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The Efficiency of State Property Management and Public Money Utilization¹

Introduction

In past decades the question of efficiency has been a central issue in public law literature. The current public policy rhetoric also greatly emphasizes the importance of an efficient state and of efficient public administration. But do we actually know what expectations efficiency makes towards organizations in the public sphere?

Efficiency, as an abstract concept, is of American roots and carries various meanings. Business enterprises are usually considered efficient when they manage to achieve the largest output with the smallest input, then being the most profitable. In public administration efficiency is not defined in terms of profitability, but of accomplishing the goals set.

American literature considers public administration as efficient when it manages to drain the least resources from economy, which is a fundamental condition for market mechanisms to be implemented to their fullest. The American approach deeply believes in the omnipotence of the market and thus sees a close correlation between market institutions and economic efficiency.

Beyond the realization of market mechanisms, however, the influence of public administration exerts on economic processes through economic policy, competition supervision, regulations, etc. is neither ancillary. Even in the most liberal economies, the state tends to extensively interfere into economic processes to avert market failure. Yet, in return, the state also has to live up to wide ranging efficiency expectations, such as expert government, a high standard of legal regulations, the application of business principles, the managerial approach, the absence of red tape in law application, low administrative burdens, etc.

A question arising with respect to our theme is what relationship is there between the utilization of public money, the management of state property, or collectively termed: administering public wealth and economic efficiency.

There is general consensus in public administration literature regarding the state being justified to intervene in economic processes in order to eliminate market failures. As far as state property is concerned, no such expressed market failures may arise, since the most benefit that maintaining public utility companies and public services in state ownership offers is the provision of better access to public services. Similarly, the utilization of public money is also in the service of an economic cause, namely facilitating that the state, through an efficient utilization of resources drained from the economy, may be able to discharge its responsibilities at the lowest cost while meeting the highest standards.

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An overview of the current practice of developed market economies clearly demonstrates that there is still no consensus regarding what the optimal ratio of state property is, what regulations ought to govern the management of public money, or in other words which state assets are to be retained in state ownership, and which, along what guidelines and what procedures are to be privatized, furthermore what institutions would be best suited to enforce efficiency requirements when utilizing public money. It is no accident that even European Community Law has no provisions on state ownership, and as regards public money it also tends to rather focus on budget indicators.

1. The History of Administering Public Wealth

In the course of history there have been various reasons for establishing state wealth, and even the guiding principles for administering it have been rather diverse.

In Antiquity and in the Middle Ages no public wealth in its current form existed yet, even though Roman Law did already recognize the Caesar's public wealth, which was, as regards both its legal status and management, clearly distinguished in the treasury from the Caesar's private wealth.

In Europe the separation of the monarch's private wealth from public wealth only ensued at the end of the 18th century. The monarch's wealth was then managed, controlled and supervised by organs distinctly detached from one another and by persons personally designated for the task by the monarch. The legal regulation for administering the monarch's wealth had not yet been created, and neither had the management of its various types, land property, the regalia, and tax based revenues been set apart yet.

1.1. The Issues of State Ownership Efficiency

Ever since the economic system of capitalism evolved, the American and European models have taken different courses of development. In America no state ownership developed, whereas in Europe, the scope of state ownership was continually widened.

On the European continent the state's entrepreneurial wealth, in addition to treasury wealth, evolved in the age of liberal capitalism. In America the state had not run any business enterprises, which even in England could not be considered prevalent.

Liberal capitalism developed a new type of state ownership in Europe as a result of the appearance of infrastructural public services. Early on infrastructural public services, such as postal and telegram services, the railway, due to their high level of capital demand, by all means, needed state subsidies, which on the European Continent finally led to the state operation and the state ownership of public services. Hence, the creation of state property on Continental Europe in the public service sector was closely related to the acknowledgement of the *state's caretaking function*.

In Continental Europe, infrastructural public services were operated in state monopoly, and it was a matter of debate whether public utilities, mostly affixed to some form of public wealth, ought to be state-operated or rather economic activities operated by private enterprises as well. The state, out of economic considerations, e.g. due to mass demand, would sometimes give public services into concession.

The central issue, however, was not yet related to whether state-owned public works or public service concessions were more efficient, but whether the *public service ought to be governed by public law or private law regulations*, and whether the *concession agreement ought to contain public or private law elements*. The broadening of the scope of public

service concessions was, however, a tacit acknowledgement of the conviction that business enterprises operated at higher efficiency.

In England no clear distinction was drawn between public and private law, for it was public corporations, bodies independent of public administration organs that controlled state-owned public services. Certain efficiency requirements could already be traced in the operation of public corporations, since public utilities were consciously withdrawn from the control of the rigid and red-tape dominated public administration, as public utilities were increasingly regarded as self-governing bodies requiring a large degree of independence in reaching their business decisions.

The state in America facilitated the creation of infrastructural public services by subsidizing privately owned public utility companies. Privately owned land was only expropriated to allow the state to grant land to railway construction companies. The US Constitution, rather early on, already at the end of the 19th century, would afford the federal government authority to extensively regulate economic activities with public significance, yet it still did not create a constitutional basis for nationalization, which therefore never became common practice. In America, thus, no state ownership of land, public utilities, and entrepreneurial wealth evolved.

Economic ideology in America has ever since the beginnings been of the viewpoint that state property is *inevitably of low efficiency in both the business and the public sectors*. All this is closely related to the traditions of decentralized US public administration and the American approach averse to centralized governance. Infrastructural public services have since the very beginnings been privately owned business enterprises, which received exclusive rights from the state, and which, due to the public nature of service provision and the absence of market competition were subjected to state *regulation*.

The communist economic system triggered the most drastic changes in state ownership. In the full nationalization of privately owned entrepreneurial wealth, war communism saw an instrument of centralizing assets. Yet, when the forthcoming collapse of the economy resulting from having eliminated market institutions could no longer be denied, the communist economic management was forced to compromise. In order to ensure economic efficiency, it returned small entrepreneurial property to private ownership and created collective ownership in agriculture. In the plan command economy state companies attained a certain level of economic independence through the application of the system of independent accounting.

The economic ideology of communism saw *in the exclusive state ownership of entrepreneurial wealth a chance to create an increasingly productive economic system*. Yet, as it soon became apparent, the profitability of state enterprises was in reality by no means related to their economic performance. Factors, such as planning and political bargain mechanisms were to replace the economic judgment earlier exercised by the market.

Reforms to the communist economic system aimed at a greater economic independence of state companies, which they hoped to achieve *through a looser control exercised by public administration*, in order to, in turn, also increase the company's efficiency.

These reforms turned out to be furthest reaching in Hungary. The 1968 reform created a system of economic regulators, which differently from the plan command system, did not directly determine the economic activity of state companies, but centrally developed an incentive system. The organizational-legal reform of 1984 withdrew the competence of exercising property rights from public administration bodies that controlled state companies, and conferred them onto the self-governing bodies of companies. However, a self-governing body composed of company employees had no ownership interests, nor any managerial

experience or approach. Neither could a state company organized and managed in a unified manner operate as a business enterprise.

Therefore, Hungarian reforms aiming at reforming economic control did not manage to establish an interest-directed system that could have brought about significant changes in economic efficiency, which proved that in the absence of market institutions, e.g. economic associations, market competition, the dominance of private property, the efficient operation of state companies was illusory.

In the first half of the 20th century various categories of public wealth were distinguished in Europe. The state's private wealth, as a private enterprise, was to be responsible for the state's revenue-making activity. Treasury wealth used to be connected to the public responsibilities of infrastructural public services, such as roads, public utilities, networks, or to the activity of state organizations, public buildings and institutions. Assets in public use constituted part of treasury wealth, e.g. natural assets, like rivers, lakes, the seaside, or artificially created assets, like parks and public areas.

At the beginning of the 20th century in each one of the European states a *process of nationalization* commenced, increasing the state's entrepreneurial wealth and state ownership related to public services. The increasing ratio of state wealth was closely related to this process, whereby the state, in order to resolve market difficulties, would intensively interfere with economic processes. Public utility wealth attached to public services was nationalized so as to achieve and maintain tighter state control over public services.

Nationalization would continue following the Second World War, too, especially in the United Kingdom, where the British Labour Party forming the government in 1945 nationalized the majority of industrial and infrastructural public services. As a result of the nationalization the ratio of state property in the public sector grew to over 70 per cent, and in the industry to over 30 per cent. Following the Second World War the application of the Keynesian economic policy became widespread in Western European countries, where *state property was an instrument in the hands of the welfare policy*. At the time, the nationalization of public services served as a safeguard for ensuring access to public services, the scope of which was further extended by welfare institutions.

From the 1980s onwards the neoliberal economic policy would also bring about a significant change in state ownership.

In the US, neoliberalism subjected public services to *market mechanisms*, believing that the removal of the limitations on entering the market as well as market competition would result in a higher efficiency functioning of public services, than public administration regulations had guaranteed them when they were still considered to be natural monopolies. The issue of ownership was not a matter of debate in the US, since infrastructural public services functioned as business enterprises, whereas local public services—such as rubbish collection, the maintenance of public areas—were not linked to assets available for privatization.

In contrast, in the 1980s economic efficiency was not expected to be achieved by market competition in Europe, but by *privatising* state-owned companies. Profit-orientation was believed to lead to more efficient functioning than state ownership had done, since the state must, by its nature, be a poor manager. In the 1980s in most Western European countries the state's entrepreneurial wealth was sold through privatisation. The United Kingdom was at the vanguard of this movement, where privatisation was not constrained by law, and where even the majority of the infrastructural public utility companies changed hands. In most countries on the Continent state ownership was protected by constitutional and legal regulations against the state's privatising ambitions, and privatisation tended to take the form of concession.

Consequently, however, privatization, either through the sale of state wealth, or through granting the right of use, proved to be insufficient to provide a solution to the question of efficiency on its own, as long as *monopoly positions* were maintained. Furthermore, profit-orientation would often lead to higher priced public services, than state ownership had done, for in the latter case the state, for political reasons, had more stake in taking consumer interests into account as well.

Neither did the competition sector's tools modelled for competition supervision prove adequate to resolve the monopoly positions of the public sector, since competition supervision organs, in the absence of market prices, were not fitted to establish, whether the service fee was high or not, and were neither authorized, nor equipped to screen public utility companies.

The state did neither manage to fully enforce the efficient operation of public service companies through concession contracts. Despite the fact that the entitlement to concession is granted through tendering, and concession agreements may ensure the state the rights of pricing and quality control, a concession agreement can only difficultly be adjusted and amended to adapt to changes of the economy.

After about a decade's delay, the European Union did eventually adopt the practice of liberalization common in the USA, and even made a policy statement that public services could not be efficiently performed when provided by state-owned, monopolized public utility companies. Community Law therefore *extended the rules of competition law* to public services, and forbade EU member states to ensure a monopoly status to public service companies. The removal of the limitations on entry to the market and establishing market competition have obliged the owner or user of a public works company or network within a given public service provision branch to allow access to any enterprise joining the market.

Neither in the competition sector, nor in the public service sector does Community Law regulate the ratio of state ownership. Maintaining the state ownership of public utility companies and networks has no relevance, since any one enterprise is eligible to entering the market, and to having access to public service provision. In other words, in the European Union *emphasis has shifted from the choice between public or private ownership to market competition* with a view to achieve efficiency.

1.2. Forms of Public Money Management

In Europe, towards the end of the 19th century, so as to combat corruption, the system of state accounting was established, with detailed legal regulations to govern budget management and supervisory institutions. Lawful and regular operation was then the main guiding principle for utilizing budget resources. Cash-flow oriented accounting supervision was suitable to enforce proper revenue and expense regulations.

It was only in the 1980s, owing to neoliberalism in America that the issue arose of *what efficiency the state could display when performing its functions beyond simply complying with the regulations*, in other words, whether the money incurred for delivering a task was proportionate to the size of the task and what efficiency state organs could perform when discharging their responsibilities.

American neoliberalism, which aimed at draining fewer resources from the economy and to correspondingly reduce budget expenses, developed the system of *New Public Management* which described more efficient methods for discharging state functions, i.e. with lower costs and a larger output. A smaller and cheaper state spending less public money can also be achieved by making the operation of public administration itself more efficient.

This has twofold implications: the more efficient discharge of public administration duties on the one hand, and the more efficient functioning of public administration bodies on the other.

New Public Management finds *business principles* the appropriate means to achieve higher efficiency in performing public functions. Thus, it confers the responsibility of discharging the duties of a public administration body onto business enterprises. These state functions—as opposed to public services—cannot be discharged in a competitive environment, therefore market competition is replaced by tendering, meant to guarantee that the most competitive enterprise win the right of deliverance. The business enterprise performing a thus ‘outsourced’ state function is expected to enforce a customer-centred approach, and through its profit-orientation to achieve an optimum of expenses.

There are numerous dissenting opinions as regards where the boundaries of the outsourcing of state functions can be drawn, whether only the functional activities complementary to the operation of public administration bodies, or whether also fundamental public functions can be subjected to business principles. Today there are numerous examples of the latter, as well: in many instances business enterprises operate prisons, implement court decisions, carry out food safety management and tax collection.

According to a vision of *developing cooperation between the public and private sectors* certain state responsibilities ought to be discharged jointly by public administration bodies and business enterprises, in the course of which cooperation they could mutually count with the other’s advantages. This arrangement has been successfully applied in completing state investments. Public Private Partnership (PPP) investments offer the state access to financial resources, while allow business enterprises access to orders placed by the state. A novel feature of the PPP construction, in comparison to concession, is that the investment is completed jointly by state organs and business enterprises, often in the framework of a business association. The risks of the investment are born by the business enterprise, in exchange for which it is entitled to utilize the facility created by the investment, or may require to be paid a lease by the state.

With respect to outsourcing and PPP investments, it is actually the *contract* concluded by the state and a business enterprise that will determine whether the application of business principles will indeed lead to higher efficiency. Considering that the compulsory content of these contracts—unlike in the case of concession agreements—is not specified by civil law, a lot depends on to what extent state bodies can assert state interests during business negotiations. The danger of corruption is also increased, since state supervisory bodies can only exercise posterior supervision of these contracts, while having to scrutinize business decisions. It is not accidental that the European Union has developed the practice of concluding PPP investment contracts along principles and model contracts, which already offer the state guidance on how to conclude the contract while seeking the most efficient solution. Another EU expectation is that once the contract has been signed an independent court of auditors should supervise its implementation according to well-determined principles, so as to ensure the efficient use of public money.

New Public Management has proposed the direct application of *management principles* even in the operation of public administration bodies to assure a more efficient utilization of public money. Such principles are, for example: a performance and quality oriented budget, the application of democratic leadership methods, providing incentive to public employees and measuring their performance. Public administration responsibilities are now discharged in accordance with the public policy approach in most developed countries. Public policy is in other words the implementation of public administration responsibilities, e.g. economy

development, or combating social problems along managerial principles, taking account of the given political and cultural conditions. *The public policy approach* nevertheless does focus on efficiency, and develops the relevant methods for achieving it, such as determining strategic goals, precisely defining the task, working out alternative solutions, and finally assessing the execution of the decision according to performance and efficiency.

There were no limitations on applying New Public Management in the American public administration system, for it has since the very beginnings applied the principles of company management, has not laid great emphasis on differences between public and private administration, and has not found legal regulations essential for the operation of public administration. The application of a public policy which lays a great emphasis on managerial principles inevitably provides sufficient incentive, even in the absence of legal obligations, to public administration bodies, hence no special legal regulations are needed to be in place.

Contrarily, in public administration systems on the European Continent, where the traditions of centralized and legally regulated public administration have evolved, the application of business principles created a challenge. It was not clear how business principles could be applicable. The values of the Weberian model of public administration tend to lay emphasis on legality and serving the public interest rather than on efficiency. Many find the business approach contrary to Weberian values, since they identify business principles with the profit aspirations of business enterprises.²

In the Weberian model public administration is legally overregulated, and the greatest expectation towards public administration bodies is that the norms pertaining to the competences, functions and procedures of the body should be fully complied with. The traditional instruments used by European public administration are controlling, direction, supervision, monitoring, individual decision making, normative direction, which tools, due to legal regulation, have attained a level of extreme sophistication. *The legal regulation of public administration has thus not much in common with efficiency requirements*, apart from wanting to regulate those, too. All this, of course, does not mean that legal regulations would be contrary to efficiency considerations, or that they would make them superfluous. In Western-European states management principles have in many instances been successfully applied in public administration.³

Public money can neither be adequately utilized without the most fundamental principles being regulated by the constitution and laws, nor without parliament exercising its supervisory function. New expectations for the efficient utilization of public money have been formulated, too, the enforcement of which can suitably be ensured by legal regulations. Such are *transparency, publicity, and accountability* in the utilization of public money. These requirements can be fulfilled by legal regulations establishing institutions. An independent supervisory body's competences ought also to be extended to the supervision of efficiency. Their traditional supervisory function ought to be transformed into a

² Lőrincz, L.: A kormányzás modernizációja (The Modernization of Governance). *Új Magyar Közigazgatás*, (2006) 11, 650–652.

³ Hajnal, Gy.: Hatékonyság és teljesítmény az Európai Unió országainak közigazgatásában (Efficiency and Performance in the Public Administration of European Union Countries). In: Lőrincz, L. (ed.): *Közigazgatás az Európai Unió tagállamaiban. Összehasonlító közigazgatás* (Public Administration in the Member States of the European Union. Comparative public administration). Budapest, 2006, 469–475.

consultative relationship aiming at cooperation. The outcome of supervision must be publicized and the legal consequences of abuses be determined.

Many people are apprehensive of applying business principles in public administration, partly, because facts have clearly shown that this approach has not anywhere yet resulted in a cheaper state, since the size of public administration has thereby not been reduced. Nor do they find the elaboration of methods which could objectively measure efficiency feasible.⁴

Others would make the discharge of public administration responsibilities cheaper and more efficient by e-government alongside deregulating legal regulations. Nowadays the expenses of the discharge of public administration functions would incur for the national economy are quantifiable, and if they largely exceed the acceptable limit the wastefulness of public administration in spending public money cannot be denied. If, however, public administration bodies were burdened with less red tape, i.e. did not unnecessarily have to issue permissions, supervise processes or keep records, or could do so more simply and more cheaply, through electronic means, the size of public administration could also be reduced.

The efficiency of utilizing public money is also greatly endangered by corruption, which often results in manifold costs incurred by state investments, orders placed by the state, or a loss of wealth through privatization. Surveys conducted by international organizations stress that there is a strong correlation between corruption, the level of an economy's development and the extent of democratic functioning, as well as the strength of the non-governmental sector. The European Union has even laid down rules regarding what kind of an institutional system ought to be established.

2. The Management of State Property, the Efficiency of Public Money Utilization in Hungary

2.1. State Property and Privatization

By the end of the 1980s state and cooperative property had ceased to be of an exclusive nature. In the so-called second economy—in the market of small enterprises—and also within the framework of state companies and cooperative farms, various kinds of enterprises developed, in spite of which development, however, state and cooperative ownership remained prevalent.

The process of privatization started in 1989, when self-governing state companies that had been granted the right of ownership were authorized to decide about their own transformation and privatization. From 1991 onwards privatization was drawn under tight state control, and was implemented by privatization organizations under government direction.

Hungarian privatization is not easy to assess as regards efficiency, since hardly any reliable data and analyses are available. The only figures so far publicized are based on the surveys of the Hungarian Court of Auditors, in accordance with which the loss of state wealth constituted 40%, out of which the loss of value amounted to 10%, and the loss through corruption to 30%.

⁴ Lőrincz, L.: A kormányzás modernizációja. *op. cit.* 645–646, and Lőrincz, L.: Közigazgatási reformok: mítoszok és realitás (Public Administration Reforms: Myths and Reality). *Közigazgatási Szemle*, 1 (2007) 2–3, 54–55.

There are counter arguments claiming that the wealth of state companies was not assessable at the beginning of the 1990s for various reasons. On the one hand, the accounting was not carried out in line with market economy requirements, on the other, there was oversupply in the market of communist countries, and furthermore, the loss of wealth would anyhow, regardless of privatization, have taken place owing to unfavorable processes in the world economy. References are also made to the small number of corruption cases that were revealed.⁵

Surveys conducted by the Court of Auditors go against the above claim, purporting that privatization in Hungary was *one of the main areas of state corruption*.

Undeniably no legal remedy could be sought against privatization decisions. In the early stage of spontaneous privatization this was due to the fact that it was the self-governing companies, the practitioners of ownership rights that decided about privatization, whereas, later on ownership rights were conferred onto the State Privatization Agency under government control and later on to the state agency, APV Rt. (APV Shareholding Company).

There was, in fact, no control available by seeking legal remedy against privatization decisions at the time of spontaneous privatization, since self-governing companies, as those entitled to exercise ownership rights decided about privatization, and later on ownership rights were conferred onto the State Privatization Agency and then to the State Privatization and Asset Management Agency, APV Shareholding Company.

Therefore, no external supervisory organs were in place to oversee the operation of privatization organizations. Not the economic rationality, but only the accounting aspects of privatization decisions were at that time subjected to the scrutiny of the State Privatization and Asset Management Agency. Parliamentary committees were, by nature, unsuitable to rule on complex business matters. Additionally, the supervisory committee in the State Privatization and Asset Management Agency, APV Rt. was also constituted of members delegated by political parties.

Hence, it is not surprising that even though from early on privatization processes have been overshadowed by corruption, *only few corruption cases have been publicly disclosed*.

Since the beginnings of the 1990s attempts have been made at *reforming privatization* in order to ensure the property acquisition of Hungarian small and medium sized enterprises. Such attempts included the introduction of 'use privatization', the legal regulation of privatization techniques and economic priorities, or the separation of state wealth retained long term in state ownership, the management of which was entrusted first to AP Rt. (AP Shareholding Company or State Privatization Agency), and then to APV Shareholding Company or the State Privatization and Asset Management Agency). The privatization of the public service sector was then fundamentally implemented in accordance with the Concession Act, which ensured the right of use to those entitled to concession instead of selling state property.

Even despite the reforms executed, no privatization organization, made up of experts, functioning independently of the government was established, which would have been overseen by external supervisory organs, exercising in merit supervision to ensure economic rationality and legality. Thus, privatization was implemented along *political* and not efficiency considerations.

⁵ Mihályi, P.: *A magyar privatizáció enciklopédiája 1989–1997* (The Chronicle of Hungarian Privatization: 1989–1997). Budapest, 1988, 397–398.

In some people's opinion it is questionable whether even a mention of the economic efficiency of privatization could be made, since at the beginning of the 1990s most emphasis was laid on establishing the institutions of market economy, and thus privatization had to, by all means, in the shortest possible period of time be performed, even though there was no privatization strategy in place, and state companies were bound to be sold at a loss.⁶

Expectations towards privatization are not easy to distinguish from political considerations and from the issue of economic rationality.

As regards the ratio of wealth remaining in state ownership, in one opinion, the practice of liberal economies, restricting the scope of state ownership to treasury wealth is alien from Hungarian traditions, whereas in another opinion, the state is by nature a poor manager, implying that the entrepreneurial wealth of the state should be privatized. These viewpoints tend to be dependent on party affiliation.

The privatization of the energy sector did not take place through concession at the beginning of the 1990s, but through the sale of public utility wealth to foreign investors.

This seems to prove the assumption that if the state sells its strategically important assets, it will not be in the position to assert the *interests of the national economy* as well as it ought to. Energy prices will become a constant political issue, and although it is hard to decide whether they are low or high compared to world market prices, it is nevertheless a tell-tale sign that despite a European Commission recommendation, in Hungary no independent, elected, financially autonomous price-regulating body, having the authority of in merit supervision, operating according to a transparent and clear procedural system has yet been established. The Hungarian Energy office—which cannot be claimed to be independent of the government, moreover, it is indeed a government agency—has only the right of proposal regarding pricing, actual decisions are made by the Minister of Economy. Earlier pricing issues in the energy sector were decided in the framework of background bargaining between the government and the privatized public utility company, then a confidential matter, although later on stipulated by a government decree.

However, the state did manage to abolish the right of motorway operation, even if only by compensation, when it was not functioning successfully as a public service, and did manage to conclude a new agreement.

The theory of the *state being a poor manager* is also proved by the corruption cases connected to transport companies and the postal services which are even now in state and local government ownership.

The debate on whether state or private ownership is more beneficial with respect to infrastructural public services will soon be history as a result of market liberalization.

Political considerations have clearly replaced the aspects of economic efficiency, when privatization took place in order to increase budget revenues or to assist the wealth acquisition of political circles favoured by the government. If our starting point is that privatization is only justifiable when state wealth is operated better by a business enterprise, we must conclude that the privatization solutions were contrary to these objectives. No reliable figures exist regarding what the ratio of those is who became beneficiaries of privatization due to their political affiliation.

⁶ Sárközy, T.: *A korai privatizációtól a késői vagyontörvényig. Az állami tulajdon jogának fejlődése* (From Early Privatization to the Late Asset Act—The development of the Right of State Ownership). Budapest, 2009, 73.

It is clearly a matter of economic policy and not a matter of economic efficiency whether it is foreign or domestic enterprises that ought to be favoured by privatization. One argument is that in the absence of Hungarian entrepreneurs with a strong capital, the involvement of foreign capital and management know-how was greatly needed at the beginning of the 1990s, whereas a counter argument is that this strengthened the tendencies of globalization contrary to the interests of the national economy.

In the course of privatization the requirement of economic efficiency was set against the requirement of *justice*.

One standpoint held that according to the principle of justice everyone should receive an equal share from the state wealth. The principle of justice justified the rejection of voucher privatization as the main type of privatization, claiming that it would split state wealth and could be used for speculation purposes. In its stead, schemes, which offered some kind of discount to individuals and small enterprises purchasing state wealth were introduced.

With respect to re-privatization a conflict of the following three principles: efficiency, justice and constitutionality also arose. According to the standpoint that emphasized efficiency considerations, re-privatization means an outpour of revenues from the budget without adequate performance in exchange, therefore it is economically unreasonable. It was later on proved that the re-privatization of arable land also worsened economic efficiency, since in the absence of capital no operable family-run farms could develop, thus also contributing to the decline of agriculture. The law interpretation by the constitutional court—which could theoretically have overwritten other considerations—could eventually not lead to precise and consistent legal decisions, rather looked for legal solutions suitable for a political compromise.

The Constitution makes a legally assessable statement as regards state ownership, claiming that the scope of exclusive state property is specified by law. Consequently, it is simple majority laws that govern state ownership, which can be amended any time at a government party's or government initiative. Hence, *privatization*, has *no constitutional limitations* beyond the binding limitation dictated by laws.

In the past twenty years the ratio of state wealth has decreased not only as regards the state's entrepreneurial wealth, but also its treasury wealth. At the beginning of the 1990s numerous public services were non-negotiable, such as agricultural land. Earlier on, the Act establishing the Hungarian State Holding Company grouped the majority of assets falling under the National Land Fund's authority among the state's entrepreneurial wealth, thereby making them open to privatization. The scope of strategically important assets was also immensely reduced to its third within twenty years.

2.2. *The Management of Public Money and the Efficiency of the Economy*

It is common knowledge that in Hungary the state drains many resources from the economy in the form of public burdens, though it is also true that the burdens of the underground economy and of multinational companies are largely compensated by state subsidy. At the same time public administration is huge, red tape dominated and of low efficiency. Instead of implementing efficiency oriented reforms, the methods used for achieving efficiency in public administration have so far only been attempts to abolish certain public administration organizations and to apply *administrative methods*, redundancies and hiring freezes.

The application of managerial principles is still entirely absent in the operation of public administration. Public administration is *legally overregulated*, while legal regulations

fundamentally focus on the operational, competence, and procedural rules of public administration bodies, whereas the requirements of efficiency play no role. Additionally, the administrative culture is also of a low standard.

State functions are also performed at a *low standard* by public administration.

The infrastructural public services still run under the authority of the state, are of poor standard, whereas the public utility companies in state and local government ownership utilize public money in a wasteful manner. In recent years, there have obviously been concrete aspirations to restrict the scope of transport company services, while increasing the fee of these services. Neither has there been a solution found for the efficiency issues of health service financing. Only administrative measures have been taken to reduce the number of beds, to close down hospitals and restrict the scope of services. At the same time, as regards the increase of affixes, sufficient action has been taken to extend them to everyone and to collect them efficiently.

On the basis of all this, however, the image of a state-owned public service model seems to be unfolding combining *neoliberal principles that encourage self-care with a high level of the public burdens of welfare states*, clearly showing that the state can only utilize public money at very low efficiency.

While the state discharges its responsibilities, it extensively applies business principles, but in most cases not successfully.

State investments are known to incur the manifold of the real costs, or are completed in areas that have no justification with respect to economic rationality.

The outsourcing of the professional responsibilities of public administration organs is often abused to utilize public money for private purposes by concluding feigned contracts.

The same purpose is served by using public foundations and public benefit companies to discharge state responsibilities. Financing in these cases is based on individual decisions, and as the investigations of the Hungarian State Audit Office have established, often no in-merit performance is delivered in exchange.

Frequently the environment in which development resources are utilized does neither enhance efficiency. Regions with an elected body, equipped with political and decision making authority, determined in accordance with Community Law cannot be created due to the two-thirds majority legislation requirement. In their place centrally directed development councils are in operation, having no real authority. Although no reliable data are available, there is a high level of likelihood that instead of efficiency requirements party political considerations matter most in utilizing development resources.

There are several reasons, why public money is spent at such low efficiency.

- A decisive factor is probably the standard of legal regulations. There is no unified legal regulation in place for involving business enterprises in discharging state responsibilities.

The Concession Act provides for the rules, concession tenders and the conclusion of concession contracts in a detailed manner. The public procurement act, although it is also thoroughly detailed, contains numerous and substantial legal gaps, making it possible for a pre-selected applicant to become the winner, or simply to avoid the public procurement procedure. Legal regulations for most of the recently completed PPP investments, and for outsourcing public administration responsibilities are totally missing, or to be more precise it is provisions of the civil code governing the conclusion of contracts in general that are in place.

The presence of legal regulations itself does not directly imply that there ought to be a close connection between legal regulations with detailed stipulations for guaranteeing an efficient utilization of public money, since *even the most sophisticated statutory provisions can be evaded, if the legal environment and culture has a long standing tradition of not respecting laws, but rather evading them.*

- According to international surveys, the extent of state corruption in Hungary already constitutes a serious obstacle to economic growth. Its main areas are privatization, orders placed by the state and development resources. Corruption typically takes place in the highest levels of politics and of public administration, within the framework of confidential relationships. This is largely facilitated by the political spoils system which increasingly penetrates the public administration personnel, thus the acquisition of public administration positions is a means of deepening contacts based upon corruption.

Corruption based on confidential relationships is hard to uncover, since the methods of leaving the person who discloses the corruption case unpunished, or disclosing the case with an anonymous report cannot be applied here. Therefore most probably the cases that have so far been revealed might well just be the tip of the iceberg.

The political elite has apparently no interest in creating a system of anti-corruption institutions and has not even established one yet.

- The requirement of accountability has neither been set.

The State Audit Office has not only been delegated the power of legality supervision by the Constitution, but the requirements of ‘justifiability, necessity, expedience and efficiency’ are also listed among efficiency considerations. Even though the State Audit Office fully complies with its duties, its publicized reports also submitted to Parliament are left *without any legal or factual consequence*. Deciding whether state investments incurring the manifold of the real costs, or PPP contracts containing detrimental conditions for the state are actually the outcome of unprofessional performance or of corruption does not fall under the purview of the State Audit Office, but rather under courts’ jurisdiction in criminal proceedings. Yet only in one instance so far has a State Audit Office report resulted in initiating a criminal lawsuit.

Accountability is rendered difficult by laws, such as the glass pocket act, which yet again does not attach any legal consequence to wealth declarations not in harmony with lawful incomes. Neither do party financing regulations clearly define costs incurable for election campaigns, making it impossible for the State Audit Office to compare campaign costs with money allocated from the budget.

Apart from the State Audit Office there is no other organ responsible for supervising public money which could be regarded *independent*. It is not accidental that the Government Supervisory Office has so far not been able to detect an abuse to be disclosed in the operation of government organs. The Parliament’s ad hoc committees, as regards their organizations and composition, are not suitable for this purpose either. The same applies to the institution of the state secretary for public money management as well.

The judicial system, too, ought to play an important role in sanctioning abuses of public money utilization. Facts, however, show that the *judicial system is not up to meeting this requirement*. State corruption cases often last even ten years long with the eventual judgments totally defying the sense of justice. Often is the charge dropped despite obvious evidence, or no criminal proceeding is initiated in cases publicized by the State Audit Office

and the media, even though the judicial bodies are ex officio obliged to launch these proceedings. In state corruption cases, judicial bodies no longer examine entanglements of leading politicians and senior public administration officials, not even when there is sufficient evidence, or when they nevertheless do, there is a strong likelihood of political revenge.

In summary it can be stated that:

- In the public service sector the significance of the management of state property has largely decreased as a result of liberalization processes. The debate regarding whether state or private ownership was more efficient has lost its significance, since market competition seems to solve the question of efficiency.
- The American approach, New Public Management, has worked out the most varied methods for utilizing public money. Applying managerial principles has never been alien to American public administration based on business principles. In the Weberian model in Europe—despite the diverse traditions of public administration—the business approach is in many respects realizable.
- In Hungary, it is strongly debatable whether efficiency requirements were indeed considered and met during the privatization of the state wealth, or else in what way they should have been. There is no constitutional limitation on the privatization of state wealth, therefore, the scope of state wealth has been drastically reduced.
- No institutional system ensuring the efficient utilization of public money has yet been established. Consequently, business principles have not been successfully applied, and state corruption has gained ground. Public administration is overregulated and managerial principles are totally absent.