of requests that benefit them or others. Such are: free services (usually minor construction work), employment of a person, donation or sponsorship funds to a sports club or association, and often to purely political party interests and others.

Sometimes, however, local communities or influential individuals also use public companies to help avoid public procurement and transfer public funds to individuals or associations and clubs (this is especially common when there are no funds in the budget and a need for them to be diverted from other budgetary items).

Public companies are often used by local communities to manipulate public tenders. This is often the case with the procurement of construction works that exceed the possibility of direct procurement or procurement by collecting bids, as public companies have a significantly higher value limit. Since public companies are owned by the local community, the local community gives the task directly to one of them. A public company then, without a public tender, selects a subcontractor, which is exactly the subcontractor or contractor the local community or its representatives or influencers would like. At the same time, there are also bribes or commissions, as well as

⁵ PUA, article 26.

⁶ PUA, article 27.

⁷ These are mainly the costs of various services or investment maintenance (road repairs, installations of playgrounds, special cleanings and others), which mayors promise to individuals or small groups and would like to implement them quickly, but there is no budget for them.

⁸ An example on a non-material gain could be the indirect benefit of the mayor to the public company by gaining the votes of voters in local elections (by additional, of course unpaid, engagement of a public company in the run-up to local elections with increased numbers). Such would be: mowing, an increased number of days when garbage is collected, more frequent cleaning of public areas and others. This additional engagement can have two causes: (1) whether the leadership wants to help the existing government to win the election, or (2) this is required of the leadership by the current municipal government.

sponsorship funds and donations for certain clubs or associations. It is similar to suppliers when the local community "recommends" a specific supplier to a public company.

Forms of corruption, which is rarely mentioned in the literature as an independent form of corruption, is trading in influence (often equated with clientelism). An act of such action would be when a resident (who is also a voter) expresses a certain wish, request or complaint regarding a public company or its services to the local community (for example the mayor), who then uses its influence to implement, realize or correct it. Another such form of trading in influence is political influence on the appointment of a director, creating some kind of reciprocal relationship. Often, however, trading in influence also manifests itself as offering its influence to local dignitaries, individuals or groups in the sense of "I will arrange this with the public company" or "I will call the mayor and he will arrange this with the public company". Of course, in return for "fixing problems with the public company", something is always expected in return.

Another form of corruption worth mentioning is fictitious employment (especially of athletes). Public companies are sometimes forced to hire an athlete (usually athletes involved in group sports, such as football, handball, volleyball or basketball), especially if the sport they are involved in is recognized as a leading sport in the local community (the club is a member of the major league) and officials the officials take place in it in one way or another (usually by being club members).

In most cases, the forms of corruption that take place between the public company and the local community are usually fairly well hidden (if they take a place between a public company and municipal officials, especially when it comes to personal gains), while others are more socially acceptable (especially when various sports or cultural associations are involved) or not even perceived as an act of corruption. The bigger question in all of these different forms of corruption is, however, how do they affect the prices of public company services?

Forms of corruption that occur in this relationship are *bribery, clientelism, conflict of interest, incompatibility of functions, fictitious employment, extortion, use of public enterprise to evade public procurement, trading in influence, trading in positions, and systemic corruption at the local level.*

3.2. Corruption and Corruption Risks in the Public Company-State Relationship

In the context of corruption between a public company and a state, the state needs to be defined more broadly, especially as an apparatus with all its services (ministries, inspection services, various agencies, institutes), as these primarily affect the business and the entire life of the company.

Due to wide discretionary powers, too many regulations, vague legislation and a large number of both supervisory and regulatory bodies, there may be public company-state corruption or corruption risks, especially when we see changes in the areas deemed as "grey fields". During the transition period, we do not know exactly which legislation applies old or new, as the transitional period is often not precisely defined. There are also various new requirements from regulators (new laws, new regulations), which are also not precisely defined in time or represent a disproportionate cost for public companies and the adoption of new laws. Therefore, public companies would like to influence the decision-making process of these new regulations as much as possible.⁹

However, public companies are also greatly affected by the implementation of EU legislation into Slovenian legislation. Slovenia often acts very strictly when it comes to the implementation of new legislation. It usually shortens the period of implementation (making it shorter than required by the EU) or even tightens legislative requirements. This causes a lot of problems for public companies and also creates corruption risks. However, there is

⁹ When adopting new legislation, public companies are trying to influence this legislation either through lobbyists or trade unions.

another, widespread field of corruption risk, where a third party enters the public company-state relationship, be it a private company or a local community. The possibility of corruption or corruption risk in the triangle of a public company-state-private company is the same as in the case of a public company-local community-private companies. The form of corruption in the triangle of a public company-state-local community is quite specific and works mainly in a way that harms the state budget (as well as various European funds).

An example of such corruption usually occurs when obtaining national or EU funds. The local community applies for various tenders and obtains funds, which then, with the help of a public company chooses the contractor, which is supposed to be used paid from the previously obtained funds. In the act of corruption, these funds are spent partially or (in some cases) even completely spent inappropriately. Local communities place these funds in public companies, which then perform the required work for the local community only partially or perform a completely different work from the required one. Public companies may also transfer the funds to various clubs or associations, and prepare fictitious or modified documentation (fictitious construction diary, invoices and others), which justifies the use of funds. However, trading in influence is also present in this relationship, when officials try to arrange something for a public company with their influence, try to influence it or just use their influence to profit.

Forms of corruption that occur in this relationship are *bribery, clientelism, conflict of interest, incompatibility of functions, fictitious employment, extortion, use of public enterprise to evade public procurement, trading in influence, trading in positions, and systemic corruption at the local level.*

3.3. Corruption and Corruption Risks in the Public Company-Suppliers and Contractors Relationship

In the public company-supplier relationship, bribery is the most common form of corruption. Public companies are very reliable payers, sometimes they are late with payments, but they always settle their obligations. There is a legal guarantee behind it since according to the law, public companies have to have guarantees, which are their founders). The orders made by public companies are usually very big and expensive (various construction machinery, trucks and other equipment needed to perform a service) and are therefore very interesting for various suppliers. Bribery (with money or some other benefits) is often used in these cases to get to achieve the desired outcome. The form of bribery is often not just a classic (ordering goods conditioned by a reward to the client or the person who approves the order), but the order is often conditioned by donations or sponsorship to various sports clubs or associations.

Another equally common form of corruption that occurs in public companies is the manipulation of public tenders.¹⁰ There are several ways to circumvent or play public contracts: (1) contracts are divided into several lots so that they do not exceed the statutory limit for mandatory contracts through the legal system, (2) tenders are organized so that they are written in favour to a specific supplier (in a way that only the latter meets the conditions or that only the goods sold by the supplier fit the public tender) or (3) the agreed division of business between several suppliers is used (each gives the same price for certain goods and each gets some business).

Often a public company enters a business relationship or is forced to enter a business relationship with certain suppliers with a suggestion, recommendation or "desire" of the local community or influential people from it (who benefit themselves or others from this business relationship). Some orders are even given to family members, relatives, friends or acquaintances, in violation of all rules (this is especially true for so-called low-value orders). However, there are also special forms of corruption in public companies in the relationship between the management of the company

¹⁰ In the literature, fraud in public procurement is the most common form of corruption in the entire public sector in developed countries, as well as the form of corruption that causes the greatest financial damage.

and suppliers where payments on time are conditioned by some kind of commission or some other benefit for the people employed in the management of the company.

The most common forms of corruption that occur in this relationship are *bribery, clientelism, extortion, and manipulation of public procurement*.

In the public company-contractors and subcontractors relationship, similarly to the public company-suppliers relationship, for the reasons already mentioned, some would like to personally benefit from that relationship. Here, too, the public company is under pressure from both various contractors and owners. Contractors would like to work, and owners often favour a particular contractor. In general, in the phase of selecting a contractor for specific work or concluding a contract, a certain favour is required from the "selected" contractor. Sometimes that favour is done for the person who is responsible for a specific contract other times for a sports club some kind of society or association. However, a bribe, in tangible or intangible form, may be offered by a contractor interested in the business as well.

Another such option for a bribe (required or offered) is the implementation phase (especially in infrastructure projects), where a bribe can be offered or requested for "deficient control". This usually means a higher number of hours charged, recognition of additional work, permission for cheaper and worse material and others. In the end, this results in either an overpayment or worse quality for the same price and consequently more repairs are needed in the future or the lifespan of an infrastructure or a facility. Clientelism is also common in this relationship, which can be seen in favouring domestic contractors, friends, acquaintances and relatives when it comes to smaller works and low-value orders at the expense of other, cheaper or better contractors.

4. FINDINGS AND SOLUTIONS

It is hard to offset corruption, however, the first measure that should be applied is to make training for the supervisory board mandatory. Members of the supervisory bodies would be obliged to take training that would train them in the field of supervisory boards and boards of directors of state-owned enterprises.¹¹ This is currently one of the requirements of the Slovenian State Holding when appointing the directors and members of supervisory boards (but now this would be sensibly transferred to lower levels of management, for example to the local level and to candidates for members of supervisory boards and boards of directors, which are usually appointed by the local community to companies owned by it). This would ensure at least a basic knowledge of legislation and business finance, as well as ethics and organizational culture, which is not exactly common practice at the moment.

Another change in legislation that would offset the corruption in this context would be a limit in the number of mayoral mandates to two consecutive mandates (currently the number of mayoral mandates is not limited).¹² A major in this case would not be able to run for the office after two consecutive terms. If he wanted to run in the future that should however be possible after four years (of inactivity). Only Article 42 of the Public Self-Government Act should be amended, or it would be reasonable to add to this article in the second paragraph that the number of mandates is

¹¹ Mandatory training for members of supervisory boards and boards of directors and directors of state-owned companies was introduced by the Government of the Republic of Slovenia by Resolution no. 00713-39 / 2005/14 on 6th of October 2005. The main purpose of this was to depoliticize corporate governance, as the management of the company is the personal responsibility of the members of the supervisory boards and boards of directors and managers. That is why, in order to run a company effectively and responsibly, people running it must have extensive legal and financial knowledge. They have to know the law, be able to assess business opportunities, partners and competitors, respond to and prevent problems in the company. However, this is still being abused, even at the highest levels of the country.

¹² For now, the function of the president (of the country) is limited to two terms, which is quite nonsensical, since the president primarily deals with protocol functions and is practically without any executive power and in relation to the mayor's office can not actually cause any harm (except political).

limited to two consecutive terms. This would at least partially (if not completely) disable creating all-powerful local politicians, that try to hold onto whatever power they can grab. At the same time, such policy would save mayors, who are now forced to keep even the most unrealistic pre-election promises and commitments (which often lead to corruption or at least immoral acts) to ensure their position. At least part of that burden, or such a restriction would make it impossible for them. Certainly, this policy would not one hundred per cent eliminate all of the local all-powerful corrupt politicians and their ties, especially if the candidate next elected will belong to the same party or list as the former mayor and have the same moral values and norms.

It would also be necessary to amend the Local Self-Government Act, which would enable or facilitate the impeachment of mayors. Under the current law, the termination of a mayor's term is only possible when they are proven guilty and imprisoned for more than six months. In December 2016, a draft law was sent to the parliament to make this possible, however, it was rejected at the beginning of 2017. The law itself had many obstacles that would make an impeachment hard to perform. To conclude, in cases of illegal conduct or serious forms of unethical conduct of municipal officials (including deputy mayors and members of the municipal council), there is still no effective mechanism by which the continuation of their work in the office could be prevented.

The Commission for the Prevention of Corruption submitted a proposal to amend the law in 2012, but so far there has been no change in the law that would allow an impeachment of the mayors conducted by voters and the state in case of obvious violations of the law or morally controversial acts. Amendments proposed, even though they included the impeachment of mayors legally, had many clauses that prevented it from happening in real-world situations.

Skrbec (2013) findings apply not only to the mayor but also to the relationship created between other local community officials and public companies (disrespect for the rule of law, seeking connections and acquaintances, greed, avoiding the rules of the game). Therefore, public companies are not immune to corruption, only less visible than other parts of the public sector and less interesting to the public. They do not have as direct of an impact visible on people's daily lives in contrast to, for example, corruption in healthcare or public administration. There is also less control at the local level and the inability to sanction (Criminal Code (KZ – 1), 2008) collective bodies, such as the municipal council, which is the only decision-making body in the municipality and the mayor, regardless of the decisions he has proposed. Currently, mayors can always blame their mistakes on the municipal council's decision (which is a political body, most of which is usually controlled by the mayor. Changes should be made here in a way that if the municipal council adopts a decision that is illegal or immoral, those who vote for the adoption of such a decision should be the ones held accountable.¹³

Vague legislation makes the corruption risk greater. Currently, PUA is very sparse in determining the legal regime of public companies, because for all issues related to the position of public companies not listed or regulated by the PUA, the current law refers us to regulations in place that normal companies (who operate under the Companies Act) which may raise doubts about its correctness. This raises further questions regarding public law entities, as in matters of legal status, management and operation of public companies and others. Article 28 of the PUA currently completely equates the business of public companies with other companies. As already mentioned, this shows a significant shortcoming in the current regulation of public companies (Brezovnik, 2009) in the dual role of the state (or local communities) in public companies. On one hand, local communities act as regulators of the public service activity performed by a public company, on the other hand as the owners of capital shares in public companies

¹³ Slovenian legislation does not recognize the institute of collective punishment, so in the case of an illegal decision, for all councilors who voted for an illegal decision should be at least financially responsible (especially if they were warned of illegality by councilors who voted against it).

and in the "sui generis" organizational form of a public company, which calls for arbitrary interpretation of laws and consequently corruption.

It would be necessary to change several laws in order to offset corruption. Greater emphasis on public enterprises should be placed in PUA, which should define more precisely both the management of public enterprises and their supervision.¹⁴ The decision on the appointment of directors should be left to the supervisory board (especially if certain competencies are required) At the same time the powers of the Council of Founders, which now hold a lot of informal powers in the management of its public companies, should be limited. Currently, these are:

- Giving consent to the decisions of different bodies of a public company on the business policy and work programs and financial plans of a public company.
- Giving consent to the appointment and dismissal of the director of a public company.
- Adopting the criteria for determining the salary of the director of a public company and the remuneration of the representatives of the municipalities founding the public company.
- Coordinating decisions on prices for the use of public goods.
- Coordinating decisions on the matters of loaning and mortgages of a public company.

It would be necessary to separate the ownership rights (which should have been exercised at the company's general meetings but are now mixed with the works of the Board of Founders) and the supervision and management of the company. The supervisory board should no longer be just an extension of the owners but should act as a body of the company that primarily works for benefit of the company.

Decision-making power concerning the prices of public services should be transferred to the state, the Ministry of the Environment and Spatial Planning (hereinafter MESP), or another relevant ministry (as before 2010), which would limit local officials' political influence (partial and non-transparent interests) on price acceptance and consequently prevent unrealistic election promises. The state has already taken the right step in this direction with the methodology for price setting in 2012 (in place from the 1st of January 2013 onwards).¹⁵ The regulation now requires municipalities to provide data on the billing and confirmed and charged the price of public services (separating between fixed prices for the maintenance of infrastructure and the prices for the implementation of individual public services). The data shall be communicated to the Ministry no later than the 31st of March for the previous year and the MESP shall make comparisons between individual municipalities. At the MESP, all municipalities were separated into nine groups, according to their size municipalities, number of residents and

¹⁴ A public company is described as an organizational form in only two articles (Articles 25 and 26), while the third (Article 28) refers to the meaningful application of the Companies Act:

Article 25 (establishment)

A public enterprise is established by the Government or a local community as an enterprise owned by the republic or a local community.

Article 26 (rights of the founder)

Founder of a public company:

- lays down special conditions for the performance of activities and the provision and use of public goods,
- decides on prices or tariffs for the use of public goods,

Article 27 (expired)

Article 28 (application of company regulations)

For all issues related to the position of a public company, the regulations governing the position of companies or companies shall apply, unless otherwise regulated by this or another law.

¹⁵ Decree on the methodology for pricing the services of public environmental protection, Uradni list RS, no. 87/12 (16th of November 2012).

population density. Based on the described criteria, a reference price is made for each group and published later year. If a price of a public company deviates¹⁶ from an average¹⁷ by more than 10% a justification must be provided.

In practice, this is now either not required (if the director has strong enough support from the owner - the local community) or it can also be abused (also to remove the management) if the director is not either a member of the right network or the right political party. If the determination and justification of price increases or reductions were taken over by the state, at least part of the local political pressure and influence on the management of the public company would be eliminated (of course, a fixed part of the price should remain in the domain of the local community). It should also be possible to prevent or legally prohibit the transfer of money from one activity to another. This currently allows (especially before the elections), for example, money collected from a fixed price (depreciation) on water supply, which should be strictly used for renovations and new investments in the water-supply networks, to be spent on road repairs in neighbourhoods, with large voter bases.

Furthermore, all various sponsorships, donations and alike payments made by public companies should be prohibited by the law (PUA). Nowadays, public companies are often the wallet of local communities due to their legal nature and are both directly (through direct financing) and indirectly (through subcontractors, suppliers and others) major »sponsors« of various local clubs and associations. However, everything, in the end, is paid for by the residents, either through the price of services as users or as taxpayers through municipal budgets. By prohibiting, forceful "donations" could be stopped, and public companies would serve their original purpose. To be able to do that to add a sentence should be added to Article 8 of PUA¹⁸, which would restrict funding to be used only for the operation of public utilities, thus preventing the outflow of various funds (direct funding), grants, sponsorships and others. A second option would be to add the article to chapter VI of PUA¹⁹ (contextually similar to the previous proposal), which would also offset the outflow of funds.

Public companies and their transactions (to whom much has been transferred) could be easily monitored via the "supervisor" application²⁰, where, among other things, all transactions of public companies would be published. This would at least partially prevent one or another overflow of funds. Indirect financing (sponsorship, donations and the like through subcontractors or suppliers) could be at least partially prevented by inserting an additional sentence or article in the current legislation concerning public companies, which would prohibit them from financing certain

¹⁶ The fixed part varies from municipality to municipality, as the waterworks are different, the age of other infrastructure is different and investments in infrastructure are also different.

¹⁷ When comparing the prices of public utility services between comparable municipalities, it should also be taken into account that there are differences between prices also due to the fact that in the case of public utility service providers there are:

- spillovers of profits between individual activities of public utility companies or replacements of losses of some activities with profits of other activities,
- political decisions and administrative restrictions on price increases, which have led to changes in prices in some municipalities but not in others.

¹⁸ Article 8 of the Public Utilities Act determines the methods of financing public utility services:

- Public utilities are financed with the price of public goods, from the budget and from other sources determined by law or a decree of the local community.
- The Republic provides funds from the budget for the financing of public utilities, and the local community for the financing of optional local public services. Budgetary financing of obligatory local economic services is delimited between the republic and the local community in the manner determined by law.

¹⁹ Chapter VI of the PUA deals with the financing of public services.

²⁰ The online service called Supervisor provides the general public, media, professions and state bodies with insights into transactions of public institutions and companies owned by the state and municipalities. Public coverage of the flow of money between public and private increases the responsibility of public officials for the efficient and effective use of public funds, enables reasonable discussions of accepted and planned investments and reduces risks of mismanagement, abuse of power and, above all, limits systemic corruption, unfair competition and clientelism.

associations or clubs. However, this is already a slippery terrain, which allows for various interpretations, even if such an article were to prevail.

5. CONCLUSION

Corruption is, as already mentioned, a multidirectional process. On the one hand, the provider of a specific benefit(s), and on the other its recipient. Both are aware of the action, which remains hidden. The third link in the chain is everyone else (the victims). Those are angry at the high prices of services, poor services or poor infrastructure, but do not know what the real causes of them are. They do not think something is right, but they often do not even think that these problems are the result of corruption.

Although any act of corruption is not illegal, it is unethical and detrimental to the economic and political development of society. Usually, people involved have some (if not a lot of) political and economic power and are in one way or another involved in decision-making (Integrity - Society for the Ethics of Public Action, 2013). Philosopher Karl Popper mentions in his book *Open Society and Its Enemies* that the biggest problem is not who has to command, but how to control the one who commands. In essence, he told us that organizing political and social institutions that prevent bad and incompetent rulers from doing too much damage is a salient problem. Because there is no general and infallible way to prevent tyranny or corruption of dignitaries, the price of freedom is eternal vigilance (Brioschi, 2003). His idea can be meaningfully applied to all types of corruption and thus to corruption in public companies as well. Quite often people who should not be on the supervisory boards (due to the conflicts of interests) or people who do not meet the conditions for it, are appointed to the supervisory bodies, which means, among other things, inadequate education, ignorance of the law, and ignorance of business finances. Even now, there are people in place whose only »competence« is belonging to the current ruling party in the local community.

Unfortunately, all the events (especially daily political ones) and people's attitudes point toward the fact that Slovenia has neither the right will nor the energy to fight corruption. Individuals are powerless in the fight against corruption, especially against corruption, which is taking on epidemic proportions and is already turning into systemic corruption (Sumah, 2018). The Commission for the Prevention of Corruption is a toothless tiger. Court proceedings in the cases of corruption are falling apart and the bodies involved do not have sufficient powers. The national hero is still a salt smuggler, and morals and ethics are just words. Although corruption in Slovenia is not a means of survival, it provides an opportunity to raise one's standards, many are taking advantage of this. If Slovenia wants to deal with this »Hydro«, the first condition is to establish zero-tolerance. This can only be done through the example of politicians and officials, by adopting new or amending existing legislation and especially by educating and informing people who need to be aware any type of corruption is harmful. Everyone gets affected by it: users of state services (including the services of public companies) as well as taxpayers and money going out of the pockets of the people that have accumulated it through corruption.

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