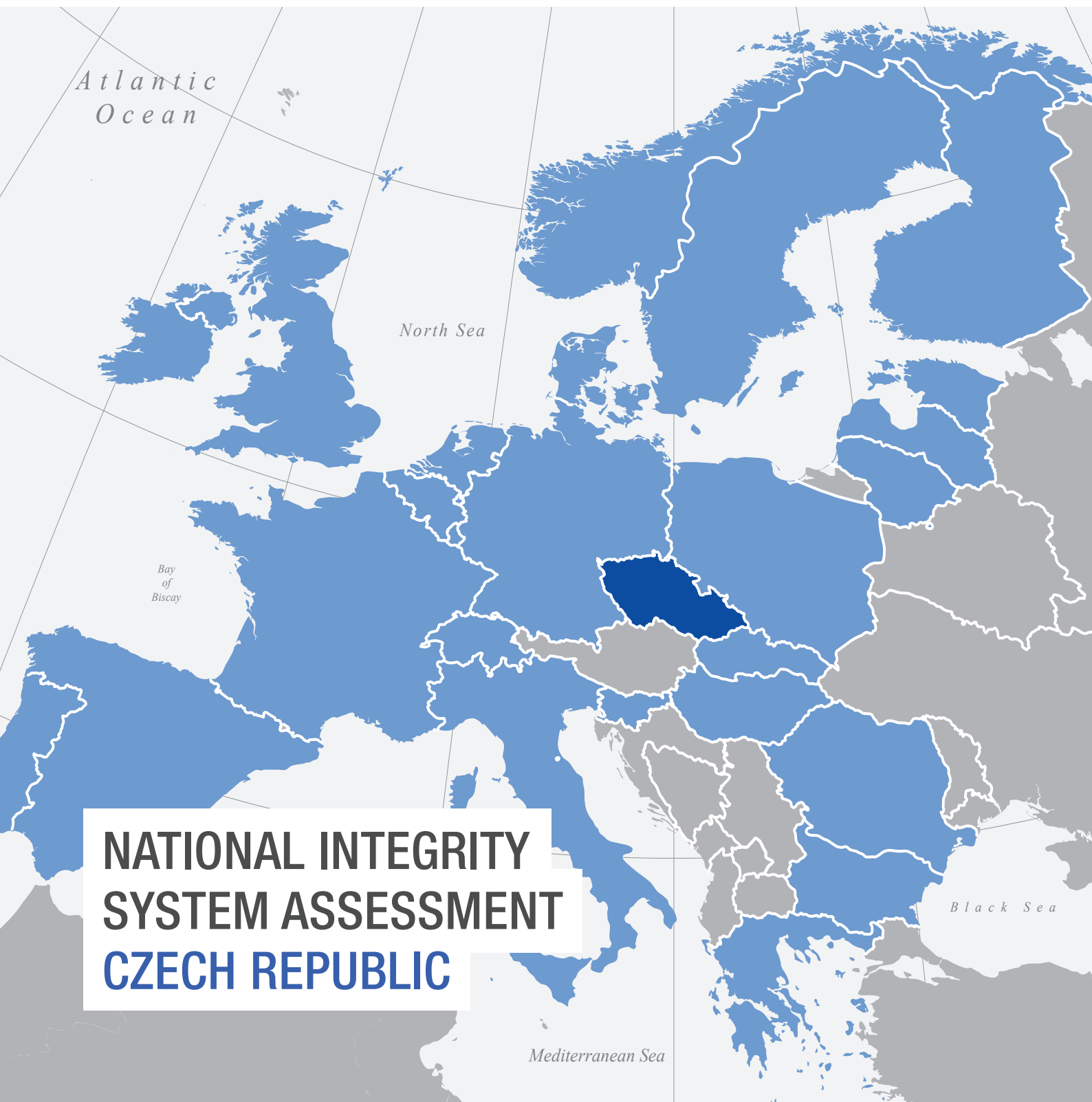




TRANSPARENCY
INTERNATIONAL

Česká
republika



NATIONAL INTEGRITY SYSTEM ASSESSMENT CZECH REPUBLIC

National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

“The term corruption contains a huge misleading potential, it brings out naive consensus, which is often turned against democracy. [...] There is an encoded idea that a system, not people failed. [...] Yet the reason why the quality of life steeply declines is not the fact that something illegal is happening in the system but the fact that what is happening is legal – this is the real problem.”¹

Václav Bělohradský

EXECUTIVE SUMMARY

The objective of corrupt behaviour is to achieve an unjustified advantage, in most cases a financial benefit or other assets. This report assesses the National Integrity System (NIS), i.e. the public institutions and other actors (pillars of the system), from a viewpoint of their resistance to corruption and their ability to limit corrupt behaviour of others. The first key finding of this report is that there are three places in the system in which the “corrupters” are primarily interested:

- places where decisions concerning direct financial or other benefits are made;
- places where decisions are made that allow to conceal an unjustified advantage;
- places where the rules determining which benefits are (or are not) justified are decided.

For simplification purposes we will refer to all such places as “money flows” for they all may serve as a source of private gain at the expense of public interest. We will use them as our interpretation framework for the outcomes of the NIS report.

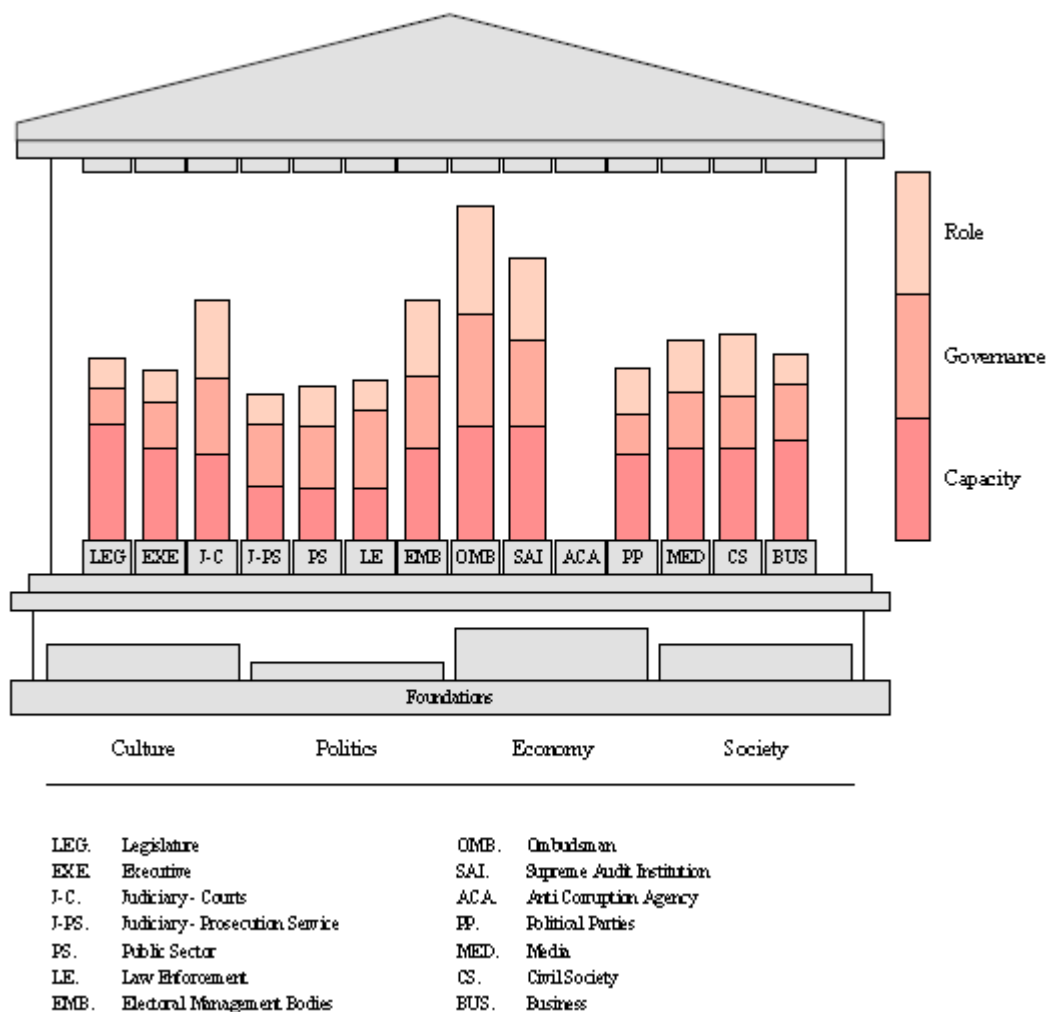
The picture that we get from the assessment of the Czech Republic’s National Integrity System consists of 14 pillars on the national level (“Judiciary” is represented by two pillars

¹ <http://www.novinky.cz/kultura/salon/233163-vaclav-belohradsky-korupce-jako-filosoficky-problem.html>



as the courts and prosecution service were assessed separately).² Figure 2.1 illustrates to what extent the individual pillars support the system's stability. The scores assigned to each pillar in terms of its capacity, governance and role in the system represent a certain generalisation of qualitative assessment provided in the chapters devoted to individual pillars.

Figure 2.1 Pillars of the Czech Republic's National Integrity System



The mere fact that the weakest NIS pillars are public sector, law enforcement and prosecution service (each pillar scored about 40% of the imaginary ideal result), the strongest are ombudsman and supreme audit institution (90% and 76%, respectively) and the remaining pillars oscillate around 56%, raises two major questions:

² The NIS report does not include the level of local self-government as well as some other areas of public life, e.g. the entire sector of public services such as education and healthcare, the army, or the role of the Czech National Bank and financial sector. For more details on the limitations of the report see the chapter *About the NIS Assessment*.

1. What is the inner dynamics of the system that presents this cheerless picture?
2. How can the dynamics be changed?

In this chapter we will focus on the two questions, without ambition to provide the complete and exhaustive answers.

NIS pillars from the perspective of “money flows”

A concise answer to the first question would be that the inner dynamics of the Czech Republic’s National Integrity System is dominated by the efforts to control or use (or abuse, for private gain) all the key “money flows”. It may seem rather perverse to consider democratic institutions and society from the perspective of corruption “money flows”. Yet there are many signals that the Czech Republic is confronted with systemic corruption for which it is quite typical to look at institutions from such perspective. At the same time, many key actors certainly go beyond simple “looking”. Therefore, anyone who wants to actively engage in the efforts to reform the system should be familiar with this perspective.

After looking in more detail at the individual NIS pillars, four basic types of inner dynamics are revealed behind the resulting scores. Thus we can divide the pillars into four categories (Figure 2.2):

Figure 2.2 NIS pillars from the perspective of money flows

Independence combined with lack of accountability	Lack of independence combined with lack of accountability
--	--

Media	
Civil Society	Police (Law Enforcement)
Parliament (Legislature)	Public Sector
Business	Prosecution Service (Judiciary)
Political Parties	Government (Executive)
President (Executive)	
Independence combined with low level of influence	Lack of independence combined with low level of influence
Supreme Audit Institution	
Ombudsman	Electoral Management Bodies
Courts (Judiciary)	

Independence combined with lack of accountability

This category includes political parties, legislature (Parliament), business, media, civil society, and the President. A typical feature for this category is high level of independence of individuals and institutions within the pillars, which is not adequately balanced with such individuals and institutions being held accountable. Their independence is limited by the term of office (in the case of institutions – Parliament, President) or by financial resources (other pillars within this category). It is important to mention that such high level of independence allows individual actors to voluntarily accept accountability despite the fact that the existing system does not force them to do so. Yet the analysis of individual NIS pillars reveals that there is great willingness to abuse their independence. Examples include voluntaristic behaviour of the President,³ enforcement of particular lobbyist interests over the public interest within the political parties and within the Parliament in the process of determining the rules and in selection of candidates for offices, sensationalism and superficiality in the media or involvement of a part of business sector and civil society in non-transparent relationships with public institutions.

All pillars in this category were assigned average scores. They have relatively high capacity (independence and resources) but suffer from serious problems with governance

³ Within the NIS report, the President is assessed together with the Government as one pillar (Executive). However, in respect of the President's high level of independence and unaccountability, which is guaranteed by the Constitution, the President (unlike the Government) falls into this category.

(transparency, accountability and integrity). Despite their capacity, their role within the system is not very significant (in the case of business and civil society pillars), or in some cases they actually have destructive influence (political parties, media, Parliament, President). Except for the President (one person), there are opposing streams within the individual pillars and it is up to each citizen, voter, donor or consumer to learn to differentiate between them.

Lack of independence combined with lack of unaccountability

Pillars in this category (judiciary – prosecution service, public sector, law enforcement, and the Government) scored the lowest in the overall assessment. All these institutions do not fulfil their roles in anti-corruption efforts. Moreover, they often do not have sufficient capacity in other areas of activities in terms of independence and stability. The individuals working in these institutions are exposed to unwarranted pressure without adequate protection, which results in several undesirable outcomes: either they leave their jobs quite soon⁴ or become passive if they stay, or they become more or less actively involved in the system that supports clientelism and corrupt practices. All four institutions are characterised not only by actual lack of accountability of individuals but also by a low level of transparency and predictability of their decisions as well as by their very low willingness to explain the decisions concerning both internal governance issues and their external relationships.

The important fact is that the generalisation described above does not apply in a blanket manner. There are areas within public sector, law enforcement, prosecution service, and the Government, where the above dynamics does not manifest itself – and perhaps it does not even exist there. Yet such dynamics is typical for the places that may serve as “money flows”, and there are many such places, considering that the public sector and the Government directly manage the biggest part of the state budget and state property and administer the EU subsidies, and that without active involvement of the police (law enforcement pillar) and prosecution service it is impossible to penalise corruption offences that – as many indications suggest – occur in these areas.

It is also important to keep in mind that while “money flows” are massively abused for private purposes, no formal rules are being broken – this applies to all relevant areas, from

⁴ High levels of staff-turnover are also typical for these pillars.

appointments to positions to public contracting, management of subsidies, and the sales of property. The individuals who make such decisions are under current system required to show a high degree of loyalty outside the official structures, and any breach of such loyalty can be easily sanctioned by removal from their office. The only difference is that such removal from office is usually much less of an existential risk for a member of the Government than for a public servant, policeman, or public prosecutor. The situation of policemen and public servants is made even worse by the current system of their remuneration, in which a considerable part of their salary is appraisal-related, i.e. depends solely on the decision of their superior and may be taken away at any time.

It may seem ironic that we include the Government in this category, as it is itself a political body and its members are actually those who exert unwarranted political pressure on and inside the public sector, police and procurement service. Yet in the recent years, Governments change so frequently that they do not have real independence. Perhaps the individual ministers who return to their departments under different Governments enjoy such independence but not the Government as a collective body dependent on the Chamber of Deputies.

Independence combined with low level of influence

The pillars in this category (ombudsman, supreme audit institution, and judiciary – courts) scored the highest overall scores. It is necessary to state at the outset that their high level of independence refers primarily to their unique competencies. Their independence in terms of financial and human resources is limited, especially in the case of the courts, which are fully dependent on the Ministry of Justice, particularly with their budgets. The important fact is that all three institutions essentially fulfil their unique control functions and decision-making powers, yet their influence on the overall strength of the Czech Republic's National Integrity System is relatively small. The same applies to their influence on decisions concerning the “money flows” – it is small and limited.

The ombudsman (the highest-scoring pillar) and the supreme audit institution have no executive power and cannot properly function without cooperation of other institutions to which they address their recommendations. The same applies to the courts, although in more moderate form. Despite the fact that individual court decisions are binding and must be executed, the highest judicial institutions in the country are repeatedly confronted with



situations when to their interpretation of the law, which would require other institutions to be more transparent, accountable and predictable in their decision-making, the Government and the Parliament react with introduction of such changes in the rules that allow them to get around the interpretation or – at least – violate it without punishment. In the area of criminal law, the courts are fully dependent on the activities of the police and prosecution service.

The key feature that differentiates pillars in this category from those included in the “independent and unaccountable” category is their high level of transparency that often goes beyond the requirements stated by the law, and (to a certain extent) also accountability and integrity of individuals working in relevant institutions. Also the levels of public trust in these institutions are relatively high.

Lack of independence combined with low level of influence

This category, which comprises electoral management bodies, resulted from the NIS report due to the fact that the Czech Republic does not have any independent body for ensuring the integrity of elections, including regulation of election campaigns. The elections are administered collectively by various public sector institutions and local self-government bodies, which nevertheless do not fall into the category of “dependent and unaccountable”. Election processes are run in a professional and transparent way and election results are not contested. So it can be said that electoral management bodies, like the ombudsman and supreme audit institution, fulfil their duties and limited competences in a responsible way, despite the fact that they are mostly a part of public sector and, as such, dependent on political institutions.

From the perspective of “money flows”, this NIS pillar functions quite well as it is not in the spotlight. There are no lucrative offices to be held, no decisions concerning huge investments, and no competences in relation to other pillars. All indications suggest that some other areas of public sector, which are not covered by this report, are in a similar position.

Systemic weaknesses as a potential for change



Now let us discuss the second question. What are the possibilities to change a system, the inner dynamics of which is dominated by the efforts to control or use (abuse) the “money flows”? A concise answer is that there are many possibilities, if only there was enough willingness. The NIS report reveals a number of systemic weaknesses that can be identified across the pillars and that provide extensive potential for change.

Access to information and transparency

The NIS report clearly shows that the decisive factor in public access to information is not so much their division on public and non-public according to official criteria but rather differentiation between “cheap” and “expensive” information, according to their sensitivity.⁵ “Expensive”, and therefore unavailable, are – within the public sector – detailed information concerning financial management of institutions and remuneration of individuals, information on exercise of control and use of sanctions, or data/materials on which the important decisions are based. Similarly inaccessible are also information concerning ownership structures and other key relationships within the private entities. The only difference is probably that non-transparent practices in the private sector are partly caused by violations of existing rules (e.g. obligation to publish financial statements and annual reports) and partly by insufficient regulation (e.g. use of bearer shares or non-existent register of individuals authorised to act on behalf of civic societies). In the public sector, the situation is more delicate, due to the existence of the act on free access to information. It is almost always illegal not to provide information on request, yet many times it is enough simply not to publish the information to keep it secret. “Cheap” information category includes all other data that are available – in ever-greater amount and often even in user-friendly format – on the institutions’ websites or in publicly accessible databases. This applies especially to the areas in which the public sector acts as a provider of services.

Upon closer examination we find out that the dividing line between “expensive” and “cheap” information lies where the citizen becomes, instead of a passive consumer of products delivered by public authorities or services provided by private entities, someone who could actively participate in internal processes of such public or private entities – if only by being allowed to look inside them. At the same time, the areas in which the

⁵ We are grateful to Oldřich Kužílek for this illustrative division of information.



information is “expensive”, conspicuously correlate with such places in the system where the “money flows” are being abused. All major corruption cases provide perfect examples: the citizens learn relevant information about their investigation not from the prosecution service or the police but from unofficial leaks of such information to the media. From the viewpoint of prosecution service and the police, it is clearly a wasted opportunity to strengthen their independence and gain more public trust. From the viewpoint of individuals inside the institutions, who are not acting in the public interest, this is a case of “expensive” information and the fact that it is not publicly available can be exploited (information may be sold, exchanged, etc.).⁶

Law and practice

The disparity between law and practice can be detected across all the pillars and individual indicators. With a few exceptions (transparency of the courts and the legislature, resources of the judiciary, independence of the ombudsman), the practice gets the same or worse scores than the legal position. This indicates direct violation of the rules as well as deviation from the principles that should be followed by the institutions within the existing rules. We have already mentioned the example of institutional unwillingness to provide some information unless someone makes a request, which has fatal consequences for the system but in most cases it does not constitute a direct violation of the obligation to make information available. Another common example, with the same destructive effect, is selective application (or non-application) of certain rules which may negate their original purpose. A typical example of such approach is selectiveness in holding individuals accountable within public sector, police and prosecution service, which creates a system that does not support integrity of individuals but rather their loyalty to superiors.

The analysis of law and practice across the pillars reveals one major weakness in the Czech Republic’s National Integrity System: its sanction and control mechanisms. There are three reasons for this weakness being of a vital importance:

1. In many cases, no such mechanisms exist.
2. Sometimes they exist but are not being used.

⁶ Such situation (the institution officially keeps silent while the information leaks) is specific in that it allows certain individuals benefit both from (official) unavailability of the information and from its (unofficial) publication.



3. In many cases, the mechanisms exist and are used, but on a selective basis. This scenario has probably the most destructive impact on the overall integrity of the system.

In this chapter as well as in the assessments of individual pillars we draw attention to cases of indirect violation of the rules or of their abuse. It is not easy to prevent such practices. In any efforts to reform the system it is necessary to consider the level of discretion that will be granted – and to whom.

Another general finding, which is rather trivial but still can be used in any steps toward reform, is the fact that in practice especially the rules that are overcomplicated do not work well.

Conflicts of interest

Acting with a conflict of interest is inherent to virtually any corrupt behaviour. The NIS report clearly reveals the loopholes and inefficiency of the existing system in the Czech Republic that should prevent conflict of interest. Formally, it is prohibited to act with a conflict of interest and such conduct may be punishable. There are provisions that set up limits for simultaneous performance of some offices or activities. Also, the obligation to submit declaration of assets applies to a broad range of public officials.

In practice, however, it is difficult to assess integrity of individuals and prove or rule out their conflict of interest or private gain. One reason is the existence of anonymous ownership structures in both business and media. Another reason is the fact that asset declarations only register an increase in the person's assets and there are no records on the initial situation. Also, there is no regulation concerning the “revolving door” practices. In many other questionable cases, the conflicts of interest are not illegal and may only be criticized at the ethical level, and that is only possible if the public obtains the necessary information – which is not easy, given the fact that such incriminating information certainly falls within the “expensive” category.

Nevertheless, we have recently witnessed some positive results on this level of defence. The 2010 parliamentary elections offered a visible example, when the voters massively used preferential votes as a “sanction” against politicians who lost their trust. Still, it can be



argued that the sanction in this case expressed rather the voters' general dissatisfaction than the way to hold individuals accountable for concrete cases of misconduct.

Accountability

The NIS report clearly shows that accountability is rather a cultural issue, not legal, and that such culture is still at the embryo stage in the Czech Republic. We have an understanding of the concept of liability, and we are able to describe it in our legal regulations – yet we are not willing to implement it on a systemic basis. The concept of responsibility, i.e. responsibility for performance of the task entrusted to a person, for the quality and manner of its performance, is much less clear to us. We are unable to describe such responsibility in our laws, let alone assess it and draw the consequences when it is not fulfilled. We are able to keep accounts but unable to be held accountable.

To provide information about one's activities is commendable and important but it is not necessarily the key aspect of being accountable. Accountability is based on the idea that there exist visions or at least long-term strategies, which are publicly available and which determine decision-making in specific matters. Thus accountability involves also predictability in decision-making and the ability to explain how the decisions were arrived at. The NIS report reveals that neither of these aspects is common in the Czech Republic, and only a few people actually realize that we could demand it from our politicians and public officials. Ironically, our focus on liability and search for someone who could be blamed push this level of thinking further aside.

Financial resources and economic dependence

Another weakness that is traceable across the NIS study is various forms of economic dependence, which have a negative impact on National Integrity System. Yet the study reveals that most pillars have sufficient or at least relatively sufficient financial resources to effectively carry out their duties. How can this be explained? One possible explanation is that the state expenditures are, in the long term, set on wasting the resources. At the same time, financial management does not follow any long-term strategy and is unpredictable, thus enabling formation of dependent relationships on various levels and making it possible to impose sanctions for disloyal behaviour of individuals and institutions. The same can be



said about the use of subsidies, incentives or financial sanctions for violation of the rules if they are applied against private entities on a selective basis.

The NIS report does not consider impacts of the economic crisis and cost-saving measures adopted by the Government in 2010 as such impacts are only becoming evident in 2011 and in discussion of the 2012 budget. The cuts to public expenditure may actually have a positive effect. The cases of obvious mismanagement of funds related to the abuse of “money flows” will become more visible. Moreover, it is to be hoped that all those who kept silent until now will not tolerate such practices any longer.

Conclusion

There are many weaknesses in the Czech Republic’s National Integrity System. The first step in any effort to strengthen the system must be to clearly understand the roles of individual actors and differentiate between the actions that weaken the system and those that strengthen it. At the same time, it is necessary to pay close attention to behaviour of individuals as even within the existing legal framework, with all its loopholes and problems, it is possible to behave in a predictable and transparent way.

This chapter and the entire NIS report provide a number of concrete suggestions to initiate changes that could make the system stronger. The reforms must also have some logical succession to bring about the desired effect. For example, any effort to strengthen the independence of institutions that are not accountable and transparent in their decision-making is foolish at best and, at worst, a cold political calculation. The real challenge for anyone who wants to get actively involved in reform process is to be able to differentiate between genuine reforms and introduction of new weaknesses and “money flows”. As the authors of the report, we hope that it may offer a useful guideline in this respect.



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co.

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

LEGISLATURE

- *All too often, adopted acts of law and other decisions made by the legislature ignore the promises made during the election campaign as well as the views of the experts and public opinion.*
- *Parliamentary procedures do not endorse responsibility and accountability of the legislature and its individual members.*

LEGISLATURE			
Overall Pillar Score		49	/100
	Indicator	Law	Practice
Capacity 94 /100	Resources	100	100
	Independence	100	75
Governance 29 /100	Transparency	25	50
	Accountability	25	25
	Integrity	25	25
Role 25 /100	Executive Oversight	25	
	Anti-corruption reforms	25	

Summary

The legislature (Parliament) has an exclusive position within the national integrity system of the Czech Republic as it approves and often also designs the rules which must then be followed by it and by all other actors. This exclusive capacity goes hand in hand with a high level of independence, which is not compensated for with clear rules of governance, transparency and other restrictions that would ensure or at least endorse responsible decision-making of the legislature and its individual members. In consequence, features that are typical for internal processes within political parties – quasi-democratic decision-making, clientelism and pursuing of personal interests (see *Political Parties*) – are transferred to the legislative level. This has a serious impact on the quality of adopted laws which



are often passed in a shape that is only a caricature of the original intention, and on the way in which the legislature exercises its power to appoint key officials. Nominations to key positions in independent institutions (e.g. Supreme Audit Office) are motivated by party interests rather than by consideration of professional expertise of the candidates.

It is not only the legislature who is to blame for the fact that the Czech Republic still lacks some basic legal regulations, for example provisions that would ensure clear control mechanisms and accountability of public administration or transparency in political party financing, as the major part of the legislative process takes place at the level of public sector and the Government. However, the lack of political will at the level of the legislature and namely the Chamber of Deputies is quite evident and one of its consequences is ever-growing citizens' mistrust of politicians. An example of a situation which is absurd and at the same time characteristic of the rule of law in the Czech Republic is the fact that citizens do not have free-of-charge access to the outcomes of the legislature's activity, i.e. to valid legislation, and the Parliament – the only institution at the national level, which is directly elected by the citizens – tolerates this situation.

The table above presents the overall assessment of the legislature in terms of capacity, governance and role in the national integrity system of the Czech Republic as well as the individual indicator scores. The remainder of the chapter presents qualitative assessments for each indicator.

Structure and Organisation

The Parliament of the Czech Republic consists of two chambers. The Chamber of Deputies (lower house) has 200 members who are elected every 4 years, according to principle of proportional representation. The Senate (upper house) is composed of 81 senators, who are elected to a 6-year term of office, according to the principle of majority rule. The draft bills may be presented by the Government, individual Deputies, group of Deputies, the Senate or representative bodies of regions (self-governing territorial units). The bills are first considered by the Chamber of Deputies and subsequently by the Senate. If the Senate rejects a bill passed by the Chamber of Deputies, the Chamber may uphold the bill and pass it against the will of the Senate by an absolute majority of all Deputies (101 members). This does not apply to constitutional laws, important international treaties and electoral laws, which must always be passed by both chambers and by qualified majority. The Chamber of Deputies, without any involvement of the Senate, approves the state budget and the state closing account. The President of the Republic also plays an important role in the legislative process as he has the right not to sign a bill passed by the Parliament and return it to the Chamber of Deputies. The President's veto can be overturned and the bill may be approved by an absolute majority of all Deputies.



Besides its legislative powers, the Parliament has a number of other authorities that have major impact on functioning of other state institutions. The Chamber of Deputies plays a role in the appointment process for and holds to account the Government, management of the Supreme Audit Office, Ombudsman, and the Broadcasting Councils (in more details, see relevant chapters/pillars).

The Senate approves nominations for the Constitutional Court judges. Both chambers, at their joint meeting, elect the President.

Resources (law)

Score: 0 25 50 75 100

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

As the legislature determines its own budget, we can assume that its resources are sufficient. Both chambers prepare their own budgets independent of the Ministry of Finance or the Government and the Chamber of Deputies approves the final draft of the state budget.¹

Base salary of legislators is derived from the average salary in non-business sector for the year before last. The coefficient for the year 2010 was determined as 2.7 for a Deputy/Senator, 5.15 for Vice-Chairmen and 7.25 for Chairmen of both chambers. The coefficient increases if a legislator holds a position in committees, commissions or parliamentary clubs. Legislators are also provided with allowances for representation, accommodation and meals, which exceed 50% of the base salary. All legislators are also entitled to accommodation in Prague (provided they do not live in Prague) and to an adequately equipped office in their constituency.²

As regards human resources, the Chairman of the Chamber of Deputies/Senate has the authority to appoint and remove the head of the Office of the Chamber of Deputies/Senate. The Office provides professional, organisational and technical support for the activities carried out by the relevant chamber. Organisational structure and tasks of the Office are decided by the relevant Steering Committee.³

¹ Constitution, Article 42, RozpZ, s. 8 par. 3.

² PlatFunZ, s. 8-10.

³ JedŘPSP, s. 29 and 117; JedŘS, s. 33 and 146.



Resources (practice)**Score: 0 25 50 75 100*****To what extent does the legislature have adequate resources to carry out its duties in practice?***

The legislature has an adequate resource base. This assumption is based on the total amount of funds as well as on the fact that in practice, both parliamentary chambers used less money than their budgets assumed.

Expenditures of the Chamber of Deputies were approximately CZK 1120 million in 2010 (less than 95% of the budget). The Chamber employed 342 persons whose average salary was CZK 41,800. Also the Senate ended the year 2010 with a surplus, using CZK 485 million for its activities, i.e. less than 92% of its proposed budget. The Office of the Senate had 197 employees whose average salary was CZK 40,500.⁴ Both budgets cover expenditures for technical equipment, including the maintenance cost of the Parliament's buildings. If we take the above numbers, the average cost per one legislator per year is 5.7 million.

Both parliamentary chambers use services of the Parliamentary Institute which employs 26 specialists and also hires external experts. The Institute serves as a scientific, research and training centre for both chambers, their committees and other sub-bodies, and for individual Deputies and Senators. The Institute annually prepares 600-700 reports, expert opinions related to the law and answers to specific questions. About one third of such documents are in relation to the EU law.⁵ As concerns direct involvement in legislation process, the Legislative Department of the Office of the Chamber of Deputies prepares specific proposals and opinions to government proposals for individual Deputies or parliamentary committees.⁶ Both chambers also use the Parliamentary Library, which is – together with the Parliamentary Institute – officially a part of the Office of the Chamber of Deputies.⁷

Independence (law)**Score: 0 25 50 75 100*****To what extent is the legislature independent and free from subordination to external actors by law?***

The Parliament represents the people who are – according to the Constitution – the source of all power in the state, so it is logical that both parliamentary chambers and their individual members enjoy high level of independence from other institutions.

The Chamber of Deputies may be dissolved by the President in certain situations, specified by the Constitution, when the Chamber fails to fulfil its functions. For example, the Chamber may be

⁴ *Návrh státního závěrečného účtu za rok 2010*, sešit H, p. 5-8;

http://www.mfcr.cz/cps/rde/xbcr/mfcr/SZU_2010_H-text.pdf.

⁵ *Ročenka Parlamentního institutu 2010*, Parlamentní institut, Praha, 2010, p. 7, 28-29, 31.

⁶ Interview with a former employee of the Office of the Chamber of Deputies. At present, the Legislative Department employs about 20 lawyers.

⁷ Parliamentary Library website; <http://www.psp.cz/kps/knih/>.



dissolved if it fails to vote confidence in the government formed by the Prime Minister appointed on the proposal of the Chairman of the Chamber of Deputies or if the Chamber has not reached a quorum for a period longer than three months. In September 2009, a constitutional amendment allowing parliamentarians to dissolve the Chamber of Deputies and call early elections was introduced. The Parliament approved this amendment only the day after the Constitutional Court had invalidated the “one-off” law setting early parliamentary elections.⁸

The Senate works continually and it takes over the function of the Chamber of Deputies in the period when the Chamber is dissolved. The Senate is authorised to adopt temporary legal measures regarding matters which cannot be delayed. Composition of the Senate changes continually – one third of Senators is newly elected every two years.⁹

Independence of Deputies and Senators in a vote is ensured by so-called “free mandate”, i.e. the right and duty to exercise their office in person and in conformity with the oath they have taken, and in doing so, not being bound by any instructions.¹⁰ An extensive immunity is another aspect of their independence. No Deputy or Senator may be disciplined for their voting and may not be prosecuted for statements made in the chambers or their bodies. For such statements or any transgressions committed outside the sessions of the chambers, Deputies and Senators are only subject to the disciplinary jurisdiction of the respective chamber. Legislators may not be criminally prosecuted without the consent of the chamber of which they are members. If the respective chamber denies its consent, criminal prosecution is excluded forever.¹¹

Independence and special position of the Parliament follow from a number of other provisions. Both chambers control the election of its chairmen and vice-chairmen, form committees and commissions and convene their sessions. The Parliament as a body also approves the rules of procedure for both chambers, which have the status of law and basically represent the only regulation of the chambers’ actions and functioning.

⁸ Compare the ruling of the Constitutional Court Pl.ÚS 27/09 of 10 September 2009 and amendment to the Constitution introduced by the Act No. 319/2009 Coll. of 11 September 2009 (for more details on the legislative process, see Parliamentary Print No. 16, 5th election period; <http://www.psp.cz/sqw/historie.sqw?o=5&t=16>). In a TV program *Hydepark* on 6 April 2011, the Constitutional Court Chairman Pavel Rychetský implied that the original action of the Chamber of Deputies (“one-off” law intended to enable the dissolution of the Chamber) was motivated mainly by the fact that if the Deputies had followed a standard procedure, they would have lost three monthly salaries.

⁹ Constitution, Articles 16, 33, 35.

¹⁰ Constitution, Articles 23 and 26.

¹¹ Constitution, Article 27. Such an extensive scope of parliamentary immunity is subject of repeated criticism (e.g. by GRECO: Evaluation Report on the Czech Republic, First evaluation round, GRECO, Strasbourg, 2002; [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1\(2002\)11_CzechRepublic_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2002)11_CzechRepublic_EN.pdf)) and also subject of repeated proposals to restrict the immunity (see *Anti-corruption reforms*).



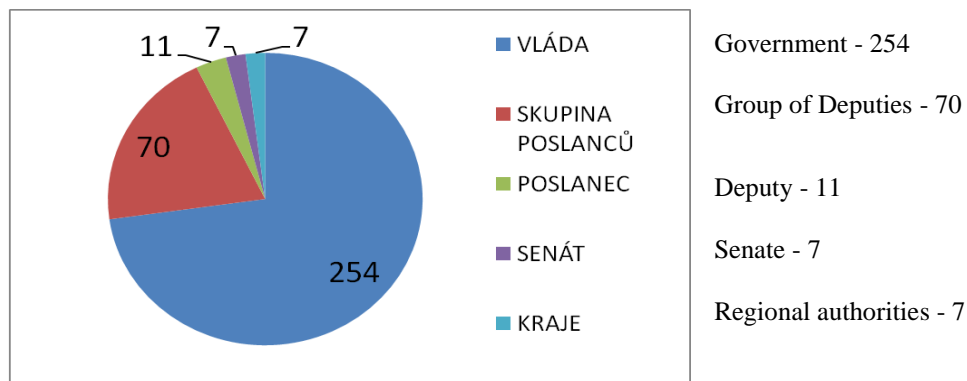
Independence (practice)

Score: 0 25 50 75 100

To what extent is the legislature free from subordination to external actors in practice?

In practice, the independence of legislators is restricted mainly by a strong influence of political parties and, to a certain extent, also by dependence on the government which has at its disposal an extensive administrative apparatus of individual ministries and thus plays a dominant role in preparation of new legislation.

Figure 6.1.1 Number of draft bills in the period 2006–2010 according to where they originated



In practice, the most active role in initiating new legislation is played by the government. Statistical data for the previous election period (2006–2010) reveal that out of the total number of 349 passed bills, almost three quarters (254) originated from the government. About one quarter of bills (70) originated from a group of deputies (see Figure 6.1.1). At the same time, the proposals submitted by the government stand a better chance of becoming law: 80% of bills submitted by the government were passed, compared to 33% (81 out of 246) of bills submitted by a group of deputies or by an individual deputy.¹²

Also the independence of individual members of legislature is restricted by their party loyalty. An extreme example is the party Věci veřejné (VV, “Public Affairs”) whose candidates for the Chamber of Deputies had to sign an agreement that they would vote – for the entire period of their office – in accordance with the party policy and in case of violation of this obligation (for example by exercising the deputy’s constitutional right to vote to the best of his/her knowledge and belief), they would pay the fine of CZK 7 million, which exceeds four annual deputy salaries.¹³ According to Jan Kysela of the Law Faculty in Prague, such contract is in contradiction to the Czech Constitution and therefore is not

¹² Author’s own calculation based on the data available from the Chamber of Deputies’ website.

¹³ VV - Agreement with candidates, Articles III and IV.;
http://data.idnes.cz/soubory/domaci/A100526_KLU_SMLOUVAVV.PDF.



legally enforceable.¹⁴ However, the party loyalty is fairly strong in all parliamentary parties. This was confirmed by an analysis of voting behaviour in the previous election period. Its results revealed that only 26 deputies (out of 200) had “rebelled” (i.e. voted in contradiction with their party policy) in more than 5% of all votes. Of these 26, ten were so-called “deserters”, i.e. deputies who left the parliamentary clubs of their political parties during their term of office.¹⁵ Under normal circumstances, party loyalty guarantees stability and is desirable as it helps the legislators to reach solutions that would be generally acceptable. Yet within the Czech political environment, party loyalty is used to enforce a policy of “zero tolerance” between the opposition and the government coalition, disregarding the contents of proposals being discussed.¹⁶ Figure 6.1.2 illustrates the strength of party loyalty – concurrence of voting behaviour of the opposition deputies (on the left) and coalition deputies (on the right).¹⁷

Figure 6.1.2 Concurrence of voting behaviour in newly elected Chamber of Deputies in 2010



In reality, undesirable (blind) party loyalty is often combined with too strong connection of individual legislators to regional politics. Provisions regulating incompatibility of offices do not apply to the office of a legislator and a position in regional authority (see *Integrity*) – it is actually quite common combination and it has a significant impact on the debate concerning nation-wide issues which are subsequently marginalized.¹⁸

¹⁴ http://zpravy.idnes.cz/john-si-veckare-jisti-smlouvou-kdo-prebehne-zaplaci-sedm-milionu-ph6-domaci.aspx?c=A100526_203232_domaci_vel.

¹⁵ Analysis of the initiative KohoVolit.eu. *Odchytky v hlasování vůči vlastní straně ve volebním období 2006-2010*. <http://cs.kohovolit.eu/cz/psp/analysis/rebel>.

¹⁶ According to Pavel Rychetský, it is a duty of a politician to seek to establish a common ground and zero-tolerance is a crime in politics. Zero-tolerance approach has found its way into the Czech politics after the split of Czechoslovakia in 1993. See <http://www.profit.cz/clanek/pavel-rychetsky-existuje-li-buh-je-to-zlocinec.aspx>.

¹⁷ Analysis of the initiative KohoVolit.eu. *Shoda v hlasování poslanců nově zvolené Poslanecké sněmovny v roce 2010*. <http://cs.kohovolit.eu/cz/psp/analysis/analyza-hlasovani-2010>.

¹⁸ Interview with David Ondráčka, director of Transparency International-CzechRepublic, on 20 July 2011.



Transparency (law)

Score: 0 25 50 75 100

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

The provisions to ensure access of the public to information on the activities of the legislature are not comprehensive. As is the case with the entire public sector, there is a significant difference between information that must be mandatorily made public (such information is scarce) and information to which the public has access by law (this applies to most information). In the latter case, each institution may decide for itself whether it will actively publish such information or only provide it on request, or whether it will use obstructive tactics and in reality will deny the public access to such information.

There are no restrictions concerning publication of speeches of legislators, with the exception of non-public meetings. In general, the sessions of the Chamber of Deputies and meetings of its committees are open to the public but the Chamber or a committee may resolve that its meeting will be closed to the public. Sessions of the Chamber where the state budget, state closing accounts and legislation on taxes and fees are being debated must be always open to the public. By contrast, the meetings of the Mandate and Immunity Committee, which has the authority to conduct disciplinary proceedings against the Deputies, are always closed to the public (unless the legislators decide otherwise). The same applies to the meetings of the Steering Committee which, among others, prepares the draft budget of the Chamber, decides on the sending of delegations and individual Deputies abroad, and discusses the expenditures of individual parliamentary clubs. Number of members of the public may not exceed the amount of seats reserved for guests, the public and media representatives. The law explicitly states the obligation to provide the public and the media with voting results. As concerns the documents discussed, sound recording, video recording and stenographic records of the meetings and the minutes of the meetings, the law states that they must be made but does not require them to be made public.¹⁹ However, the public may request such information based on the Free Access to Information Act, which also stipulates an obligation to actively publicize some information (for more details on this Act and its application see *Public Sector/Transparency*).

Individual legislators are not subject to the Free Access to Information Act but they have an obligation to make public their asset declarations according to the Act on Conflict of Interest (see *Integrity*). In this context, it is worth mentioning the code of conduct for legislators elected from the ranks of the Green Party. The code requires them to adhere to the Free Access to Information Act and provide the

¹⁹ JedŘPS, s. 10, 37, 45, 52, 56, 76 par. 3.



public with all information pertaining to execution of their office with the exception of classified information specified by law.²⁰

A separate and rather sorrowful issue is the public access to valid legal regulations. By law, it is not the Parliament but the Ministry of Interior who is responsible for publication of adopted legislation. The laws, regulations and findings of the Constitutional Court are published in the Collection of Laws. The authentic wording of the Collection is its printed version published by the Ministry of Interior and the text is also available on-line.²¹ The main problem is the fact that in case of amendments, the public has access only to the changes and no institution has an obligation to publish an updated valid version of the act, including newly adopted changes.²² It is virtually impossible to put together the current wording of an act which has been frequently amended.²³ In consequence, the public does not have free-of-charge access to valid legislation and depends either on more or less comprehensive compilation of laws offered by individual institutions or on paid databases. What makes this a paradoxical situation is the fact that the Rules of Procedure of the Chamber of Deputies require that any proposed amendment must be supplied with the text of the relevant act of law, in which all proposed changes and additions are marked out.²⁴ So when the Deputies consider the proposal, they work with a document in such a user-friendly format but the Parliament officially adopts and subsequently publishes only the individual changes.²⁵

Transparency (practice)

Score: 0 25 50 75 100

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

In practice, information on the activities of the legislature is available to a greater extent that would seem possible, based on the evaluation of legal provisions. The single major problem thus is the fact that the citizens do not have a free access to valid legislation while they have a duty to abide by that legislation. As concerns some other information, it may be available – but either it is only available in a format that is not user-friendly, or it is only provided on request. On the website of the Chamber of

²⁰ Code of conduct of the Green Party Deputy, Articles 10-12.

²¹ Collection, s. 1 and 12; <http://aplikace.mvcr.cz/sbirka-zakonu/>.

²² The former Ministry of Informatics (which existed in the period 2003-2007) tried to introduce such a system when it bought a public on-line access to one of the commercial databases. This service is still available at <http://portal.gov.cz/wps/portal/s.155/699>. However, the reader can only view individual sections separately, so it is not possible to view, print or search the entire text of the law. Interview with Oldřich Kužílek.

²³ For example, the Civil Code has been amended eight times since 2009; the Income Tax Act has been amended 14 times and the Civil Procedure Code 15 times.

²⁴ JedŘPS, s. 86 par. 5.

²⁵ To illustrate the point: publicly available text of an amendment may look as follows: “In s. 14 par. 2, the words “s. 16 par. 3” shall be replaced by “s. 16 par. 2”. In s. 16, paragraph 2 shall be deleted. The present paragraph 3 shall become paragraph 2.”, or: “In s. 137 par. 2, the number ‘15’ shall be replaced by ‘30’.” The above quotations are from the amendment to the Act No. 69/2011 Coll.



Deputies, the documents to be discussed and the agenda of the sessions are published in advance. The verbatim records of the Chamber's sessions as well as sound and video recordings are available, and the sessions are broadcasted by the Czech TV during the late night hours. Also the voting records (how the individual Deputies voted and who was present at what meeting) are available, yet any analytical information (e.g. which legislators were present at a specific vote) are only available from independent sources (see *Independence* and *Accountability*). At the Chamber of Deputies website, the information of the Parliamentary Institute is also available, offering for example selected reports that were commissioned by individual legislators.²⁶

In compliance with the Free Access to Information Act, both parliamentary chambers publish a report on provision of information to the public. The report of the Senate includes all requests received by this institution. In 2010, the Senate's Office registered 1617 requests for information, of which only 11 specifically referred to the Free Access to Information Act. Most inquiries were concerned with the current political issues and were forwarded to individual Senators. The Office primarily handles questions concerning arrangement of visits to the historic premises of the Senate building and various cultural events.²⁷ The report of the Chamber of Deputies states that it registered 8422 requests for information in 2010 (of which 7948 were telephone inquiries). According to the report, written inquiries were concerned mainly with the legislative process and with the salaries, allowances and expenditures of legislators. According to a former employee, the Office has a similar policy as the entire public sector – it differentiates between “neutral” information which is provided freely, and “politically sensitive” information, which includes for example information on expenditures of individual legislators. Such data are mainly requested by the journalists and the Office's internal unofficial policy is not to provide such information.²⁸ Implementation of this policy is confirmed by the fact that neither the Chamber of Deputies, nor the Senate publicize information that was already disclosed on someone's request even though the law requires them to do so. Furthermore, neither chamber complies with the requirements on amount and structure of information that must be mandatorily made public although the Senate at least includes most of such information in its annual reports.²⁹

Public access to asset declarations required by the Conflict of Interest Act (see *Integrity*) and financial reports of political parties is complicated. Both types of documents are archived in the Office of the Chamber of Deputies. Asset declarations can be accessed on-line only with a special access code which the applicant receives on request. In practice, this complicated method of public oversight is

²⁶ <http://www.psp.cz/sqw/hp.sqw?k=40>.

²⁷ *Výroční zpráva Senátu o podávání informací za rok 2010*;
http://www.senat.cz/informace/zadosti/vyrzpr10.php?ke_dni=18.06.2011&O=8.

²⁸ Interview with a former employee of the Office of the Chamber of Deputies.

²⁹ Author's own research and an inquiry sent to the Office of the Chamber of Deputies and the Office of the Senate.



usually only used by the media.³⁰ Financial reports of political parties are not available on-line (see *Political Parties/Transparency*).

Accountability (law)

Score: 0 25 50 75 100

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

From institutional viewpoint, the activities of the legislature are to a certain extent rectified by the Constitutional Court which may invalidate unconstitutional laws. However, this is not exactly a way to hold the legislature accountable. No provisions are in place to ensure that individual members of the legislature be answerable. Thus their accountability to voters and to their own consciousness³¹ remains theoretical. Codes of conduct are non-existent and there is a lack of other rules and regulations that would specify duties of legislators (see *Integrity*), including their duty to report on and be answerable for their actions. While the citizens may contact their elected representative (by mail, e-mail, or in his/her office in the constituency) and they may write petitions, there are no provisions in place to ensure a feedback.³² Not even the voters have much opportunity to hold individual candidates accountable in the elections, due to the major parties' methods of putting together their lists of candidates (for more detail, see *Political Parties/Integrity*).

The Constitutional Court may invalidate the acts of law or their parts which are in conflict with the constitutional law. A direct proposal for the act to be invalidated may be submitted by the President or by a group of no less than 41 Deputies or no less than 17 Senators. In practice, only the President and opposition legislators use this right. Indirectly, any person whose constitutionally guaranteed rights were affected by the act in question may demand that the act be invalidated. However, in this case all other available methods of protection (appeal in administrative case, filing an administrative complaint, etc.) must be exhausted first. Such methods can only be tried after the act comes into force and the process may take years.³³

Besides reviewing the contents of adopted laws, the Constitutional Court has been repeatedly invalidating laws adopted in a way that did not comply with the legislative process. In 2007, the Court

³⁰ For example, see information published on server Aktuálně.cz:

<http://aktualne.centrum.cz/grafika/2011/08/08/grafika-kompletni-seznam-jaky-majetek-priznali-pos/?cid=708235>.

³¹ The oath of office of the legislator includes the following sentence: „I swear on my honour that I shall exercise my office in the interest of all the people and to the best of my knowledge and belief“.

³² While the Act on the right of petition establishes an obligation to consider a petition and provide an answer within 30 days, it does not introduce any sanctions for violation of this obligation. The Constitutional Court in its decision I. ÚS 21/94 of 23 June 1994 stated that from the constitutional point of view, it is essential that there exist the right to submit a petition, which is a specific manifestation of freedom of speech, yet that there is no legal claim pertaining to the handling of the petition.

³³ Constitution, Article 87.



banned the practice of so-called “limpets”, i.e. amendments added by the Deputies to a bill which is under consideration by the Chamber of Deputies that have no connection to the debated bill’s subject matter.³⁴ In March 2011, the Court invalidated an act which was approved by the Chamber of Deputies in a single day in the process of so-called “legislative emergency”.³⁵ Under normal circumstances, consideration of draft bills in the Chamber of Deputies takes several months and the process includes three readings and debates in relevant committees and parliamentary clubs, which allows the Deputies to submit their comments. “Legislative emergency” may only be declared by the Chamber of Deputies’ Chairman under exceptional circumstances, when fundamental human rights and liberties or the state’s security are in jeopardy or when the state may suffer considerable economic losses.³⁶

Accountability (practice)

Score: 0 25 50 75 100

To what extent do the legislature and its members report on and answer for their actions in practice?

It clearly follows from the above that the legislators only bear political responsibility for the activities of the legislature. Also, the fact is that the election system (at least in case of elections to the Chamber of Deputies, where there are no individual candidates, only lists of candidates of political parties) primarily encourages loyalty and accountability to political parties. A politician’s future and “career” is chiefly decided by internal processes of political parties. Such processes include selection of candidates and their order on the candidate lists, as well as the practice of “pre-negotiation”³⁷ for other nominations (for positions in the institutions whose management is either appointed or approved/proposed by the legislature). Quite often, politicians get appointed to positions that should be filled by experts without any narrow political connections. This applies especially to various positions in central state institutions (e.g. Board members of the Supreme Audit Office – see *Supreme Audit Institution/Independence*), media councils (see *Media/Independence*) or management positions in the Office for Personal Data Protection (OPDP). For example, the OPDP’s management consists mainly of people who are closely related to individual political parties. Quoting the need to protect sensitive personal data, the OPDP obstructs publicization of information concerning the efficiency of

³⁴ Compare decision Pl.ÚS 77/06 of 15 February 2007.

³⁵ Compare decision of the Constitutional Court Pl.ÚS 55/10 of 1 March 2011, Parliamentary Print No. 155, 6th election period; <http://www.psp.cz/sqw/historie.sqw?o=6&T=155>.

³⁶ JedŘPS, s. 99.

³⁷ Blogger Tomáš Haas nicely summarized the principle of “pre-negotiation” of any important decision: “It should be mentioned that the Chamber of Deputies is no longer a place where the debates would be held. Any issue “debated” by the Chamber must be “pre-negotiated”. To raise an issue that has not been pre-negotiated is scandalous and such behaviour is considered to be a violation of good manners and parliamentary standards. The Chamber is not a place for discussions. It is certainly undesirable to draw attention of the public to discussions concerning any proposed legislation.” See <http://blog.aktualne.centrum.cz/blogy/tomas-haas.php?itemid=13341>.



public administration.³⁸ If we take into account the fact that within individual political parties, personal interests and interests of various lobbyist groups often predominate over the public interest (in more detail, see *Political Parties*), it comes as no surprise to learn that accountability mechanisms tend to follow the same parallel structures. The lack of any direct feedback mechanisms toward the voters and insufficient regulation of conflict of interest (see *Integrity*) make this situation even worse. A certain extent of feedback from voters toward individual politicians may be expressed in the form of preferential votes. In the last elections to the Chamber of Deputies, preferential votes were massively used to express the voters' discontent and 47 deputies got elected from the lowest positions on candidate lists.³⁹ However, the present election system does not allow voters to express "negative preference". Therefore, to remove an unpopular politician from his leading position on the candidate list, large number of voters must give their preferential votes to some other candidate of the same party.⁴⁰

While the above-mentioned decisions of the Constitutional Court concerning "limpets" and other unacceptable legislative practices have precedential value, in practice their application to other cases always depends on whether the President, opposition Deputies or a group of Senators submit a constitutional complaint. For example, the practice of "limpets" is still frequently used by the Chamber of Deputies and there is a general agreement on the opinion that the Deputies overuse their right to submit amendments.⁴¹ According to the analysis prepared by the Parliamentary Institute, the following changes would greatly help stabilize the situation and make the legislative process more transparent: explicit ban on the use of "limpets", restriction of the right to submit amendments (these could be submitted only by a group of Deputies, not by individuals), and the introduction of the rule that the Deputies cannot introduce any factual comments in the second reading, i.e. if there are any amendments, the bill would have to be returned for reconsideration to the relevant committees.⁴² At present, the Deputies do not have to justify their proposed changes which results in a situation when the explanatory report on the relevant bill corresponds with its original wording (in most cases, submitted by the Government) and the amendments supplied by the Deputies remain without appropriate justification even though they fundamentally change the original intention.

³⁸ Compare the article „Tajná mise ÚOOÚ“, *Respekt* 35/2011. The OPDP attracted attention by its recent recommendation to other state authorities to ignore the court's decision which required the public sector to disclose salaries of the officials (for more detail see *Public Sector/Transparency*).

³⁹ <http://hn.ihned.cz/c1-43971730-pavel-saradin-politicky-marketing-iluze-a-cssd>.

⁴⁰ VolParlZ, s. 39. For the results of massive use of preferential votes in the 2010 elections see also *Political Parties/ Interest aggregation and representation*.

⁴¹ Interview with a former employee of the Office of the Chamber of Deputies. See also an evaluation of the students' initiative "Inventura demokracie"; <http://www.inventurademokracie.cz/pilepky>.

⁴² Syllová, J.: *Možnosti zklidnění legislativního procesu v Poslanecké sněmovně a jejich použití v procedurách zahraničních parlamentů*, Parliamentary Institute, publication No. 1.182, 2007; <http://www.psp.cz/kps/pi/PRACE/pi-1-182.pdf>.



Working moral of the legislators is relatively satisfactory, according to their attendance in sessions when the votes are taken. More than half (105) Deputies had attendance record of 80% in 2010 and only 16 Deputies had attendance records of less than 50%.⁴³ The citizens, however, have no comprehensive information on the activities of their elected representatives beyond the data on their attendance at the votes, membership in committees and commissions and initiative in proposing new legislature. For example, the Deputies are very reluctant in providing any information on their trips abroad and quite often they are unable to explain their purpose.⁴⁴ The Chamber of Deputies, Senate and individual legislators do not make public the expenditures of individual members of the legislature for their assistants, offices in their constituencies and experts whose services they hire. The public usually gets such information from the media and only in some questionable cases (see *Integrity*). The Senate, unlike the Chamber of Deputies, publishes at least a summary report on its activities. However, the report includes primarily information on the activities and financial management of the Senate's Office and does not provide information on the activities or expenditures of individual Senators.⁴⁵

Integrity mechanisms (law)

Score: 0 25 50 75 100

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Mechanisms to ensure integrity of legislators are insufficient. While the rules of procedure of both chambers include provisions on disciplinary proceedings with Deputies and Senators, such provisions apply only to offences for which the legislator refuses to be held to account in a standard way, or to any conduct of the legislator in the chambers or in their bodies that has characteristics of a criminal offence. Disciplinary proceedings are conducted by the Mandate and Immunity Committee of the respective chamber, which also considers requests for lifting the immunity to allow for criminal prosecution of a legislator.⁴⁶ Disciplinary proceedings do not deal with the ethical issues as there is no general code of conduct for Deputies and Senators. The only document dealing with the issue of ethical codes is a report of the Parliamentary Institute of June 2010.⁴⁷ Some parliamentary parties have their own codes of conduct for their representatives in the Parliament⁴⁸ and some other parties have

⁴³ Analysis of the initiative KohoVolit.eu. *Přehled aktivity poslanců 2010*.

http://cs.kohovolit.eu/cz/psp/analysis/prehled-aktivity-poslancu_2010.

⁴⁴ <http://www.ceskatelevize.cz/ivysilani/1097181328-udalosti/209411000101211/obsah/95466-zahranicni-cesty-poslancu/>.

⁴⁵ *Výroční zpráva Kanceláře Senátu za rok 2010*;

http://www.senat.cz/kancelar/zpravy/2010/index.php?ke_dni=18.06.2011&O=8.

⁴⁶ JedŘPS, s. 13 and following, and s. 45, JedŘS, s. 13 and following, and s. 41.

⁴⁷ Němec, J.: *Etické kodexy v parlamentech zemí Evropské unie*, Parliamentary Institute, document No. 1.205, 2010; <http://www.psp.cz/sqw/text/orig2.sqw?idd=63070>.

⁴⁸ The Green Party has its own Code of Conduct for Deputies/Senators and the Public Affairs party has its universal code of conduct for all elected representatives. See <http://strana.zeleni.cz/13451/clanek/eticky-kodex->



tried to prepare such documents.⁴⁹ By their nature, such voluntary codes are unenforceable and the experts regard them rather as a suitable supplement of valid regulation, which cannot be effective on its own.⁵⁰ At present, there is no legal regulation of lobbying activities. Two unsuccessful attempts to regulate lobbying can be mentioned in this context: the first draft bill initiated by the Deputies did not pass through the first reading in the Chamber of Deputies and the second ended in the Senate.⁵¹

Conflict of interest provisions are also inadequate. The law states that public officials (not only legislators) may not prefer their own personal interest to the interests which they have a duty to promote and defend in their role of public officials,⁵² yet this general provision is not connected with any sanction, and enumeration of specific conflict of interest situations is incomplete. Deputies or Senators may not simultaneously with their mandate hold any position in the judiciary or any other constitutional institution⁵³ and may not be employed in the public sector. However, they may be members of the Government⁵⁴ or hold an elected office at a regional or municipal level. There are also no provisions banning their membership in management or supervisory bodies of state-owned companies. The phenomenon of “revolving doors” remains unregulated, which allows the politicians to freely move to any employment or position incompatible with Deputy/Senator mandate immediately after their mandate is ended.⁵⁵

The legislators have an obligation to fill out declarations on assets, activities, income, gifts and liabilities every year and at the end of their mandate. Such declarations are publicly available in the Office of the Chamber of Deputies/Senate and the public may also apply to be allowed an electronic access to the registers. The contents of these declarations, unlike similar declarations filled out by other public officials (see *Public Sector*), may be made public. A major weakness of asset declarations is the fact that they only include the assets acquired during the term of office.⁵⁶ A politician whose newly acquired assets do not correspond with his income thus may always argue that he obtained the

poslance-za-stranu-zelenych/, <http://strana.zeleni.cz/8407/clanek/eticky-kodex-senatora-zvoleneho-za-stranu-zelenych/> and <http://www.veciverejne.cz/eticky-kodex-zastupce-vv.html>.

⁴⁹ Namely the ČSSD party. Its code was introduced in 2005 by Lubomír Zaorálek. According to the critics, the code was only intended to ensure the loyalty of the candidates in the upcoming elections. See <http://www.epravo.cz/top/clanky/koudelka-cssd-zaoralkuv-eticky-kodex-poslance-je-protiustavni-36916.html>.

⁵⁰ Vojtěch Prokeš of Respekt institut in an interview for Český rozhlas, see <http://www.rozhlas.cz/zpravy/spolecnost/zprava/ministerstvo-vnitro-dostalo-podklady-pro-zakon-o-regulaci-lobbingu--905639>.

⁵¹ Compare Parliamentary Print No. 832, 5th election period, (<http://www.psp.cz/sqw/historie.sqw?o=5&t=832>) and Parliamentary Print No. 994, 5th election period (<http://www.psp.cz/sqw/historie.sqw?o=5&t=994>).

⁵² StřetZ, s. 3.

⁵³ For example, they may not hold a position in the Czech National Bank, the Supreme Audit Office, or the Council for Radio and TV Broadcasting. Also, they may not hold the office of the President or Ombudsman.

⁵⁴ The Constitution in its Article 32 explicitly allows for such possibility. It merely prohibits the members of the Government to be the Chairman or Vice-Chairman of the Chamber of Deputies or of the Senate or to be a member of a parliamentary committee or commission. The Policy Statement of the present Government promises to introduce the so-called sliding mandate which would mean that a substitute would take the place of a Government member in the Parliament for his/her period of office.

⁵⁵ Compare Constitution, Article 22, StřetZ, s. 5 par. 3. Compare also the other chapters/pillars.

⁵⁶ Compare StřetZ, s. 9-14.



money in question from the sale of some previously obtained property which he owned before becoming a public official and which he has no duty to disclose. It is impossible to verify the truthfulness of such statement.⁵⁷ The other weakness of the present regulation lies in its lack of sanctions for not fulfilling the obligation to submit the declaration or for providing false information. The original provisions on conflict of interest (valid from 2007) allowed for judicial review resulting in mandatorily publicized judgement. In 2008, the law was amended and the new procedure includes only disciplinary proceedings closed to the public. The amendment also introduced more moderate sanctions.⁵⁸

Integrity mechanisms (practice)

Score: 0 25 50 75 100

To what extent is the integrity of legislators ensured in practice?

In practice, we can see from a number of examples presented by the media that there are many other issues (beyond lobbying, conflict of interest and asset declarations) that would require more specific regulation. Although the scandals always concern individual members of legislature, the lack of comprehensive information on the activities of legislators (see *Accountability*) easily results in general conviction that such practices are standard.

There were several cases in which the Parliament was requested to lift immunity of individual legislators. In 2009, parliamentary immunity was lifted of Deputy Wolf (suspected of misuse of the state subsidy)⁵⁹ and in 2005, of Deputy Doležal (suspected of corrupt practices).⁶⁰ The Senate gave its consent to criminal prosecution of Senator Novák in 2003 (in more detail, see *Judiciary/Corruption prosecution*).⁶¹ Somewhat peculiar is the case of Deputy Huml. In March 2011, the Chamber of Deputies refused to lift his immunity despite the fact that Huml himself (at least officially) requested it.⁶² In August 2011, the Chamber gave its consent to criminal prosecution of suspected corruption of the former Minister of Transport Bárta and another Deputy, Mr. Škárka.⁶³

⁵⁷ With some exaggeration it can be said that to provide information on the increase in someone's assets without knowing his original financial situation is like to inform a visitor on his arrival to a foreign country that "today's temperature is 5 degrees higher than yesterday's".

⁵⁸ Compare StřetZ, s. 23 and the amendment No. 216/2008 Sb. It is curious that the amendment was introduced at the time when the Supreme Administrative Court was about to decide in the first case of such nature, namely in the case of Senator and Deputy Prime Minister Čunek. See ruling NSS 7 As 19/2008 of 19 December 2008.

⁵⁹ <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=652191>.

⁶⁰ http://zpravy.idnes.cz/poslanec-dolezal-celi-podezreni-z-korupce-fid-domaci.aspx?c=A051205_194655_domaci_lja_a_http://zpravy.idnes.cz/snemovna-zbavila-poslance-dolezala-immunity-fz0-/domaci.aspx?c=A051220_194448_domaci_miz.

⁶¹ <http://www.novinky.cz/domaci/19113-senatori-vydali-novaka-k-trestnimu-stihani.html>.

⁶² <http://www.rozhlas.cz/zpravy/politika/zprava/869793>.

⁶³ http://zpravy.idnes.cz/bartu-i-skarku-vydali-poslanci-ke-stihani-kvuli-podezreni-z-korupce-11q-domaci.aspx?c=A110830_105723_domaci_kop.



As concerns the lobbyists, they have no obligation to register and declare whose interests they promote but they certainly exist and often are even paid directly by the state as the politicians like to employ them as their co-workers or advisers. An illustrative example is the lobbyist Marek Dalík who is suspected of corrupt practices in public contracting, who used to be an advisor to Prime Minister and Deputy Mirek Topolánek.⁶⁴ It is also quite frequent that assistants to legislators are at the same time employed by a certain lobby (e.g. tobacco lobby) and straightforwardly promote its interests with the help of “their” legislators. Another interesting fact concerning the lobbyists is that although there exist no official regulation of their activities, the lobbyists are registered as a special category of visitors when entering the Chamber of Deputies and unlike ordinary citizens, they can freely move around the premises, without accompaniment.⁶⁵

There are many other examples of situations when the legislators act in the conflict of interest, e.g. the practice of pork-barrel politics (in Czech called “porcování medvěda” – slicing of the bear), in which legislators slip various allotment requirements for local projects (usually in their own constituencies) into the state budget draft. Subsequently, in some cases, direct personal benefit of relevant legislators has been proved.⁶⁶ In this context, legislators may consider as simply trivial some other types of misconduct (which are of rather ethical nature), such as employing the legislator’s own relatives as assistants⁶⁷, plagiarism in obtaining academic titles⁶⁸, or using their own house as their constituency office and getting money for the rent⁶⁹. If such practices are exposed in the media, relevant politicians usually comment their conduct with the statement: “No provision of law has been violated.”

Executive oversight

Score: 0 25 50 75 100

To what extent does the legislature provide effective oversight of the executive?

The oversight of the executive should be provided mainly by the Chamber of Deputies, which has the right to express no confidence in the Government, to interpellate the Prime Minister and individual Ministers and to set up various commissions, including commissions of inquiry. Furthermore, the

⁶⁴ Compare http://www.tyden.cz/rubriky/domaci/jak-si-topolankova-kasirtaska-mohla-rikt-o-pohadkovy-uplatek_201436.html.

⁶⁵ Interview with a former employee of the Office of the Chamber of Deputies.

⁶⁶ The last time the Deputies used the practice of “slicing of the bear” was in 2009, when they diverted from the state budget a total amount of CZK 2.1 billion. In the period 2002–2009, the average amount of such appropriations for local projects was CZK 7.4 billion a year. Cost saving measures forced the Deputies to abandon this practice in 2010 and 2011. See <http://zpravy.ihned.cz/cesko/c1-41406170-male-domu-za-sedesat-miliard-porcovani-medveda-se-zrejme-vrati>; www.parlamentnilisty.cz/parlament/poslanecka-snemovna/182518.aspx.

⁶⁷ <http://www.mediafax.cz/politika/3066873-Poslanci-ODS-zustali-u-stare-praxe-jako-asistenty-zamestnavaji-rodinne-prislusniky-a-zname> a <http://aktualne.centrum.cz/domaci/politika/clanek.phtml?id=713414>.

⁶⁸ <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=704670>.

⁶⁹ http://zpravy.idnes.cz/poslanci-letos-pri-porcovani-medveda-utrati-1-8-miliardy-pjp-domaci.aspx?c=A081121_223551_domaci_dp.



legislators are entitled to ask any member of the Government or any head of public administration body for information and explanations necessary for the execution of their official duties.⁷⁰

The method of expressing no-confidence and the process of interpellations are described in the following chapter (*Executive/Independence and Accountability*). Undoubtedly, the cycle of expressing no-confidence and forming a new Government has been repeated far too often (during the last 8 years, the Czech Republic has had 7 Governments and 6 Prime Ministers) to have any motivational value. The vote of no confidence leading to the Government's resignation followed by a period without a Government or by new general elections cannot be regarded as an effective oversight tool. The Policy Statement of the present Government promises the introduction of so-called constructive vote of no-confidence, which should help stabilise the situation. Under this principle, the motion to express no confidence in the Government could only be submitted together with the nomination of the new Prime Minister.⁷¹

The right to interpellate the Prime Minister and Ministers is used by the Deputies quite frequently. In practice, there are more requirements than the time reserved for interpellations in the Chamber's weekly schedule allows, so the order of individual questions is decided by drawing lots. However, the Ministers often avoid answering unpleasant inquiries and do not attend the Chamber's session, or provide only a formal written answer, with which the Chamber disagrees.⁷² The right to demand a new answer in such case of disagreement arises directly from the Constitution⁷³ but even this procedure does not necessarily lead to a satisfactory result if the answer does not address the issue. The interpellations thus often follow a pattern of "You may ask me anything you want and I will say anything I want".⁷⁴

The legislature's lack of ability to exercise effective oversight of the executive is proved by the way in which the Parliament uses (or fails to use) the audit results of the Supreme Audit Office, Ombudsman's reports and other materials it has at its disposal (see *Supreme Audit Institution and Ombudsman*).

It is also worth mentioning the activity of the Chamber of Deputies in the establishment of commissions of inquiry that have competences similar to those of law enforcement authorities.⁷⁵ While the commissions' activities do not have to be directly concerned with the executive oversight,

⁷⁰ JedŘPS, s. 11, JedŘS, s. 12.

⁷¹ *Programové prohlášení vlády*, 4 August 2010; http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Programove_prohlaseni_vlady.pdf.

⁷² Compare for example stenographic report of the Chamber of Deputies session of 9 June 2011 (<http://www.psp.cz/eknih/2010ps/stenprot/019schuz/s019108.htm>) and written interpellations in the Parliamentary Print No. 106 and Parliamentary Print No. 244, 6th election period.

⁷³ See comments to Article 53 of the Constitution, p. 404. In: Sládeček, V., Mikule, V., Syllová, J.: *Ústava České republiky*. C. H. Beck, Praha, 2007.

⁷⁴ Interview with a former employee of the Office of the Chamber of Deputies.

⁷⁵ JedŘPS, s. 48 and annex 1.



they illustrate inconsistency and inefficiency of exercising the powers of the Chamber. In the previous election period (2006–2010), the Chamber established four commissions of inquiry. They were all supposed to investigate corruption-related issues. The commission established “to investigate circumstances of a selection process and contract to supply the electronic road toll system for trucks over 12 tons between the Czech Republic and the company Kapsch” focused on a problematic public tender in the value of CZK 22 billion, awarded to Kapsch, which submitted the third most expensive bid out of four offers, after the remaining three bidders were excluded by the evaluation committee. This was the only case in which the commission of inquiry arrived at some concrete conclusions. Even though it did not discover any formal faults, one of its four members brought the attention of the Chamber of Deputies when the outcomes were debated to the fact that it is not suitable to use external contracting authorities for important contracts as they can basically predetermine the result of the tender by specific definition of qualification criteria and other terms.⁷⁶

The commission established “to investigate unauthorised intervention in private and family life of some persons aimed to put the pressure on members of Parliament of the Czech Republic”, which was supposed to investigate the case of Deputy Morava who was involved in collecting compromising materials about his colleagues, was established on 23 September 2008 but it did not even commence its activity.⁷⁷ Another commission was established “to investigate penetration of organised crime and interest groups into the activities of public authorities”, with the aim to investigate circumstances of Krakatice police file which mapped penetration of organised crime into political circles. The commission, established on 1 April 2009, also never started to operate.⁷⁸ The same applies to the fourth commission of inquiry, established in November 2009 to investigate corruption scandal at the Plzeň-based University of West Bohemia law faculty.⁷⁹ So far, no commission of inquiry has been established in the present election period (i.e. since May 2010).

The Senate has so far never used its right to file suit at the Constitutional Court against the President of the Republic for high treason, which consists in “actions of the President directed against the sovereignty and territorial integrity of the Republic, as well as actions against its democratic order”.⁸⁰ According to some political scientists,⁸¹ lawyers⁸² and Senators⁸³, President Klaus oversteps his

⁷⁶ See www.novinky.cz/ekonomika/173651-vlada-uzavrela-zakazku-na-mytne-kapsch-zaplati-171-milionu-korun.html, parliamentary resolution No. 234 (<http://www.psp.cz/sqw/text/text2.sqw?idd=11759>) and stenographic report of the Chamber of Deputies session of 28 April 2008 (www.psp.cz/eknih/2006ps/stenprot/030schuz/s030142.htm#r4), par. 88.

⁷⁷ See parliamentary resolution No. 867 (<http://www.psp.cz/sqw/text/text2.sqw?idd=30328>) and zpravy.idnes.cz/snemovni-komise-k-vysetreni-kaucy-jana-moravy-se-ani-jednou-nesesla-11y-domaci.aspx?c=A090630_123042_domaci_adb.

⁷⁸ See parliamentary resolution No. 1171 (<http://www.psp.cz/sqw/text/text2.sqw?idd=54072>) and http://zpravy.idnes.cz/snemovni-komise-ke-krakatice-ani-nezacala-pracovat-ted-ji-ceka-zanik-1-ph-domaci.aspx?c=A100303_161121_domaci_lpo.

⁷⁹ See parliamentary resolution No. 1455; <http://www.psp.cz/sqw/text/text2.sqw?idd=59366>.

⁸⁰ Constitution, Article 65, ÚstSoudZ, s. 96.

⁸¹ Pehe, J.: *Co je (Klausova) velezrada*; <http://www.pehe.cz/zapisnik/co-je-klausova-velezrada/>.



constitutional powers (see also *Executive/Accountability*) in such an extent that the suit at the Constitutional Court would have a good chance to succeed.

Anti-corruption reforms

Score: 0 25 50 75 100

To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?

As regards introduction of anti-corruption measures, the Parliament rather hinders than promotes such reforms. In many cases, much needed bills – whether they originated from the Government or from the legislature – do not pass through the Parliament or undergo significant changes for the worse. Every year, the NGO Oživení presents a summary of legislative activity in its report on the fight against corruption. The last two years were described as follows: “In 2009, the only adopted law with anti-corruption impact was the amendment to the Act on Public Procurement, which introduces the possibility to impose a ban on the performance of the contracts already concluded between the contracting authority and the winning bidder, and establishes so-called black lists.⁸⁴ In 2010, the legislators did not introduce any single significant anti-corruption measure that would help strengthen the rule of law.”⁸⁵

Examples of non-existent regulation or half measures can be found in most chapters of this report and it makes no sense to list them all here. To illustrate the point, a few selected examples will suffice. The Parliament has many times refused to introduce criminal liability of legal entities (see also *Business/Integrity*). This is presented as the main reason why the Czech Republic has not yet ratified the UN Convention against Corruption (for more details, see *Anti-corruption Agency*). Since 2004, the Parliament has been repeatedly postponing the introduction of the Civil Service Act, which means that public servants still operate in a legal vacuum (see *Public Sector*). When the first case of violation of the Conflict of Interest Act by a Senator appeared, the Parliament changed the relevant sanctions and amended the law so that such offence would only be debated in the non-public disciplinary proceedings (see *Integrity*). Furthermore, the amendment excluded judges from the scope of the Act (see *Judiciary*). Another example: repeated proposals to restrict the excessive parliamentary immunity by an amendment to the Constitution (see *Independence*). The last such proposal was refused in

⁸² http://www.lidovky.cz/tiskni.asp?r=ln_domov&c=A110413_102346_ln_domov_kim.

⁸³ http://www.tyden.cz/rubriky/domaci/klause-obvinime-z-velezrady-planuje-senatorka_118611.html.

⁸⁴ Oživení, o.s.: *Zpráva sdružení Oživení o boji proti korupci za rok 2009*; <http://www.bezkorupce.cz/documents/zprava-o-boji-proti-korupci-v-cr-2009.pdf>.

⁸⁵ Oživení, o.s.: *Zpráva sdružení Oživení o boji proti korupci za rok 2010*, <http://www.bezkorupce.cz/wp-content/uploads/2010/12/zprava-o-boji-proti-korupci-v-CR2010.pdf>.



December 2010 when it did not pass through the third reading in the Chamber of Deputies.⁸⁶ Yet this is an example of a really simple change and its introduction was –before the elections – promised by representatives of both the parliamentary parties and the opposition.⁸⁷ The approach of the legislature described above results in the lack of some much needed laws or in many loopholes in existing legislation.

To get a complete picture, it is fair to state that the Chamber of Deputies formed by the elections of May 2010 is considering a number of legal reforms submitted in compliance with the anti-corruption strategy of the Government (see *Executive/Anti-corruption reforms*). However, it is better to wait and only praise the new legislation when it is adopted. Such caution is indeed necessary, as was proved by the important amendment to the Public Procurement Act, which – after a relatively placid and constructive preparation stage at the ministerial and governmental level – met with a spate of proposed changes in the Chamber of Deputies.⁸⁸

LAWS AND REGULATIONS

Constitution: Act No. 1/1993 Coll., Constitution of the Czech Republic.

InfZ: Act No. 106/1999 Coll., on Free Access to Information.

JedŘPSP: Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies.

JedŘS: Act No. 107/1999 Coll., on the Rules of Procedure of the Senate.

PlatFunZ: Act No. 236/1995 Coll., on the Salary and Other Indemnities Associated with the Execution of the Office of Representatives of State Power and Some State Bodies and Judges and Members of European Parliament.

StřetZ: Act No. 159/2006 Coll., on Conflict of Interest.

RozpZ: Act No. 218/2000 Coll., on Budgetary Rules.

ÚstSoudZ: Act No. 182/1993 Coll., on the Constitutional Court.

VolParlZ: Act No. 247/1995 Coll., on Elections to the Parliament of the Czech Republic.

⁸⁶ Parliamentary Print No. 11, 6th election period; www.psp.cz/sqw/historie.sqw?o=6&t=11. Since the establishment of the Czech Republic in 1993, a similar proposal has been submitted at least twenty times – see http://cs.wikipedia.org/wiki/Imunita_z%C3%A1konod%C3%A1rc%C5%AF_v_%C4%8Cesku.

⁸⁷ aktualne.centrum.cz/domaci/politika/clanek.phtml?id=685969.

⁸⁸ Parliamentary Print No. 370, 6th election period; www.psp.cz/sqw/historie.sqw?o=6&T=370.



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

EXECUTIVE

- *Czech Governments have been ignoring serious corruption risks for ages – the lamentable state of public sector is a sad example.*
- *Instead of visions and strategies the Government presents to general public incomprehensible coalition squabbles.*
- *During the last 8 years, the Czech Republic has had 7 Governments and 6 Prime Ministers.*

EXECUTIVE			
Overall Pillar Score		46	/100
	Indicator	Law	Practice
Capacity 75 /100	Resources	-	100
	Independence	75	50
Governance 38 /100	Transparency	50	50
	Accountability	50	25
	Integrity	25	25
Role 25 /100	Public sector management	25	
	Anti-corruption reforms	25	
	Management of state-controlled companies	25	

Summary

The Government's task is to create and implement visions and strategies. For this purpose, it is entrusted with the authority to take major decisions concerning day-to-day operations of the state as well as long-term strategies. The Government has at its disposal an extensive administrative apparatus and it is in charge of preparation of the state budget. Both domestic and foreign experts willingly



provide consultations to the Government. The Government's capacity is limited by its dependence on the Parliament. No reform that requires a change in legislation can be implemented without necessary support of the Parliament. In recent years, the Parliament has been enjoying a practice of ending the Government's mandate even before its Ministers could start functioning. Unstable situation is being reinforced by corruption scandals that involve individual Ministers. As a result of such scandals, visions of anti-corruption measures and reforms presented to the citizens in pre-election campaigns become caricatures and the Government gets involved in incomprehensible coalition squabbles which have a negative impact also on its long-term strategies. Lack of such long-term conceptual documents allows the Government and its individual Ministers to make totally unpredictable decisions.

While the media provide the public with information on the activities of the Government on everyday basis, there is no direct public access to a number of significant information, which makes public control difficult and decision-making processes less credible. Examples of non-transparent procedures include the way in which the state budget is prepared and presented or the decision-making related to the state-controlled companies. Corruption scandals in which the Ministers are involved do not have any clear outcome and the public is left to guess whether the problem lies in unwillingness of law enforcement authorities to investigate politically sensitive cases, in their lack of skills (see *Judiciary* and *Law Enforcement Agencies*), or simply in the fact that existing laws allow for certain corrupt practices. It is hardly surprising that in this situation the Government is unable to efficiently manage the public sector or implement anti-corruption reforms, and that citizens no longer believe in seriousness of its intentions.

The President is perceived rather as a moral authority which is above and detached from everyday politics. The President traditionally enjoys high credibility. However, in a situation when most other institutions are weakened (see other chapters), the President represents a strong centre of power and in some cases it has been clearly demonstrated that his powers are not only formal. This is especially true in the case of the current President who is willing to use his powers on the verge of violating the rules.

The table above presents the overall assessment of the executive in terms of capacity, governance and role in the national integrity system of the Czech Republic as well as the individual indicator scores. The remainder of the chapter presents qualitative assessments for each indicator.

Structure and Organisation

The President of the Czech Republic is elected by the Parliament for the term of 5 years. He represents the state with respect to other countries and he is granted specific powers in relation to the legislature (an act that is not signed by the President is returned to the Chamber of Deputies for re-approval), the judiciary (the President appoints judges and other judiciary officials and has the right of granting



pardons in criminal proceedings), and other institutions (the President appoints the members of the Bank Board of the Czech National Bank and the President and Vice-President of the Supreme Audit Office, and nominates the Constitutional Court judges). He is not involved in everyday activities of the executive. The supreme body of the executive power is the Government, which is led by the Prime Minister. The Government consists of the Prime Minister and other 15 members, 14 of which are in charge of individual ministries.¹ The highest level of the executive also includes other 11 institutions whose heads are not members of the Government. A specific position in relation to the Government belongs to the Government Office, which provides expert, organizational and technical support to the activities of the Government and the Prime Minister.²

Resources (practice)

Score: 0 25 50 75 **100**

To what extent does the executive have adequate resources to effectively carry out its duties?

With regard to resources, the executive is the strongest pillar by far. The Government has at its disposal, in addition to numerous administrative apparatus of individual ministries and other state institutions (see *Public Sector*), the Government Office, with 475 employees and the budget of CZK 684 million in 2010.³ The Government also uses services of various experts who are members of working groups and advisory bodies and whose services are in most cases provided for free or for symbolic compensation only. As an example, the Government Legislative Council (GLC) can be mentioned. Members of GLC include lawyers and legal experts – academics, judges, experts from other legal fields and public administration. The GLC plays an important role in the legislative process. As a rule, it meets once every 14 days, and it prepares recommendations for the Government to adopt (or not to adopt) draft legislation submitted by individual ministries.⁴ An example of ad hoc advisory body is the Czech Government's National Economic Council (NERV), which was established in 2009, in reaction to economic crisis. There are six working groups whose members (economic experts) prepare analyses concerning key topics, which also include the fight against corruption.⁵ Other advisory bodies are concerned with particular areas, for example the Government Council for Non-Governmental Non-Profit Organisations (see *Civil Society*), Government Council for

¹ The number of members of the Government is not constant and it is always a result of a coalition agreement. The numbers above reflect the situation as of July 2011 when, following the period of government crisis and subsequent personnel changes, one more Deputy Prime Minister who is not in charge of any ministry joined the Government.

² KompZ, s. 1, 2 and 28.

³ Návrh státního závěrečného účtu za rok 2010; http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/statni_zav_ucet.html.

⁴ <http://www.vlada.cz/cz/ppov/lrv/legislativni-rada-vlady-25264/>.

⁵ <http://www.vlada.cz/cz/ppov/ekonomicka-rada/narodni-ekonomicka-rada-vlady-51371/>.



Human Rights, Government Council for National Minorities or Government Council for Drug Policy Coordination.⁶

Also the Office of the Czech President has a fully adequate resource base. In 2010, it had at its disposal CZK 378 million and 102 employees, with additional 283 employees ensuring the administration of the Prague Castle. The Office is one of the six privileged institutions that propose their own budget independent of the Ministry of Finance.⁷ Contrary to the Ombudsman or the Supreme Audit Office, the Office of the Czech President did not end the year 2010 with a surplus.⁸

Similarly to the legislators, the salary of the President and members of the Government is derived from the average salary in non-business sector for the year before last. The coefficient for the year 2010 was determined as 5.2 for Ministers, 6.2 for Deputy Prime Ministers, 7.3 for the Prime Minister and 9 for the President.⁹

Independence (law)

Score: 0 25 50 75 100

To what extent is the executive independent by law?

The Government is restricted in its independence by the Parliament. First and foremost, the Chamber of Deputies may end the Government's mandate. Second, the Parliament approves the bills and there are two levels on which this fact restricts the independence of the Government. No reform that requires a change in legislation can be implemented without necessary support of the Parliament. Also, the Government must respect the existing law in all of its activities. Within these limits, the Government and its individual members have at their disposal the largest part of the state apparatus (see *Resources*) as well as significant decision-making powers which have direct impact on the functioning of the state and on its individual citizens.

In a standard situation (following the elections), the Government is formed in this way: the President appoints the Prime Minister and on the Prime Minister's proposal the other members of the Government. Subsequently, the Government presents itself to the Chamber of Deputies and asks for a vote of confidence. If it fails to win the confidence of the Chamber of Deputies, the Government submits their resignations to the President. If the second attempt to form the Government by the way described above fails, the President appoints a Prime Minister on the proposal of the Chairman of the

⁶ <http://www.vlada.cz/cz/pracovni-a-poradni-organy-vlady/default.htm>.

⁷ Other institutions include the Chamber of Deputies, the Senate, the Constitutional Court, the Ombudsman, and the Supreme Audit Office. Prospective objections of the government concerning the extent of their proposed budgets are decided directly by the Budget Committee of the Chamber of Deputies – see s. 8 par 3 RozpZ.

⁸ *Návrh státního závěrečného účtu za rok 2010*; http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/statni_zav_ucet.html.

⁹ PlatFunZ, s. 11-16. The President and members of the Government are also provided with allowance on representation and other direct expenses and are entitled to some other benefits.

Chamber of Deputies and he has the right to dissolve the Chamber of Deputies if it fails to vote confidence even in the Government formed in this way.¹⁰

The mandate of the Government is ended and the Government must resign either after the first meeting of a newly elected Chamber of Deputies or if the Chamber of Deputies expressed no confidence in the Government. A motion to express no confidence must be supported by not less than one quarter of Deputies and the motion is admitted when approved by the majority of all Deputies. The Chamber of Deputies may also express no confidence in the Government by refusing the Government's request for a vote of confidence or by not deciding on a bill the consideration of which the Government tied to the question of confidence.¹¹

The President cannot be removed from office except for high treason. He is elected for a 5-year term at a joint meeting of both chambers of the Parliament. Nominations of a candidate for the presidency may be submitted by at least 10 Deputies or 10 Senators.¹² The role of the President in the constitutional system is meant to be mainly representative and most of his decisions must be countersigned by the Prime Minister or by a member of the Government authorised by the Prime Minister.¹³ The present Government has submitted to the Parliament a proposal for the amendment of the Constitution to introduce direct presidential election.¹⁴

Independence (practice)

Score: 0 25 50 75 100

To what extent is the executive independent in practice?

As concerns the Government, it is an open secret that its independence is often violated by lobbying interests behind the political parties that form the coalition government. The Constitution stipulates that the Government is dependent on the confidence of the Chamber of Deputies (see above). However, considering the fact that during the last 8 years, the Czech Republic has had 7 Governments and 6 Prime Ministers, the Government as a collective body is paralysed and unable to function independently.¹⁵ Thus the only stable component of the executive is President Klaus who has been holding the office since 2003 (he was re-elected in 2008).

¹⁰ Constitution, Articles 35, 68, 73.

¹¹ Constitution, Articles 35, 71-73.

¹² Constitution, Articles 54, 58, 65.

¹³ Constitution, Article 63. One of the most important presidential powers that do not require countersignature is appointment of members of the Bank Board of the Czech National Bank, see Constitution, Article 62 subpar k).

¹⁴ Parliamentary Print No. 415, 6th election period; <http://www.psp.cz/sqw/historie.sqw?o=6&t=415>.

¹⁵ <http://aktualne.centrum.cz/domaci/spolecnost/clanek.phtml?id=698521>.



All major steps taken by the Government are traditionally being “pre-negotiated” on the meetings of leaders of coalition parties (3-member “K3”, 9-member “K9” and various other ad hoc groups¹⁶). The same platform is used for discussions of how to solve corruption-related and other scandals. This power centre, which is clearly not one of the institutions anticipated by the Constitution, in fact determines the Government’s policies, which of course must also take into account the interests of parliamentary clubs so that the Government itself or its individual actions win support of the Chamber of Deputies. Bearing in mind that members of the Government generally come from the ranks of Deputies (12 of 16 present members of the Government are Deputies) and that composition of the Chamber of Deputies in large part does not depend on the will of the voters but rather on lobbying groups within the political parties (see *Political Parties*), we may – together with political analyst Petr Just – talk about participacy, a practice of long standing in the Czech Republic, beginning in 1920s when Czechoslovakia was practically ruled by the chairmen of 5 major parties.¹⁷

Within the executive, President Václav Klaus evinces a high level of independence, sometimes on the verge of violating the Constitution. Foreign policy is a good example, as the President often disregards the official position of the Government and decisions of the Parliament. In this context, we can mention Klaus’s obstruction of the Lisbon Treaty, which he finally signed six months after the Treaty was approved by the Parliament and only after the Constitutional Court ensured him for the second time that the Treaty would not damage the Czech Republic’s sovereignty.¹⁸ Yet negotiation and ratification of international treaties are part of the representative role of the President and, as stipulated by the Constitution, responsibility is borne by the Government. President Klaus uses (or abuses, according to some opinions) his independence also in domestic affairs, for example in relation to the Government when he postpones acceptance of its Ministers resignation and dictates terms for its acceptance,¹⁹ or in his repeated verbal attacks on the Constitutional Court which he considers to be the “third parliamentary chamber” and requests that the Court’s powers be restricted.²⁰

¹⁶ http://zpravy.idnes.cz/lidri-koalice-se-zkusi-dohodnout-u-vecere-netradicne-ve-dvanacti-px0-domaci.aspx?c=A110413_103600_domaci_jw.

¹⁷ Petr Just in <http://www.ceskatelevize.cz/ct24/exkluzivne-na-ct24/osobnosti-na-ct24/22989-masaryk-a-velka-petka/>. The article is inspiring as two historians and one political analyst are generally of the opinion that the „Group of 5“, i.e. group of chairmen of 5 political parties that had been forming coalitions, dividing the powers and determining the policies in the 1920s, had positive impact and contributed to stability of the country.

¹⁸ <http://aktualne.centrum.cz/domaci/politika/clanek.phtml?id=636634> a http://zpravy.idnes.cz/klaus-podepsal-lisabon-cesko-tak-ztraci-suverenitu-prohlasil-p63-domaci.aspx?c=A091103_145225_domaci_adb.

¹⁹ <http://aktualne.centrum.cz/domaci/politika/clanek.phtml?id=696850>.

²⁰ http://zpravy.idnes.cz/je-velka-sance-na-reformy-rekl-klaus-vyzval-politiky-at-omezi-ustavni-soud-1u1-domaci.aspx?c=A100907_093318_domaci_kop.



Transparency (law)*Score: 0 25 50 75 100****To what extent are there regulations in place to ensure transparency in relevant activities of the executive?***

There are no specific regulations in place which would require the President and the Government to provide information on their activities. The Government approves its own Rules of Procedure and other rules of its functioning, which cover also the issue of transparency.²¹ However, the Government and the President (or the Government Office and the Office of the President) are fully subject to the Act on Free Access to Information, which – on request – enables access to almost any information, as well as to other general requirements concerning the information that must be made public by the institutions (in more detail see *Public Sector/Transparency*).²²

Government meetings are not open to the public and the public does not have access to sound recordings that are made of the meetings. From every meeting, there are also minutes of the meeting which state the items on the agenda and information on the result of the vote concerning relevant Government resolutions. Since the last amendment of the Rules of Procedure in February 2011, the minutes must also inform how the individual Government members voted on the issues pertaining to management of the state property, public contracts, subsidies and grants. The Rules of Procedure do not explicitly stipulate whether the minutes should be made publicly available. The Government may decide that there will be no sound recording of a particular meeting and it can also exclude from the meeting any persons who are not members of the Government.²³

Materials to be discussed at a Government meeting are submitted by individual Ministers or by heads of other central institutions to the Government via electronic library, which is also closed to the public. Online database for draft legislation (eKLEP) and a database of documents to be discussed at Government meetings (eVláda) serve for internal communication between individual ministries and other institutions which may submit its comments on the materials. Starting from 2007, so-called library of draft legislation is publicly accessible.²⁴ The library contains proposals of legal regulations but does not contain the entire documentation of interdepartmental comment procedure.²⁵ The fact that

²¹ Rules of Procedure of the Government approved under Government Resolution No. 101 of 9 February 2011; <http://www.vlada.cz/cz/jednani-vlady/jednaci-rad-vlady/jednaci-rad-vlady-26527/>.

²² It is a question whether the rules stipulated in the Rules of Procedure would stand if someone made request for the minutes of a Government meeting according to the Free Access to Information Act.

²³ Article VI, par. 16 of the Rules of Procedure; <http://www.vlada.cz/cz/jednani-vlady/jednaci-rad-vlady/jednaci-rad-vlady-26527/>.

²⁴ Government Resolution No. 816 of 18 July 2007; http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/9d960a7bf947adf0c1256c8a00755e91/f2fece77e7a090c1c125731a0045ec3e?OpenDocument.

²⁵ <http://icv.vlada.cz/en/cotoje/co-je-odok--59491/tmplid-560/>.



it was made publicly accessible was in 2009 recognised as a breakthrough event by the NGO Otevřená společnost in its competition Otevřeno x Zavřeno (Open vs. Closed).²⁶

Transparency (practice)

Score: 0 25 50 75 100

To what extent is there transparency in relevant activities of the executive in practice?

The executive provides information about its activities via Internet and the media. The amount of information available on the Internet is extensive (agenda and minutes of the meetings, decisions, press releases and many other documents and information). However, a closer look reveals that a significant amount of important information remains hidden. For example, most government resolutions are made public without annexes, i.e. without relevant documents that they are referring to.²⁷ On request, it is possible to obtain such documents from the Government's information centre of from the Government Office (as in most cases there are no restrictions that would prevent their publication) but as a rule, such documents are not available to the general public and, most importantly, they are not available at the moment when the media inform about their approval (e.g. TV Evening News), i.e. when it can be expected that someone may want to read them. The same applies to the bills which are available in the library of draft legislation in the wording resulting from the interdepartmental comment procedure but not in the wording approved by the Government. Such approved wording is only published on the website of the Chamber of Deputies, with several days delay.²⁸ The annual report of the Government Office on provision of information reveals that citizens scarcely use the possibility to ask for information (71 requests in 2010).²⁹

In this context, it is worth to mention also the state budget and the state closing account. The Government is responsible for preparation and implementation of both documents. Both documents contain only summary information (for individual budget chapters, for example, there are data on total wages and number of employees, investment and non-investment expenditures, and amounts of subsidies provided). More detailed information concerning particular income and expenditure items may occasionally be obtained from other sources (e.g. an overview of subsidies) but such sources are

²⁶ Results of the competition Otevřeno x Zavřeno 2009; <http://www.otevrete.cz/hodnoceni-uradu/soutez-otevreno-zavreno/archiv-souteze/2009/>.

²⁷ As a rule, government resolutions are very brief and important information can be found only in its annexes. For example, Resolution No. 471 of 22 June 2011 says: „The Government (I.) takes due note of 1) Supreme Audit Office audit conclusion of its audit No. 10/11 Financing operations and items of the state budget included in the chapter State Debt, which is contained in part III of the material No. 469/11 (hereinafter referred to as “Audit conclusion”) and 2) opinion of the Minister of Finance on the Audit conclusion, contained in part IV of the material No. 469/11; (II.) imposes upon the Minister of Finance to ensure implementation of the measures to eliminate the insufficiencies identified by the Audit conclusion contained in the opinion mentioned in paragraph I/2 of this Resolution and inform the Government of this implementation by 31 December 2011. Responsible: Minister of Finance “.

²⁸ Author's own research.

²⁹ <http://www.vlada.cz/assets/urad-vlady/poskytovani-informaci/vyrocní-zpravy/vyrzpr10.pdf>.

not linked to the state budget. For most items, there are not detailed data available. Final accounts of individual ministries and institutions contain some more details but often remain unpublished (see *Public Sector/Transparency*). Both the Government Office and the Office of the President publish their closing accounts.³⁰ The approved state budget is published in pdf format, which means that it is not possible to easily search in this 150-page document or copy some parts of it.³¹ This hinders public control and makes it practically impossible for the Deputies, who approve both documents, to objectively assess the state's income and expenditures. This fact has been criticized by the National Economic Council which recommends, as another anti-corruption measure, that the entire public sector should present its income and expenditures in an electronic format that enables the user to click on individual items and get all the details.³²

Declarations of members of the Government required by the Conflict of Interest Act (see *Integrity*) are archived in the Office of the Chamber of Deputies. To check a declaration, one must either personally visit the Office or submit a written application for on-line access to be provided with a special access code.

Accountability (law)

Score: 0 25 50 75 100

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

The President and the Government bear mainly political responsibility which is only indirectly regulated by law. While there are provisions pertaining to predictability and proper justification of decisions that apply to lower levels of public sector, no such legal requirements apply to governmental level. As was already mentioned, the Government itself defines basic rules and standards of its functioning. At the same time, no sanctions can be imposed for violation of such standards and there are no enforcement mechanisms. Two documents are of key importance in this respect: Rules of Procedure (see *Transparency*) and Government Legislative Rules which integrate procedures and actions of individual ministries in preparation of legislation and also stipulate an obligation to prepare

³⁰ <http://www.vlada.cz/cz/urad-vlady/zaverecny-ucet-kapitoly/zaverecny-ucet-kapitoly-23346/> a <http://www.hrad.cz/cs/prezident-cr/kancelar-prezidenta-republiky/cinnost-kancelare-prezidenta-republiky/zaverecny-ucet-kapitoly-301-kancelar-prezidenta-republiky.shtml>.

³¹ Act on the 2011 State Budget published in the Collection of laws; <http://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=z&id=21414>. Also the website of the Ministry of Finance, which coordinates preparation of the state budget, offers the document in the same format (see http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/stat_rozp.html). The only comprehensible electronic format is available on the Chamber of Deputies website – see Parliamentary Print No. 102; <http://www.psp.cz/sqw/historie.sqw?o=6&t=102>. However, this is only a draft, not the final version.

³² National Economic Council (NERV): *Boj proti korupci*, Chapter 8; <http://www.vlada.cz/assets/ppov/ekonomicka-rada/dokumenty/NERV-Boj-proti-korupci--sbornik.pdf>. See also www.rozklkavaciropocet.cz.



an explanatory report and regulatory impact assessment (RIA) for each draft. However, the Rules do not stipulate that the general and expert public must be included in the legislation process.³³

The Government is answerable for its actions to the Chamber of Deputies which has the right to express no confidence in the Government (see *Independence*). Furthermore, every Deputy may interpellate the Government or any of its members about the particular issues.³⁴ The Chamber of Deputies has in its weekly schedule reserved time for interpellations and the interpellations may be presented by the Deputies either in writing prior to the meeting or verbally at the meeting. If the member of the Government to be questioned is not present or if he/she is not able to respond to an interpellation, he/she is obliged to provide a written answer within 30 days.³⁵ A member of the Government is obliged to be personally present at the Chamber's meeting and also at the meeting of the committees, if the Chamber or the committee require it. Members of the executive may also at any time during the Chamber's meeting ask to be given floor.³⁶

Members of the Government do not enjoy any special immunity and they have criminal liability for any illegal actions. However, if they also are Deputies or Senators, deputies' immunity applies to them (see also *Independence* and *Legislature/Integrity*). The President cannot be held accountable for his actions in any way. He may not be detained or criminally prosecuted and criminal prosecution for offences committed while he executes his office is ruled out forever. He may only be prosecuted for high treason at the Constitutional Court, based on the suit filed by the Senate. The punishment is the loss of his presidential office.³⁷ According to the opinion of the Supreme Administrative Court, the President cannot be excluded from the obligation to give reasons for his decisions which have a nature of administrative ruling and which interfere with the rights of individuals, such as decisions not to appoint certain candidates for judges.³⁸

Accountability (practice)

Score: 0 25 50 75 100

To what extent is there effective oversight of executive activities in practice?

In the case of the executive, accountability mechanisms do not fulfil their purpose. Political analyst Jiří Pehe aptly noticed that while explanations may be the focal point of all Government activities, they are sadly not so much concerned with reforms but rather with continuous series of coalition or

³³ Government Legislative Rules; http://www.vlada.cz/assets/ppov/lrv/legislativn_pravidla_vl_dy.pdf. The obligation to prepare regulatory impact assessment (RIA) was included in the Legislative Rules in 2007, based on the Resolution of the Government No. 816 of 18 July 2007.

³⁴ Constitution, Article 53.

³⁵ JedŘPSP, s. 110 and following.

³⁶ Constitution, Article 38 par. 2, JedŘPSP, s. 39 par. 2, s. 55, s. 68.

³⁷ Constitution, Article 65.

³⁸ Supreme Administrative Court in its ruling 4 Aps 3/2005 of 27 April 2006.



party scrapes and scandals.³⁹ Regarding its excessive use (see *Independence*), the vote of no confidence leading to the Government's resignation followed by a period without a Government or by new elections cannot be regarded as an effective oversight tool. Also the interpellations do not fulfil their intended purpose (see *Legislature/Executive Oversight*).

In this context, a special attention should be drawn to the Government's ability (or rather inability) to form coherent strategies that are important not only as an argumentational foundation and a basis for preparation of specific measures but also provide a reference framework for accountability. As an example, we can mention the anti-corruption policy and its development over the last 12 years (for more detail, see *Anti-corruption Activities*). The Government has repeatedly failed to achieve specified objectives and eventually became resigned and ceased providing analyses and giving reasons why it strives to achieve particular changes. As a result, the existing anti-corruption "strategy" is merely a collection of more or less specific measures on which there may be a political consensus but which are clearly lacking a unifying framework.⁴⁰ Regretfully, this is not a singular case of one document. While "conceptual" documents exist for almost all areas, their implementation is generally highly unconceptual and quite often the individual steps being taken go against the original strategy, or result in the original strategy being amended.⁴¹ This tendency goes hand in hand with frequent changes on ministerial posts, which are even more frequent than changes of governments. The Transport Ministry alone had three Ministers in the period from May 2010 to September 2011.⁴²

President Klaus takes pride in his independence and the fact that he cannot be held to account. Besides the cases mentioned above (see *Independence* and *Accountability/law*) it is worth mentioning the period of 2003-2005 in which the President to a certain point paralysed the Constitutional Court by his repeated proposals of totally unsuitable candidates in a situation when it was necessary to appoint 4 new Constitutional Court judges.⁴³ Despite all this, the President enjoys high credibility among the public (60-70%).⁴⁴ By contrast, confidence of the public in the Government is unstable. For example, the confidence level has dropped from 72% in April 2010, when the mandate of Jan Fisher's temporary government ran out, to mere 17% in June 2011.

³⁹ <http://blog.aktualne.centrum.cz/blogy/jiri-pehe.php?itemid=13147>.

⁴⁰ *Strategie vlády v boji proti korupci na období let 2011 a 2012*; <http://www.mvcr.cz/clanek/uplna-verze-strategie-vlady-v-boji-proti-korupci-na-obdobi-let-2011-a-2012.aspx>.

⁴¹ Speech by Vladimíra Dvořáková at the seminar on the NIS assessment, 15 September 2011.

⁴² Press releases of the Ministry of Transport of 14 July 2010 (Vít Bárta appointed; http://www.mdcz.cz/cs/Media/Tiskove_zpravy/TZ_14_07_2010.htm), 21 April 2011 (Radek Šmerda appointed; http://www.mdcz.cz/cs/Media/Tiskove_zpravy/TZ_21_04_2011.htm) and 1 July 2011 (Pavel Dobeš appointed; http://www.mdcz.cz/cs/Media/Tiskove_zpravy/TZ_01_07_2011.htm).

⁴³ <http://www.novinky.cz/domaci/29515-senator-barta-klaus-je-velezradce.html>.

⁴⁴ http://www.cvvm.cas.cz/upl/zpravy/101127s_pi110324.pdf and http://www.cvvm.cas.cz/upl/zpravy/101164s_pi110627.pdf. The confidence in the President dropped below 60% only after the recording of the press conference in Chile showing President Klaus pocketing a ceremonial pen was broadcasted by the Czech TV – see <http://www.youtube.com/watch?v=zpe4T0IXZcE>.

Integrity (law)Score: 0 25 50 75 100***To what extent are there mechanisms in place to ensure the integrity of members of the executive?***

Similar to legislators, the Government members are subject to the Act on Conflict of Interest, which generally prohibits any behaviour that would result in obtaining a personal advantage, prohibits simultaneous holding of some offices and establishes an obligation to annually submit declarations of property and other assets. As was already stated in the chapter *Legislature/Integrity*, such provisions are insufficient as they for example do not prevent simultaneous holding of offices of the Government member and deputy/senator, and also allow the executive officials to move freely into judiciary or business sector. The provisions related to the Government members are stricter in their requirement that Government members (similar to public sector employees, judges and some other officials) may not be engaged in any business activity in their own name, may not be members of the bodies of commercial companies and may not be employed in the public sector. They may, however, manage their own property and may perform artistic, educational, scientific or sports activities.⁴⁵ Limitations related to business activities do not apply to relatives or close associates, thus offering an easy way to circumvent the law.

The Government does not have its own code of conduct and its members are not even subject to the universal code of conduct approved by the Government in 2001,⁴⁶ which is generally used throughout the entire public sector. As was already mentioned above, the President may not be subjected to criminal prosecution and he is not subject to the Act on Conflict of Interest or any ethical codes. The Constitution stipulates that the office of the President is incompatible with the office of a deputy/senator or a judge.⁴⁷

The Constitutional Court presently deals with a motion concerning the conflict of interest. The Supreme Administrative Court suggests repealing a provision of the Administrative Code, which stipulates that the principle that an official must be excluded from decision-making process if he/she is biased does not apply to ministers and other leading officials.⁴⁸ What is appalling is the mere fact that a regulation that makes acting in the conflict of interest legal was adopted in the first place.

⁴⁵ StřetZ, s. 4.

⁴⁶ Government Resolution No. 270/2001 of 21 March 2001;
http://racek.vlada.cz/usneseni/usneseni_webtest.nsf/0/88408E345B70E4B4C12571B6006DB7BB.

⁴⁷ Constitution, Articles 22 and 82.

⁴⁸ Compare SŘ, s. 14 par. 6; Supreme Administrative Court motion No. 1 Afs 7/2009-680; proceedings of Constitutional Court No. Pl. ÚS 30/09. The Supreme Administrative Court is of the opinion that this provision is in contradiction to the constitutional principle of impartiality in decision-making.



Integrity (practice)

Score: 0 25 50 75 100

To what extent is the integrity of members of the executive ensured in practice?

In practice, a conflict of interest on governmental level may take the following form: the former Transport Minister Řebíček (Minister from 9 January 2007 till 23 January 2009) announced that he sold his stake in the company Viamont before the 2006 elections. However, he only received major part of compensation for his sold shares later, when the company started winning public contracts awarded by institutions under the jurisdiction of the Ministry of Transport (of which he was the head). Viamont won public contracts in the value of CZK 558 million in the period from January 2005 to August 2006, followed by contracts in the value of 3.5 billion (September 2006 – May 2008) and 6.9 billion (May 2008 – end 2009). It is impossible to check in any publicly available source whether the Minister really sold his stake in the company. Not even the Police have such information as the company Viamont uses anonymous bearer shares (for more detailed information on bearer shares see *Business/Transparency*). It was this dubious transfer of Viamont shares and a suspicion of money laundering that led the Finance Ministry to file a criminal complaint against Řebíček. After a year-long investigation, the anti-corruption police have shelved the case.⁴⁹

Even now, accusations that cast doubt on the integrity of individual Government members and the present Government as a whole appear almost every day. The only positive aspect of the situation is the fact that two of the three Ministers who were involved in corruption scandals left the Government. In December 2010, Environment Minister Drobil stepped down after he was accused of practices aimed at channelling money from the ministry-controlled State Environment Fund. He allegedly asked his subordinate director of the State Environment Fund to manipulate public tenders. The funds thus obtained were meant to be used to finance Drobil's political party, ODS.⁵⁰ In April 2011, Transport Minister Bárta resigned over a scandal revealing that his political engagement was based on the objective to help promote the interests of private security agency ABL. Bárta owned ABL before he joined politics (for more detail, see *Political Parties/Interest aggregation and representation*). Drobil and Bárta still retain their Deputy mandates⁵¹ (both of them held the ministerial posts simultaneously with deputy mandate). Drobil's case was shelved by the police, allegedly based on an instruction from a public prosecutor (see *Judiciary/Accountability/practice*) but criminal charges have been brought against his advisor Knetig (the person who asked the director of the State Environment Fund to manipulate public tenders during their meeting). The police asked the Chamber of Deputies to lift

⁴⁹ http://zpravy.idnes.cz/zlate-vejce-exministra-rebicka-za-podil-ve-viamontu-dostal-dalsi-miliony-1qe-domaci.asp?c=A100603_110533_domaci_jav; http://www.rozhlas.cz/zpravy/spolecnost/ zprava/713902.

⁵⁰ http://zpravy.idnes.cz/audio-ministr-drobil-vyzyva-sefa-fondu-michalka-at-znici-dukazy-o-korupci-1ra-domaci.asp?c=A101215_115521_domaci_jan; http://zpravy.idnes.cz/drobil-opusti-vladu-po-skandalu-na-ministerstvu-zivotniho-prostredi-lks-/domaci.asp?c=A101215_131130_domaci_kop.

⁵¹ Register of Deputies on the Chamber of Deputies website at <http://www.psp.cz/sqw/snem.sqw?P1=B&P2=B&l=cz>.



Bárta's immunity and the Chamber obliged the request (see *Legislature/Integrity*) but this does not necessarily mean that his case will be brought to a satisfactory conclusion (see *Judiciary/Corruption prosecution*). The third corruption scandal involves Defence Minister Vondra and a lucrative contract for audiovisual services awarded without a tender during the Czech Republic's turn at the helm of the rotating EU Presidency.⁵² Vondra was then Deputy Prime Minister for European Affairs and with his team was in charge of the Czech EU presidency's organisation. Vondra claimed that he was not acquainted with the suspicious contract. There is no evidence of Vondra's role in the case as all documents were signed by his subordinates. Both key officials – then Government Office head Jan Novák who signed the contract and the head of relevant department Radomír Karlík who was in charge of its implementation – still have important posts in the public sector. Novák is a Deputy Director of National Security Authority and Karlík is Deputy Head of Mission of the Czech Embassy in Damascus, Syria. So it seems obvious that their roles and responsibilities in the scandal are not being investigated by any official authority.⁵³

Huge numbers of other scandals concerning the members of the Government, which cast doubt on their integrity, is beyond the scope of this study, as well as the number of criminal complaints being filed⁵⁴ that have not brought any specific results so far. It must be said that political culture in the Czech Republic is such that more subtle nuances of political responsibility and ethics are not even considered by relevant actors.

Public sector management (law and practice)

Score: 0 25 50 75 100

To what extent is the executive committed to and engaged in developing a well-governed public sector?

Stabilisation of public sector repeatedly appears in Policy Statements of Czech governments and the present Government clearly admits in its Statement that public sector lacks efficiency. It states that “the Government will seek the depoliticisation of public administration by introducing modern

⁵² http://www.lidovky.cz/firme-promopro-vyplatila-vlada-551-milionu-vondra-pripustil-rezignaci-1k5-/ln_domov.asp?c=A110201_202844_ln_domov_kim.

⁵³ http://www.lidovky.cz/klicovi-urednici-v-kauze-vondra-mlci-ten-hlavni-pusobi-v-syrii-pbo-/ln_domov.asp?c=A110202_181751_ln_domov_pks and <http://www.vlada.cz/cz/media-centrum/tiskove-zpravy/jan-novak-se-stane-namestkem-reditele-nbu-74731/>.

⁵⁴ E.g. criminal complaint filed by a close colleague of Interior Minister John against Finance Minister Kalousek – see <http://aktualne.centrum.cz/domaci/politika/clanek.phtml?id=701413> or criminal complaint filed by Minister Kalousek against the entire previous Government – see <http://www.ct24.cz/ekonomika/111275-kalousek-chce-podat-trestni-oznameni-na-zemana-a-jeho-byvalou-vladu/>. In a TV interview, the Constitutional Court Chairman Pavel Rychetský described this situation as absurd. A criminal complaint only makes sense if the citizen who files it provides the investigators with some specific evidence. Both the police and prosecution service should be able to investigate criminal conduct spontaneously and based on their own initiative. TV program HydePark, 6 April 2011; <http://www.ceskatelevize.cz/ivysilani/10252839638-hyde-park-ct24/211411058080406-hyde-park/>.



management principles for public authority bodies and quality management methods. The Government will submit a draft unified amendment for the rights and obligations of public servants, in which the boundary between political and public service positions will be unambiguously defined and the depoliticisation, professionalization and stabilisation of public administration secured.”⁵⁵

However, the Government’s anti-corruption strategy that follows from the Policy Statement clearly implies that there is no political will to implement the Civil Service Act which was adopted in 2002. Since its adoption, all the governments – supported by the Parliament – have been postponing the date of its entering into force (for more details see *Public Sector/Independence*). The Ministry of Interior was tasked to prepare a draft framework of new bill.⁵⁶ While the draft was prepared and submitted in August 2011,⁵⁷ it only means the beginning of legislative process which may take years or may be cut short – as was the case of a similar draft prepared in 2009.⁵⁸ In effect, even the present Government continues to prolong the current undesirable situation described in the chapter *Public Sector* – instability that encourages loyalty to political representation and clientelism over impartiality and professionalism.

One positive trend that can be identified in relation to public sector is its continuing electronisation (eGovernment). From among successful attempts, we can mention electronisation of the Czech Office for Surveying, Mapping and Cadastre, which offers user-friendly on-line access to its real estate cadastre and cadastral maps as well as information on individual proceedings,⁵⁹ or the approach of the Czech Statistical Office to presentation of election results to the public (see *Electoral Management Body*). But on the whole, electronisation is only proceeding very slowly and individual projects are not interlinked. They are also overpriced and arouse suspicion of corruption.⁶⁰

Anti-corruption reforms

Score: 0 25 50 75 100

To what extent does the government gives priority – in the area of legislation – to accountability of public sector and the fight against corruption?

The coalition Government formed after the 2010 elections calls itself a government of “budget responsibility, rule of law and fight against corruption”. A strong anti-corruption ethos was already discernible in pre-election campaign and in manifestos of parliamentary parties (see *Political Parties/Anti-corruption commitment*). However, the key document is the Anti-Corruption Strategy

⁵⁵ Programové prohlášení vlády ze srpna 2010, p. 20.; http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Programove_prohlaseni_vlady.pdf.

⁵⁶ Strategie vlády v boji proti korupci na období let 2011 a 2012, par. 1.7.; <http://www.mvcr.cz/clanek/uplna-verze-strategie-vlady-v-boji-proti-korupci-na-obdobi-let-2011-a-2012.aspx>,

⁵⁷ <http://eklep.vlada.cz/eklep/page.jsf?pid=RACK8ETFSH1M>.

⁵⁸ See the library of draft legislation; <http://eklep.vlada.cz/eklep/page.jsf?pid=KORN8B9JKWOM>.

⁵⁹ <http://nahlizeniidokn.cuzk.cz/>.

⁶⁰ <http://ekonom.ihned.cz/c1-44167410-otesanek-egon>.



approved by the Government in January 2011.⁶¹ Representatives of the coalition mention their determination to enforce anti-corruption reforms as the reason why the coalition should stay in power despite the fact that the Government has lost credibility in the eyes of the public after a series of scandals (see *Accountability*). From a long-term perspective, the same assessment that applies to the Parliament's anti-corruption commitment (see *Legislature/Anti-corruption reforms*) applies to the Government: major reforms are rather hindered by the Government. This is suggested for example by the list of GRECO evaluation team's recommendations for improvements in the area of public administration. Most recommendations from 2006 report have not been implemented yet.⁶² Also the anti-corruption strategies of previous Governments have not been implemented (see the chapter *Anti-corruption Activities*).

The present Government's Anti-corruption Strategy is a 53-page document. Some of the proposed measures have already been turned into concrete proposals and submitted to the Parliament. For example, we can mention the amendment to the Act on Public Procurement, which lowers the limits for small-sized public contracts and establishes an obligation to disclose contracts, real costs/final prices and some other information.⁶³ However, the draft Act is now stumbling through the Parliament where it met with dozens of new amendments, which go against the spirit of the original proposal. Even the Ministry for Regional Development which prepared the original draft now comes with new changes.⁶⁴ The second important law that reached this phase is the amendment to the Act on the Supreme Audit Office (SAO) that extends its competences to include also the self-governing institutions.⁶⁵ The amendment has already met with some criticism, based mainly on the fact that it only allows for audits of legality in the case of municipalities. Another reservation is that the amendment does not extend the SAO competences to include state-controlled companies despite the fact that the need to audit such companies is included in the Government's anti-corruption strategy.⁶⁶

In April 2011, the Government established the Committee for Coordination of the Fight against Corruption and the former Interior Minister Radek John was appointed to be its chairman.⁶⁷ Under normal circumstances it would have been commendable. In the context of the Government coalition

⁶¹ *Strategie vlády v boji proti korupci na období let 2011 a 2012*; <http://www.mvcr.cz/clanek/uplna-verze-strategie-vlady-v-boji-proti-korupci-na-obdobi-let-2011-a-2012.aspx>.

⁶² GRECO: *Evaluation Report on the Czech Republic. Second Evaluation Round*. GRECO, Strasbourg, 2006; [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2\(2005\)7_CzechRepublic_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2(2005)7_CzechRepublic_EN.pdf). According to the report of June 2008, only one of five recommendations for the area of public administration has been satisfactorily implemented – see *Aktualizace Strategie vlády v boji proti korupci na období let 2006 až 2011*, p. 5.

⁶³ Parliamentary Print No. 370, 6th election period; <http://www.psp.cz/sqw/historie.sqw?o=6&t=370>.

⁶⁴ Interview with David Ondráčka, director of Transparency International-Czech Republic, on 20 July 2011. See also <http://aktualne.centrum.cz/domaci/spolecnost/clanek.phtml?id=714790>.

⁶⁵ Parliamentary Print No. 352, 6th election period; <http://www.psp.cz/sqw/historie.sqw?o=6&t=352>.

⁶⁶ Press release of Ekologický právní servis, 23 May 2011, <http://www.eps.cz/cz2287375ak/aktuality/>.

⁶⁷ Press release of the Government, 27 April 2011; <http://www.vlada.cz/cz/media-centrum/aktualne/vlada-zridila-vybor-pro-koordinaci-boje-s-korupci-83583/>.



crisis and the fact that Minister John was forced to resign by the coalition partners who did not trust his abilities to be in charge of the Interior Ministry, the newly established committee (which is supposed to have at its disposal 13 government officials and the budget of approx. CZK 20 million) is generally considered to be only a formal institution.⁶⁸ Shortly after, in May 2011, Radek John resigned from both his office of the Deputy Prime Minister and the chairman of the Committee.⁶⁹ In July 2011, new Deputy Prime Minister, Karolína Peake, was tasked to form the new Committee.⁷⁰ In her case, it is not her will to enforce the anti-corruption strategy that is being questioned but rather the willingness of the remaining Government members to support her efforts. Peake herself is not certain of their support.⁷¹

Management of state-controlled companies

Score: 0 25 50 75 100

To what extent is the government capable of transparent management of state-controlled companies?

Turnover of state-controlled companies, i.e. companies in which the Czech Republic holds a majority share, amounts to at least 60% of the state budget (see Figure 6.2.1).⁷² The level of corruption risks related to decision-making processes corresponds with the economic power of such companies.⁷³ In practice, most decisions that concern the state-controlled companies are not made by the Government but individually by relevant Ministers.⁷⁴ However, the Government could reserve such decision-making authority for itself and therefore it bears responsibility for all such decisions.

⁶⁸ <http://zpravy.ihned.cz/cesko/politika/c1-51701720-necas-posvetil-trafiky-pro-johna-zridil-urad-pro-boj-s-korupci>.

⁶⁹ <http://www.novinky.cz/domaci/233065-john-ve-vlade-konci.html>.

⁷⁰ <http://www.ceskatelevize.cz/ct24/domaci/129277-peake-si-zacala-vybirat-spolupracovniky-pro-boj-s-korupci/>.

⁷¹ TV program „Otázky Václava Moravce“, 21 August 2011; <http://www.ceskatelevize.cz/ivysilani/1126672097-otazky-vaclava-moravce/211411030510821-otazky-vaclava-moravce-2-cast/>.

⁷² Bouda, P., Boudal, J., Fadrný, M.: *Veřejná kontrola obchodních společností s majetkovou účastí státu a samospráv. Analýza a doporučení k rozšíření kompetencí NKÚ*. Ekologický právní servis, Brno, 2011; http://aa.ecn.cz/img_upload/98a9a0fe3779d35f22dc8d93fe87df89/2011_06_01_EPS_ANALYZA_NKU_FINAL.pdf.

⁷³ With regard to the fact that mandatory expenditure (i.e. expenditure that the state has to spend by law and the Government cannot influence the amounts) accounts for up to 80% of the state budget (see <http://icv.vlada.cz/scripts/modules/advice/detail.php?id=647>), we can conclude that from economic point of view, decision-making processes in the state-controlled companies have greater impact than decisions related to the state budget!

⁷⁴ Ministry of Finance alone manages 40 state-controlled companies, including the power giant ČEZ, Letiště Praha (Prague Airport) and Czech Airlines. See http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/fnm_portfolio.html.



Figure 6.2.1 Economic power of state-controlled companies



The way of exercising the state's ownership rights in state-controlled companies is non-transparent and it is not subject to public control. Most state-controlled companies are joint stock companies which must adhere to general rules for commercial companies (see *Business*). Moreover, similar to the public sector, they are subject to the Free Access to Information Act and – to a certain extent – also to the rules for awarding public contracts.⁷⁵ In practice, however, information concerning management of such companies by the state is not available. This does not apply only to information that the media are interested in, such as appointments to managerial positions or management remunerations,⁷⁶ but also to information concerning major privatisation or investment projects which are presented to the public only in fragments and often retrospectively. At the same time, there are well-founded suspicions that the system of remuneration for membership in the bodies of state-controlled (or municipal) companies is interlinked with political party financing (see *Political Parties/Accountability*). In spite of the fact that the previous Government approved stricter rules for remunerations in February 2010⁷⁷ and the present Government included its intention to regulate this

⁷⁵ In most cases, such companies fall into the category of so-called “sector contracting authority” according to s. 2 par. 6 and s. 4 ZVZ. The Supreme Administrative Court has repeatedly ruled that they must provide information, e.g. in relation to ČEZ in its ruling 2 Ans 4/2009 of 6 October 2009.

⁷⁶ For example, managers of ČEZ receive bonuses that are approximately 10 times higher than the salary of the Czech President. See http://www.tyden.cz/rubriky/byznys/cesko/rekordni-odmeny-pro-sefy-cez-2-2-miliardy_117603.html.

⁷⁷ http://ekonomika.idnes.cz/vlada-schvalila-prisnejsi-odmenovani-manazeru-statnich-firem-p60-/ekonomika.aspx?c=A100222_185412_ekonomika_fih.

area in its Policy Statement,⁷⁸ the new rules are only very slowly being implemented or they have been abandoned completely.⁷⁹

Another significant corruption risk lies in the contracts awarded by the state-controlled companies as well as in privatisations of such companies. For example, the media have recently reported about the case of the company Amun.Re, which was the main supplier of gigantic contract from ČEZ for construction of solar power stations. Amun.Re uses anonymous bearer shares so it is impossible to find out who its real owners are. There have been speculations of some links to the ODS party.⁸⁰ A tangle of daughter companies of ČD (Czech Railways) is an example of suspicious privatisation project which allowed private investors linked to politicians and ČD management to be involved in privatisation of more lucrative parts of the company.⁸¹

The question whether state-controlled companies operate in the public interest at all is more frequently asked by the citizens than by politicians. For example, power giant ČEZ can enjoy higher profit margins due to its dominant market position⁸² and high prices for end users (basically all the Czech citizens) and the company keeps expanding despite the fact that domestic electricity consumption is sufficiently covered.⁸³ According to BIS (Security Information Service), inconsistent behaviour of the state as an owner is a long-term phenomenon, with ample opportunities for private entities to benefit – to the detriment of the state-controlled companies – through manipulated public contracts, getting round the Public Procurement Act, overestimating acquisitions, disadvantageous sales of property or purchases of unnecessary marketing, consultancy or legal services.⁸⁴ A comparative study of EPS (Ekologický právní servis) argues that one major problem related to the state-controlled companies is the fact that in the Czech Republic, such companies are not subject to audits of the Supreme Audit Office, contrary to all neighbouring countries and many other OECD countries.⁸⁵

⁷⁸ See *Programové prohlášení vlády ze srpna 2010*; http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Programove_prohlaseni_vlady.pdf, p. 17.

⁷⁹ Article „Kolik berou manažeri státních firem? To je pořád tajné” in *MF Dnes*, 16 May 2011.

⁸⁰ <http://byznys.ihned.cz/c1-52034670-kdo-je-neznama-firma-amun-re-ktere-cez-zaplatal-5-miliard-za-solarni-projekty>.

⁸¹ For example http://byznys.lidovky.cz/protikorupcni-policie-prosetruje-cd-cargo-f2o-/ln-doprava.asp?c=A110403_145431_ln-doprava_mev.

⁸² The European Commission investigated ČEZ in 2009, in relation to suspected abuse of its dominant position on the market. The investigation has allegedly not been completed yet. See http://ekonomika.idnes.cz/brusel-nejspis-bude-vysetrovat-cez-kvuli-zneuzeni-dominance-pt6-/eko_euro.aspx?c=A110624_125554_eko_euro_mad.

⁸³ Oldřich, J., Bebiak, M.: *Power Abuse. ČEZ a zneužití dominantní tržní síly*. Candole Partners. Praha, 2011; http://www.candole.com/files/Power%20Abuse_cz_final.pdf, p. 5 and p. 26.

⁸⁴ *Výroční zpráva bezpečnostní informační služby za rok 2010*; <http://www.bis.cz/n/2011-09-07-vyrocní-zpráva-2010.html>.

⁸⁵ Bouda, P., Boudal, J., Fadrný, M.: *Veřejná kontrola obchodních společností s majetkovou účastí státu a samospráv*. Brno, Ekologický právní servis, 2011; http://aa.ecn.cz/img_upload/98a9a0fe3779d35f22dc8d93fe87df89/2011_06_01_EPS_ANALYZA_NKU_FINALE.pdf.



To get the complete picture, it must be added that similar risks and corruption schemes are being used also on the municipal level where the property is often transferred to the municipal companies⁸⁶ where it is not so much exposed to public control and where it thus also helps create new lucrative positions in statutory bodies. Such posts are often occupied by politicians or their relatives or friends, disregarding any necessary qualifications. In many cases, such posts are connected with holding a political office. For example, the head of Prague Social Democrats (CSSD) Petr Hulinský has accumulated CZK 12 million from his membership in statutory bodies of municipal companies over the last 3 years (approx. 4 times his Deputy salary for the same period).⁸⁷ Yet it is a clear example of circumventing the Act on the Conflict of Interest, which stipulates that politicians are not entitled to receive remuneration for their participation in state-controlled and municipal companies.⁸⁸

LAWS AND REGULATIONS

Constitution: Act No. 1/1993 Coll., Constitution of the Czech Republic.

InfZ: Act No. 106/1999 Coll., on Free Access to Information.

JedŘPSP: Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies.

KompZ: Act No. 2/1969 Sb., on the System of Ministries and Other Central Bodies of State Administration of the Czech Republic.

NKÚZ: Act No. 166/1993 Coll., on the Supreme Audit Office.

PlatFunZ: Act No. 236/1995 Coll., on the Salary and Other Indemnities Associated with the Execution of the Office of Representatives of State Power and Some State Bodies and Judges and Members of European Parliament.

SŘ: Act No. 500/2004 Coll., Code of Administrative Procedure.

StřetZ: Act No. 159/2006 Coll., on Conflict of Interest.

RozpZ: Act No. 218/2000 Coll., on Budgetary Rules.

ZVZ: Act No. 137/2006 Coll., on Public Contracts.

⁸⁶ Pavel, J.: *Používání obecních obchodních společností v České republice na příkladu krajských měst*. Transparency International - Česká republika, Praha, 2008.

⁸⁷ <http://zpravy.ihned.cz/c1-51755450-primator-svoboda-chce-politikum-sebrat-milionove-odmeny-z-mestських-firem>.

⁸⁸ Compare StřetZ, s. 5. Politicians circumvent the law by formally representing in statutory bodies not the particular municipality but some company (owned by that municipality) or by being members of the bodies of the companies which are not controlled directly by the municipality but by some other company, which is owned by the municipality. Compare explanatory report to the Parliamentary Print No. 994; <http://www.psp.cz/sqw/text/tiskt.sqw?O=5&CT=994&CT1=0>.

National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co.

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

JUDICIARY

- *The highest judicial instances are capable of making bold decisions and enjoy relatively high public confidence levels.*
- *Personnel issues and financial management of the judiciary suffer from a lack of transparency and both areas are under a strong influence of the executive.*
- *Serious corruption cases remain unsolved and unpunished.*

COURTS			
Overall Pillar Score: 65 /100			
	Indicator	Law	Practice
Capacity 69 /100	Resources	50	75
	Independence	75	75
Governance 63 /100	Transparency	50	75
	Accountability	100	50
	Integrity mechanisms	50	50
Role 63 /100	Executive oversight	75	
	Corruption prosecution	50	



PUBLIC PROSECUTION SERVICE			
Overall Pillar Score: 40 /100			
	Indicator	Law	Practice
Capacity 44 /100	Resources	50	75
	Independence	25	25
Governance 50 /100	Transparency	50	25
	Accountability	75	50
	Integrity mechanisms	50	50
Role 25 /100	Executive oversight	-	
	Corruption prosecution	25	

Summary

Using the Czech judicial system to seek justice is an arduous and time-consuming process with uncertain results. It is not quite clear whether this situation is caused by insufficient capacity of judicial system, by its inefficient internal processes, or by leaky and ever-changing legislation. The only “certainty” is the resulting citizens’ distrust of courts and their ability to seek and guarantee justice. Despite these critical remarks, the courts – in important cases – successfully fulfil the role of an independent safety-valve against excesses of the executive and legislative powers. This is especially the case of supreme courts in the area of administrative and constitutional law. As far as corruption is concerned, the most serious cases are usually not brought before the court at all and they have their own life, without any legal repercussions. In this context, the courts can be reproached mainly for the fact that inadequately mild sentences are imposed in cases where corrupt behaviour is proved.

To an independent observer, public prosecution service in the Czech Republic may seem like a black hole that absorbs all information on major corruption cases while no information escapes from it. This may be caused by the fact that the prosecution service is formally – and to a certain extent also practically – a part of the executive, and unlike the judges, individual prosecutors do not have sufficient independence to successfully resist political pressure. The prosecution service fails to use its opportunity to be answerable directly to the public, by which it could significantly reduce such negative political pressure.

Due to substantial differences between the courts and the public prosecution service, some indicators provide separate qualitative assessments for the prosecution service. Also the tables above provide separate overall assessment for the courts and the public prosecution service in the national integrity system of the Czech Republic.

Structure and Organisation

For the purposes of this NIS report, we consider the public prosecution service as a part of the judiciary, despite the fact that some of its characteristics put it rather in the executive branch.

The courts' function is to defend legal rights. The role of the Constitutional Court is to defend constitutional principles and fundamental human rights; the system of general courts consists of the Supreme Court, Supreme Administrative Court, two high courts, eight regional courts (including the Municipal Court in Prague), and 85 district courts (including 10 district courts in Prague). General courts decide disputes between private individuals, provide protection against interventions of state authorities in administrative justice, and decide on guilt and punishment in criminal proceedings.

Public prosecution service's major role, according to the Czech Constitution, is to represent public prosecution in criminal proceedings. Public prosecutors also have a significant role in investigation of criminal offences. In this area, however, they need to closely cooperate with the Police. Organisational structure of public prosecution service replicates the structure of criminal courts – from the Prosecutor General's Office to higher and regional prosecution offices to district prosecution offices.

Resources (law)

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

Score (courts and public prosecution service): 0 25 50 75 100

With the exception of salaries of judges and public prosecutors, which are determined by law, appropriate salaries and working conditions of judiciary are not adequately guaranteed by legal regulations. The budget of the judiciary and prosecution service is a part of the Ministry of Justice's budget. The authority with decisive influence on total expenditure in the judiciary is the Ministry of Finance, which puts together – in cooperation with the administrators of individual budget chapters – the overall state budget. The Constitutional Court is an exception, being one of the six privileged institutions

that propose their own budget independent of the Ministry of Finance.¹ The Ministry of Justice's budget includes, besides the resources dedicated to the judiciary (more than half of the total budget), also expenditures dedicated to prison service (more than one third of total expenditures).² There is no regulation concerning minimum percentage of the general state budget to be apportioned to the judiciary. In the process of drafting the Ministry of Justice's budget chapter as well as in drafting budgets for individual courts, the role of the representatives of the judiciary is only advisory. Deputy Justice Minister admits that the issues of finances and working conditions for the judiciary are effectively decided by the Finance Minister.³

Salaries of judges and public prosecutors are relatively stable. As is the case with constitutional officials, such salaries are determined by a special law and the salary level is derived from the average salary in non-business sector for the year before last. In 2010, the judges' salaries at district and regional courts were 2.2 – 4 times higher than the average salary (based on the years of service), and the salaries of judicial officials and judges of highest courts were up to 6.25 higher.⁴ Similar coefficients (only about 5 per cent lower) apply to public prosecutors.⁵ The system based on coefficients constitutes an adequate mechanism securing salary adjustment with regard to inflation. However, instability in remuneration system is caused by frequent changes in the law that stipulates relevant principles. That is why the Constitutional Court has repeatedly provided protection to the judges against inadequate reductions in salary. The last time was in September 2010 when the Constitutional Court revoked the 4 per cent reduction, and in August 2011, when it revoked a similar reduction for the year 2011.⁶ However, the Constitutional Court did not meet similar requirements of public prosecutors, giving the reason that the level of independence of public prosecutors required by the Constitution is not comparable to the requirements on the independence of judges.⁷

There is no legal regulation of career advancement for judges and public prosecutors (see *Independence*); thus the above described indexation of salary according to the years of service represents their only certainty.

¹ Other institutions are: Chamber of Deputies, Senate, Office of the Czech President, Ombudsman, and Supreme Audit Office. Prospective objections of the government concerning the extent of their proposed budgets are decided directly by the Budget Committee of the Chamber of Deputies – see s. 8 par. 3 RozpZ.

² See chapter „Ministry of Justice“ of the State Final Account for 2009;
http://www.mfcr.cz/cps/rde/xbcr/mfcr/SZU2009_H_Sesit2_pdf.pdf.

³ Interview with František Korběl. Also Korběl, F.: Současný stav správy justice a pokusy o jeho reformu. In: *Česká justice*. Transparency International - Česká republika, Praha, 2010, p. 11-78;
<http://www.transparency.cz/publikace-analyzy/ceska-justice-otazka-spravy-nezavislosti/>.

⁴ Cf. PlatFunZ, s. 3, s. 17, s. 28.

⁵ Cf. PlatSzZ, s. 3.

⁶ Despite the original plan (reduction in salaries of all state employees on grounds of the economic crises), the final reduction applied only to constitutional officials, judges and public prosecutors. In its ruling Pl.ÚS 12/10 of 10 September 2010, the Constitutional Court held the reduction in judges' salaries as unconstitutional as it is not a proportional measure in the circumstances when judges' salaries had been subject to restrictions for more than 10 years. For decisions of the Constitutional Court related to the salaries of judges see
<http://www.concourt.cz/clanek/GetFile?id=5543>.

⁷ Decision of the Constitutional Court Pl.ÚS 17/10 of 28 June 2011.

Resources (practice)

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Score (courts and public prosecution service): 0 25 50 75 100

In 2009, the expenditures apportioned to the judiciary constituted 1.1% of total expenditures of the state. In 2010, their proportion on budget expenditures dropped to 1%. The Constitutional Court had at its disposal CZK 162 million in 2009, the budget for all other courts was CZK 10.5 billion, and the budget for the prosecution service was CZK 2.2 billion.⁸ The budgets of individual courts cover direct costs of their operation (salaries of judges and other staff, postage and other operational costs) as well as compensations paid to solicitors and experts that are covered by the state, through relevant courts.⁹

Excluding the Constitutional Court, the judiciary employs the total of 3060 judges and 1239 prosecutors. The numbers of expert staff are low, in proportion to the number of judges and prosecutors. Altogether, the courts employ 571 assistants, 1131 judicial clerks and 102 judicial trainees. In the public prosecution service, the proportion is even lower: there are only 63 trainees, 35 assistants and 3 prosecution clerks.¹⁰ Administrative and organisational support is provided by additional staff of approximately 5,000. In 2010, the average salary was CZK 81,485 for a judge and 70,475 for a prosecutor.¹¹ In total, the salaries of judges account for almost one third of the courts' budget and the salaries of prosecutors amount to approx. 50% of the prosecution service's budget.¹²

According to Supreme Administrative Court Chairman, the judiciary suffers more from the lack of strategy and continuity in financing than from the overall amount of financial resources apportioned to it (although he says that the Czech judiciary actually is underfinanced, compared to other countries). There are frequent changes in the ministerial positions and the reforms that could help make the judiciary more effective remain unfinished.¹³

The fact is that judicial proceedings take relatively long time. While the Ministry of Justice's statistical data show that the courts are successful in gradual reduction of the number of unclosed cases as well as the overall length of the proceedings (both parameters had culminated after 2004), they also reveal that the courts still do not manage to handle their agenda in real time. In the area of civil disputes, restitution cases take the longest time (over 5 years), followed by employment disputes (698 days), and ownership

⁸ Information from financial statements provided on request by the Ministry of Justice.

⁹ In 2009, such compensations reached almost CZK 1 billion and thus form a significant proportion of the budget.

¹⁰ As of 1 March 2011; data provided on request by the Ministry of Justice.

¹¹ Source of data: decision of the Constitutional Court Pl.ÚS 17/10 of 28 June 2011.

¹² Budgets and closing accounts of the courts and state prosecution service provided on request by the Ministry of Justice.

¹³ Interview with Josef Baxa.



disputes (694 days). A little less time is needed to handle actions for damages (320 days) and family disputes (298 days).¹⁴

Also the predictability in legal decisions is relatively low. In civil disputes, regional courts handled 76,097 appeals in 2009 and the ruling of the lower courts was confirmed only in 34,429 cases. Distrust of lower courts' decisions (see also *Accountability*) creates a further burden for the system. The overload and related inappropriate length of appeal proceedings before the Supreme Court (in civil cases, 13 months in average) were also pointed out by the Ombudsman in his reports. With regard to the inefficiency of the courts, the Ombudsman also criticized the overuse of expert evidence, which makes the proceedings not only longer but also more expensive.¹⁵

Independence (law)

To what extent is the judiciary independent by law?

Score (courts): 0 25 50 75 100

The judiciary's independence is anchored in the Constitution as an integral part of fundamental principles of democratic state.¹⁶ The law regulates in detail especially the independent position of judges in their decision making. As to the other issues, there are loopholes in their legal regulation, which may result in negative influence over the independence of the judiciary as a whole. The judges are appointed without any tenure limit and they may be removed only as a result of disciplinary proceedings or some other reasons stipulated by law.¹⁷ In their decision making, the judges are only bound to follow the valid law¹⁸ and – in individual cases – also the legal opinion of the higher court which overturned their original ruling. The Constitutional Court has 15 judges who are appointed for 10-year term by the President with the consent of the Senate. Judges may be held criminally liable for offences related to their performance of duty only with the President's consent; judges of the Constitutional Court may only be held criminally liable with the approval of the Senate.¹⁹

With regard to independence, besides the economic issues mentioned above, there is also a question of the process for appointing judges and judicial officials, as well as the issue of their career advancement.

¹⁴ Statistical overview of judicial agenda for the year 2009;

<http://portal.justice.cz/Justice2/MS/ms.aspx?j=33&o=23&k=3397&d=47145>.

¹⁵ *Souhrnná zpráva o činnosti veřejného ochránce práv za rok 2010*, pp. 63-64, <http://www.ochrance.cz/zpravy-pro-poslaneckou-snemovnu/>.

¹⁶ To amend the Constitution, 3/5 majority of all Deputies and the consent of the Senate is required. However, such amendment as well as any law that would significantly limit the independence of the courts may be invalidated as unconstitutional by the Constitutional Court (see also *Legislature*).

¹⁷ Reaching the age of 70; being convicted for a criminal offence; being incapable to exercise the duties of the office for medical reasons; losing Czech citizenship (SoudZ, s. 94).

¹⁸ However, the judges are not obliged to apply laws that are in contradiction to the Constitution. If such situation arises, they may turn to the Constitutional Court (Constitution, Art. 95).

¹⁹ SoudZ, s. 76, Constitution, Art. 86.

The law stipulates basic conditions for performance of the office of the judge (qualification requirements, practice, age limit, incompatibility with other offices). Yet there are thousands of lawyers who fulfil such criteria and no official procedure exists for approaching the candidates and for the subsequent selection process. The law merely states that the judges are appointed by the President, based on suggestions provided by the Minister of Justice, and that the Minister also allocates the judges to individual courts (with their consent).²⁰

Minister of Justice also plays a key role in career advancement of judges, as s/he has the authority to decide on relocation of a judge to a different court, to propose candidates to be appointed chairmen of regional and high courts by the President, and to appoint chairmen of district courts (at the suggestion submitted by the chairman of a regional court). The term of the chairman of a court is 7 years and the office's holder may only be removed as a result of disciplinary proceedings. Chairmen of Supreme Court and Supreme Administrative Court are appointed for a 10-year term by the President, and they are selected from among the judges of these courts without suggestion.²¹ Relocation of a judge is always subject to his/her consent, and the Minister of Justice must consult such relocation with the respective court's chairman, while only the chairmen of Supreme Court and Supreme Administrative Court have the right of veto. As is the case with the appointment of a new judge, the law does not stipulate any rules for the career advancement of judges, with the exception of the required number of years of practice.

Score (public prosecution service): 0 25 50 75 100

Contrary to the courts and judges, the independence of the prosecution service and prosecutors is not anchored in the Constitution and it is not sufficiently guaranteed by law. According to formal division of branches into the legislature, the executive and the judiciary, the Constitution includes the public prosecution service in the executive branch, together with the government and the President.

The law only emphasises impartiality of prosecution service and individual prosecutors in execution of their powers, which is related with the general principle of officiality in criminal proceedings, i.e. with prosecutors' duty to prosecute all criminal offences they become aware of.²² Thus by law, public prosecution service is obliged to prosecute anyone without any differentiation. However, the independence of individual prosecutors in execution of their duties is not guaranteed in the same extent as the independence of judges, although there are provisions that guarantee a certain level of independence. For example, the law explicitly states that a prosecutor is not obliged to follow

²⁰ Constitution, Art. 63, SoudZ, s. 67.

²¹ Constitution, Art. 62, SoudZ, s. 73, s. 102-105.

²² TR, s. 2, par. 3.



instructions of his/her superiors in the court proceedings if the evidence has changed during the proceedings.²³

Organisational structure of public prosecution service is a hierarchy similar to those of state administration authorities. Considering the influence that the politicians have on appointments to key positions in prosecution service, such hierarchy and subordination has a negative impact on the independence of prosecution service. Especially the Prosecutor General, who is appointed by the government at the suggestion of the Minister of Justice and who may also be removed from office by the government at the suggestion of the Minister of Justice, without giving any reason, has an extremely weak position. The Minister, in collaboration with the Prosecutor General, has the authority to remove officials of lower levels of prosecution service. Despite the fact that such removal from office must be justified by a serious breach of duties, such authority significantly limits the independence of public prosecution.²⁴

Independence (practice)

To what extent does the judiciary operate without interference from the government or other actors?

Score (courts): 0 25 50 75 100

As regards the courts, their situation largely mirrors schizophrenic nature of Czech legislation, which provides individual judges with thorough protection of their independence in decision-making in individual cases (which is crucial), yet it does not provide for the independence of the judiciary as a whole.²⁵

In practice, the right to one's "legal judge" – one of the attributes of judges' independence – is being rigorously exercised. The cases are assigned to judges mechanically, based on previously approved and publicised work schedule, and the chance to remove a case from a designated judge is very limited. Recent attempt to remove politically sensitive case of so called "judicial mafia"²⁶ from judge Cepl was

²³ StZastZ, s. 12e, par. 4.

²⁴ StZastZ, s. 9 and 10. An alternative to the existing model could be a system similar to that of appointing the judicial officials, i.e. to appoint them for a fixed term, with the possibility of their removal based on disciplinary proceedings.

²⁵ The Constitutional Court in its ruling No. Pl.ÚS 18/06 of 11 July 2006 commented on the independence of the judiciary as follows: „[...] the judiciary here does not constitute a separate and independent representation, it cannot exteriorize as one of independent powers, as it is in fact represented by the Ministry of Justice, which fact is being reflected in the entire regulation of the courts administration model [...]“.

²⁶ The case filed against former Prosecutor General Marie Benešová for calling top-level officials of public prosecution service (including her successor Renata Vesecká) a „judicial mafia that strives to gain control of the judiciary so that it would serve the governing elites's interests“. Vesecká and her colleagues sued Benesova over her statement. Judge Cepl, in his daring ruling, stated that the label „judicial mafia“ was exaggerated and inaccurate, yet he rejected the complaint, reasoning that the statement is based on reality, concerning non-standard conduct of the complainants and suspicious meetings held by them. The „non-standard“ conduct consisted namely in the fact that the investigation of alleged criminal behaviour of the then deputy prime minister Čunek was

blocked by the Constitutional Court, which stated in its decision that the court of appeal may remove the case from the judge of the court of primary jurisdiction only in a situation when the right to a fair trial is endangered, not because of any imperfections that may be corrected in subsequent proceedings.

A judge may not be transferred to a different court without his/her consent, and if s/he does not commit any serious misconduct (see *Accountability*), there is no danger of removal from the position. However, the executive power may exert its undue influence resulting in the fact that the judge will never be promoted or appointed a judicial official. Officially, the authority lies with the Minister of Justice but in real life, the chairmen of regional and high courts play key roles in such decisions. It is the chairmen who select candidates that will be subsequently suggested by the Minister of Justice to the President for appointment.²⁷ Thus the Ministry of Justice voluntarily surrenders its authority to organise an open selection process with broader range of candidates.²⁸ The outcome of present procedure is a choice of nominations that bear evidence, in specific cases, rather of existing clientelistic relationships than of the efforts to choose the best candidate available (see *Integrity*; the case of appointment of judge Šedivá).

Clientelistic relationships between the Ministry and judicial officials are supported also by the present system of deciding the economic issues. In his comments on decision-making concerning the budget allocation, the chairman of the Supreme Administrative Court says that negotiation with the Ministry takes place behind the closed door, at the level of individual courts' chairmen, and follows a principle of "divide and rule", which seems to suit the ministers.²⁹ According to a deputy justice minister, setting-up the budgets of individual courts is a fairly routine matter, and the only sphere concerned with political decisions is the issue of larger investments (e.g. renovation of buildings).³⁰ If we look more closely at these apparently contradictory views, they are rather complementary, and both describe a vulnerable system that is overly dependent on moral integrity of its key actors.³¹

Score (public prosecution service): 0 25 50 75 100

removed from the state prosecutor in Přerov shortly before Čunek's formal accusation. See the ruling of Prague Regional Court 36 C 8/2008 of 5 June 2008 (<http://aktualne.centrum.cz/domaci/kauzy/fotogalerie/2008/06/05/prohlednete-si-rozsudek-soudce-vojtechy-cepla-o-justicni-mafii/>). The court of appeal revoked the ruling in February 2011 (see <http://zpravy.e15.cz/domaci/udalosti/benesova-se-musi-omluvit-za-vyrok-o-justicni-mafii/>), but the matter is yet to be handled by the Supreme Court.

²⁷ This was confirmed in the interview with both the representative of the Ministry and the representative of the courts. See interview with František Korbel; interview with Josef Baxa.

²⁸ Starting from 2002, it is not only lawyers who completed judiciary training and passed the exam who may become a judge but also lawyers who passed a bar exam, notary exam or executor exam (SoudZ, s. 60).

²⁹ Interview with Josef Baxa.

³⁰ Interview with František Korbel.

³¹ The concentration of power is illustrated also by the weak position of judicial self-administration. By the law, there exist judicial councils that are elected by general assembly of all judges of the relevant court but the councils do not have any independent decision powers and thus act merely as an advisory board for the chairmen of individual courts (SoudZ, §46-59).

In practice, the independence of public prosecution service is being questioned because of possible political pressures. Due to the prosecution service's hierarchical organisational structure, it is possible to remove a case purposefully from a certain public prosecutor and to assign a prosecutor with a different agenda. Such practices are actually being used. An example can be the case of former deputy Prime Minister Čunek, which became a basis for the above mentioned "judicial mafia" case.³²

Chief prosecutors cannot feel secure about their positions – changes in political elites at the Ministry of Justice are often followed by removal of public prosecutors from their office, possibly followed by their return to the same office later. For example, media paid a lot of attention to the case of Liberec chief prosecutor Adam Bašný who was removed from office by his superior, Ústí chief prosecutor Křivanec. After the general elections, the Minister of Justice initiated changes that reversed the situation: Bašný was re-appointed to his office and Křivanec was dismissed.³³ Changes of this sort cast doubts on the independence of public prosecution service even in situations when the dismissal seems to be completely justified, such as in the case of former Prosecutor General Vesecká (who was removed in October 2010, partly also due to her participation in the case of the "judicial mafia")³⁴ or chief prosecutor Rampula (who was removed from office for foot-dragging on politically sensitive cases – see *Accountability*).

According to former Deputy Prosecutor General, it is necessary to differentiate between external independence of public prosecution service, which suffers from interference (in personnel or budgetary issues) from the executive, and internal independence, i.e. investigation of individual cases. Such internal independence is being violated mainly by the prosecution officials themselves. At present, appointment procedure of such officials is non-transparent and it encourages loyalty to politicians.³⁵ Chief public prosecutors at all levels may have considerable influence on the investigation as they have the authority to assign a case to some other public prosecutor or to issue an instruction which is binding for their subordinates (for more details, see *Accountability*).

³² The case was first removed from the Vsetín District Prosecution Office to Přerov and later – after an intervention of the Prosecutor General's Office – from Přerov to Jihlava. Non-standard nature of such procedure was recognized also by the prosecution service itself, after the new Prosecutor General was appointed. See the press release of 17 August 2011; <http://portal.justice.cz/nsz/hlavni.aspx?j=39&o=29&k=2716&d=318040>.

³³ <http://www.ceskatelevize.cz/ct24/domaci/46682-pospisil-chce-navrat-basneho-do-funkce-jeho-nadrizeneho-odvolal/>.

³⁴ http://zpravy.idnes.cz/vlada-odvolala-nejvyssi-zalobkyni-veseckou-nahradi-ji-pavel-zeman-10e-/domaci.aspx?c=A101027_141026_domaci_js.

³⁵ Interview with Jaroslav Fenyk.

Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

Score (courts and public prosecution service): 0 25 50 75 100

Legislation that would guarantee the public to have an access to information on the judiciary and its activities is relatively fragmentary. As to the decision-making activities of the courts, the law stipulates an obligation to publish selected judgements of the Constitutional Court, Supreme Court and Supreme Administrative Court.³⁶ In other cases, procedural legislation for civil, administrative and criminal law allows for the public to be present at the proceedings and the rulings are public, yet there is no obligation to publicise such rulings. On the other hand, all courts are obliged to publicise their work schedules so that from the moment of filing it is clear which judge or which panel will handle each individual case.³⁷

Court hearings records or transcripts, which are made by the courts, are not public – they are a part of judicial files which are generally accessible only to the participants in the proceedings. Other parties may access such files only with the approval of relevant judge and they must prove their legal interest.³⁸ However, the participants in the proceedings and the public are allowed to make their own recording of the hearings. An approval of the judge is necessary to make a visual recording of the court hearing or to broadcast it.³⁹

There is no official obligation to make public judicial statistics, information on personnel of individual courts, or detailed economic information. With regard to the fact that administration of the courts and public prosecution service is to a large extent exercised by the Ministry of Justice, it is not clear whether such information should be provided in a summarised format by the Ministry, or also individually by each court or prosecution office. On the other hand, the Ministry and each individual court or prosecution office have an obligation to publish basic information concerning its activities on its website, as well as to provide other information on its activities on request, based on the Free Access to Information Act.⁴⁰ In individual cases, it is only possible to obtain the judgements of the courts on such request for information.

As regards the prosecution service, provision of information is further limited by Criminal Procedure Code, especially in relation to the cases under investigation.⁴¹ The situation was made even more complicated by the adoption of so-called Muzzle Law in 2009, which practically makes it impossible to

³⁶ ÚstSoudZ, s. 59, SoudZ, s. 24, SŘS, s. 22.

³⁷ SoudZ, s. 41.

³⁸ OSŘ, s. 14, SŘS, s. 45, TR, s. 65.

³⁹ SoudZ, s. 6 par. 3.

⁴⁰ InfZ, InfV.

⁴¹ TR, s. 8a.



provide the public with information on the progress of investigation of serious crimes.⁴² The law was intended to increase protection of victims but resulted in providing an inadequate protection of privacy to persons charged with an offence. For that reason, some Senators consider the law to be unconstitutional and they have submitted a proposal for the law to be abolished.⁴³ The law directly affects especially the activities of journalists. However, some experts are of the opinion that the journalists actually provoked its adoption by their irresponsible and excessive publicising of information leaked from criminal files (see *Media/Independence* and *Accountability*). Public prosecution service is also authorised to decide the extent of information concerning the investigation of criminal offences that will be provided to the media by the police.⁴⁴

Transparency (practice)

To what extent does the public have access to judicial information and activities in practice?

Score (courts): 0 25 50 75 100

Provisions governing transparency of the judiciary have been prepared for pre-Internet era. Therefore, not surprisingly, in practice the courts provide information in larger extent than required by law. This applies especially to the rulings of highest-level courts, which are available on the Internet (in an anonymised format). Specifically, the Constitutional Court thus makes available all its rulings from the date of the establishment of the Czech Republic in 1993; the Supreme Administrative Court all its rulings starting from the court's establishment in 2003; and the Supreme Court all its rulings as of June 2000 plus selected older rulings.⁴⁵ Comprehensive information on decisions of lower courts is not available to general public. Professional public may find such information in anthologies, paid legal databases or articles in professional journals.

As to other information on activities of the courts, which are available to the public on the Internet, we may point out the InfoSoud application – a centralised collection of information on proceedings and ordered hearings of all courts in the Czech Republic. Statistical data on the courts' activities are published once a year by the Ministry of Justice. This comprehensive (several hundred pages long) report includes data on the number and length of court proceedings in individual areas and in some cases includes also summarized information on the results (e.g. for divorces). The most detailed part of the annual report deals with criminal agenda – besides overall data on number of prosecuted, accused and sentenced persons there are also detailed statistics on individual criminal offences.

⁴² Cf. Act No. 52/2009 Coll, which amended the Criminal Procedure Code.

⁴³ <http://zpravy.ihned.cz/c1-37129740-senat-at-ustavni-soud-prednostne-projedna-nahubkovy-zakon>. The Constitutional Court has not decided yet.

⁴⁴ Cf. TR, s. 8a par. 3.

⁴⁵ See websites of individual courts: Constitutional Court - <http://www.concourt.cz>, Supreme Court - <http://www.nsoud.cz/>, Supreme Administrative Court - <http://www.nssoud.cz/>.

Information portal of the judiciary includes also websites of individual courts of lower level. The quality of their websites varies and some of them contain information that is obsolete or incomplete. Not even the highest courts respect the obligation to publish certain information.⁴⁶ For example, information concerning the budget for the actual and previous year can only be found on the website of the district court in Prachatice.⁴⁷

Score (public prosecution service): 0 25 50 75 100

Prosecutor General's Office publishes on its website, besides guidance notes and opinions, also its annual activity report, which it is – by law – obliged to prepare and submit to the government.⁴⁸ The report includes a brief summary followed by chiefly statistical data on investigation of criminal offences.

What often meets with criticism is the way in which the public prosecution service informs the public about cases under investigation. Information provided is usually so fragmentary that it encourages speculation that the public prosecution purposefully hinders investigation of certain cases or that it at least tries to disguise its own inability to properly investigate. Contrary to such policy of “closed door”, some very detailed information often leaks to the media (such information has also been a valuable source for this NIS report). Public prosecution and the police blame each other for such leaks while at the same time claiming their own blamelessness, like for example in the recent case of leaked testimony of a state's witness in the case of alleged corruption around the purchase of Pandur armoured personnel vehicles for the Czech Army.⁴⁹ The leak put in jeopardy further cooperation with the Austrian judiciary in the investigation of the case. According to Jaroslav Fenyk, lawyer and former public prosecutor, silence or equivocating from the side of law enforcement authorities damage reputation of these institutions and make them less credible. This is only reinforced by the fact that most information that leak to the media is actually correct though it may be distorted in a particular case.⁵⁰

⁴⁶ InfV, appendix 1.

⁴⁷ In March 2011, when the websites were searched, other courts' budgets were not available or they were not updated (there were budgets for 2005, 2007, etc.).

⁴⁸ StZastZ, s. 12 par.7, reports are available at <http://portal.justice.cz/nsz/hlavni.aspx?j=39&o=29&k=2750>.

⁴⁹ <http://www.ceskatelevize.cz/ct24/domaci/127164-rampula-unik-informaci-v-kauze-pandur-se-proveruje-na-muj-podnet/>.

⁵⁰ Interview with Jaroslav Fenyk.

Accountability (law)

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

Score (courts): 0 25 50 75 100

The Czech law regulates the responsibility of judges for proper performance of their duties in detail, through a system of interconnected institutes – procedural regulations,⁵¹ disciplinary liability⁵² and liability for damage incurred due to unlawful decision.⁵³

Basic protection against malicious decision-making of the courts is provided by the procedural regulation of civil, criminal and administrative proceedings, which makes it possible for the proceedings' participants to make objection for the bias of the judge (see *Integrity* for more details). Procedural legislation also requires giving reasons for each individual decision, which is a necessary prerequisite for its review by higher courts. Remedial measures at higher courts present the only possible way of questioning the subject-matter of the decision (a principle of independence).

Participants in proceedings may complain about delays in proceedings or about improper conduct of the judge to the chairmen of relevant courts who are obliged to handle the complaint and inform the complainant about its results. They are also obliged to initiate disciplinary proceedings if they detect any intentional error. If the chairman fails to act, the complainant may ask the Ministry of Justice to review the complaint.⁵⁴ Disciplinary liability of judges⁵⁵ is determined by a special panel consisting of one Supreme Court judge, one Supreme Administrative Court judge, one other judge, one public prosecutor, one attorney and a lawyer suggested by the deans of law faculties. In addition to the chairmen of individual courts and the Minister of Justice, disciplinary proceedings may be initiated also by the President and the Ombudsman.⁵⁶ The Constitutional Court judges have a special regulation of disciplinary liability.⁵⁷

Actions of judges and public prosecutors are also subject to liability for damages incurred due to unlawful decision or improper official procedure. The damages are reimbursed by the Ministry of Justice; compensation may be claimed from the judge or prosecutor who caused the damage if s/he was adjudged guilty in disciplinary proceedings.⁵⁸ One significant loophole in the law is the fact that the

⁵¹ OSŘ, SŘS, TŘ, ÚstSoudZ.

⁵² KarOdpZ.

⁵³ OdpŠkZ.

⁵⁴ Cf. SoudZ, s. 164-174, s. 128.

⁵⁵ According to s. 87 SoudZ, a disciplinary wrongdoing of the judge is an “intentional breach of judge’s duties, as well as any intentional conduct or behaviour by which the judge affects the dignity of the judge’s position or endangers confidence in independent, impartial, professional and fair decision-making of the courts”.

⁵⁶ Cf. *Ombudsman/Independence* and the attempt to challenge the Ombudsman’s authority at the Constitutional Court.

⁵⁷ Cf. ÚstSoudZ, s. 132-144.

⁵⁸ Cf. OdpŠkZ, s. 6, s. 17.

disciplinary proceedings are ended when the judge or prosecutor resigns from his/her office in the course of the proceedings. In this way, it is possible to avoid compensation claims.

Score (public prosecution service): 0 25 50 75 100

There is an analogous mechanism of complaints handling and disciplinary proceedings for public prosecutors.⁵⁹ However, the overall situation is more complicated. On the one hand, criminal proceedings are non-public, which means the public oversight is significantly restricted (see *Transparency*), on the other hand there are relatively detailed provisions stipulating which methods can be used within the official hierarchy to give instructions and related responsibility to individual public prosecutors. The law explicitly states that prosecutors are obliged to follow the instructions of chief public prosecutor or a prosecutor authorised by him provided the instruction is not in contradiction with the valid law. Such instruction may be given orally but the subordinate is entitled to ask for a written confirmation of the instruction and he/she may refuse to follow it after stating (in writing) his/her reasons for such refusal.⁶⁰ Thus – in theory – a prosecutor may resist undue pressure from his/her superiors. In practice, however, the lack of public oversight and dependence of prosecution officials on the politicians result in the situation in which these internal mechanisms do not function.

Accountability (practice)

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

Score (courts): 0 25 50 75 100

In practice, the issue of responsibility for proper performance of the judiciary is a bit more complicated than the above described rules would suggest, namely because the members of the judiciary do not feel to be directly responsible for the performance of the system and they ascribe its dysfunctioning to the Ministry of Justice, as it is the holder of key competences (see *Resources* and *Independence*). Also, even the implementation of the existing rules is not without problems in practice.

Complicated procedural legislation, which is supposed to protect the participants in the proceedings, actually constitute – according to the Supreme Administrative Court chairman – one of the main reasons for inefficiency of judicial proceedings. It allows for too many obstructions to be created by the participants who rely on the length of the process and often use litigation only as a means to postpone their duties. The same legislation enables judges to postpone making a decision – a conduct for which

⁵⁹ Cf. StZastZ, s.13i, s. 16b, KarOdpZ.

⁶⁰ Cf. StZastZ, s. 12e.

various motives may exist. Moreover, the reasons provided to participants by the courts are often incomprehensible.⁶¹ All this is viewed by the public as the failure of the courts. Opinion polls continue to reveal negative perception of the courts performance among the public; only one in four respondents holds the opinion that the courts function well. In recent years, also the perception of impartiality of the courts has dropped to similarly low levels. People show significantly higher levels of trust in the highest judicial instances, i.e. the Constitutional Court (61%), the Supreme Court (65%), and the Supreme Administrative Court (64%).⁶²

Disciplinary proceedings with judges do not occur very often. They are mainly concerned with the delays in proceedings, and the sanctions are rather mild. From the total of 17 disciplinary proceedings opened in 2009, the disciplinary panel in 4 cases punished the judge with a temporary reduction in salary. In another 4 cases, the judge was found guilty but the only sanction imposed was reprimand, or there was no sanction at all. Then there is an interesting case in which the Minister of Justice recommended punishment for the judge but the disciplinary panel agreed on the judge's innocence, despite obvious misconduct, citing his work overload as the reason.⁶³ In the remaining 8 cases, the judges resigned from their position before the disciplinary panel reached a decision (3 cases), or the petitioner (usually the relevant court's chairman) withdrew the complaint (usually giving the reason that the situation has already been corrected).⁶⁴ Even the Constitutional Court has already commented on the fact that "disciplinary proceedings with the relevant judge do not solve the problem of the proceedings' participants with adequate flexibility, and even the prospective disciplinary punishment of the judge may not ensure successful course of the proceedings."⁶⁵ Deputy Minister of Justice states that the system only slowly adapts to the new concept of disciplinary liability (author's note: the present system was introduced in October 2008) but that the concept effectively breaks through the unhealthy professional solidarity in the judiciary as it allows the Ministry to sanction the courts' chairmen if they do not handle the complaints or do not supervise their judges.⁶⁶

As to the compensation for damages incurred due to unlawful decision or delays in proceedings, there is an established practice of the courts. The Supreme Court has recently adopted case-law of the European Court of Human Rights and stipulated that the initial amount, based on which the adequate compensation for delays in proceedings will be determined, will vary between CZK 15,000 – 20,000 for the first 2 years of the proceedings and then for each additional year.⁶⁷ However, the Ombudsman in his

⁶¹ Interview with Josef Baxa.

⁶² <http://www.stem.cz/clanek/2110>, <http://www.stem.cz/clanek/2120>.

⁶³ By way of illustration: The judge in question worked with 463 criminal files in 2004, with 589 in 2005, with 694 in 2006, with 741 in 2007 and with 546 in 2008.

⁶⁴ Author's own research of disciplinary decisions available on the website of the Supreme Administrative Court as of April 2011.

⁶⁵ Constitutional Court in its ruling IV.ÚS 956/09 of 22 October 2009, case Cepl.

⁶⁶ Interview with František Korbel.

⁶⁷ Ruling of the Supreme Court 30 Cdo 1151/2009 of 12 January 2011, compare also OdpŠkZ, s. 31a.



comprehensive report for the year 2010 mentions a number of cases in which the Ministry of Justice does not handle the application for adequate compensation in legally stipulated period of 6 months, or even ignores such applications completely, thus initiating another legal case instead of acknowledging the claim.⁶⁸

Score (public prosecution service): 0 25 50 75 100

As regards public prosecution service and criminal proceedings, responsibility of individuals is a bit hazier than in case of the courts. It is especially true in such cases where the criminal proceedings had been ended before the matter was brought before the court or where no proceedings were commenced. According to former Deputy Prosecutor General, too many prosecutors are quite happy with their dependence on the instructions of their superiors and with the lack of responsibility related to that. Such prosecutors ask for a written approval even for their planned next steps to be taken in the court proceedings where they are entitled by law to act independently (see *Independence*). In practice, the above described opportunity to have the superior's instruction confirmed in writing and subsequently refuse to follow it in controversial cases is also not being used. Therefore, the steps taken in high profile and politically sensitive cases are rather characterised by collective irresponsibility for the fact that the case will lead to nowhere. Similar behaviour of the police is also encouraged by public prosecutors who tolerate – in contradiction to the law – that its “preliminary investigation” takes many months, instead of proper procedure in criminal proceedings, and that the case can later be shelved without written documentation of all the steps taken, which is required by law.⁶⁹

It is exactly such written documentation of the interference in investigation of cases from the side of superiors what is very important if the present dismal results of high profile cases should ever improve (see *Corruption prosecution*). For example, a recent investigation of the former Environment Minister Drobil (for more details, see *Executive/Integrity*) was ended and subsequently some internal instructions leaked to the media, revealing that relevant public prosecutors were under pressure from their superiors who had ordered them to shelve the case.⁷⁰ Instruction to put the brake on some other sensitive investigations led to dismissal of the chief public prosecutor in Prague, Vlastimil Rampula. Justice Minister Pospíšil, who dismissed Rampula at the suggestion of the Prosecutor General, mentioned

⁶⁸ The Ombudsman's Comprehensive activity report for the year 2010, p. 46; <http://www.ochrance.cz/zpravy-pro-poslaneckou-snemovnu/>.

⁶⁹ Interview with Jaroslav Fenýk. Also see opinion of Transparency International - Česká republika to the police investigation of criminal complaint of 18 October 2010; <http://old.transparency.cz/pdf/2010-10-18-stanovisko-policie-ukladaniAA.pdf>.

⁷⁰ http://zpravy.idnes.cz/nadrizena-nabadala-zalobkyni-at-nevysetri-kauzu-drobil-piv-domaci.aspx?c=A110522_192921_domaci_cem.



specifically Rampula's instruction to a subordinate prosecutor who was not to appeal in the case of Investiční a poštovní banka.⁷¹

In practice of the public prosecution service, also the disciplinary proceedings many times serve rather as a tool that encourages loyalty to superiors, not a tool of prevention and cleanup of the system. Again, the top prosecution officials are to blame, as the authority to initiate disciplinary proceedings rests with them. Quite often, such positions are occupied by unsuitable individuals who abuse their office.⁷²

Integrity Mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

Score (courts and public prosecution service): 0 25 50 75 100

The position of a judge is incompatible with the post of the President, a member of parliament, or any position in public administration. A judge also cannot be engaged in any other sort of profitable activity, with the exception of administration of his/her own property, scientific, teaching, literary, publishing and artistic activity and involvement in advisory bodies of the ministry, government or the parliament. The above activities may be exercised only if they "do not affect the dignity of the judge's position or endanger confidence in independence and impartiality of the judiciary."⁷³ Moreover, the position of the Constitutional Court judge is incompatible with membership in a political party.⁷⁴

Judges are not subject to the conflicts of interest regulation or any other regulation that would require them to disclose their assets.⁷⁵ On the other hand, judges are the only profession within the public sector where at least some restrictions apply to transfer from one position to another. By law, the position of the judge expires only three months after the judge's resignation. Within these three months, all above-described provisions on incompatibility of offices are effective.

The conflicts of interest of judges in individual proceedings are primarily solved by the institute of the bias. If the proceedings' participants have any doubts concerning the impartiality of certain person, they can make objection for the bias and their complaint will be handled by higher court. At the same time, procedural regulations for civil, administrative and criminal proceedings require that such person (a

⁷¹ <http://zpravy.ihned.cz/cesko/c1-52367270-vrchni-statni-zastupce-rampula-odvolan-podivejte-se-na-jeho-nejvetsi-kauzy>.

⁷² Interview with Jaroslav Fenyk.

⁷³ Constitution, Article 82, SoudZ, s. 74, s. 85.

⁷⁴ ÚstSoudZ, s. 4.

⁷⁵ The Act on Conflicts of Interest had applied to the judges from 1 January 2007 until 19 June 2008 when the judges were excluded from the Act by the amendment to the act made by MPs. The provision on exclusion of the judges appeared in the draft of the bill only during the legislation process, namely at the suggestion of Committee on Constitutional and Legal Affairs of the Chamber of Deputies of the Czech Parliament, and therefore there are no reasons provided for this provision in the explanatory report accompanying the draft (see Parliamentary Print No. 171, 5th electoral period).

judge or a prosecutor but also an interpreter or an expert) informs about such bias the chairman of the court who then assigns the matter to some other judge.⁷⁶

The law determines ethical aspect of judicial profession in the judge's oath of office and in the definition of disciplinary wrongdoing (see *Accountability*). An explicit prohibition to accept any gifts – in connection with the relevant position – is stipulated in the Labour Code, which also applies to the judges.⁷⁷ Slightly more detailed explanation of ethical requirements for judicial profession is included in ethical principles of the Czech Union of Judges,⁷⁸ which is a voluntary professional association of Czech judges.

Similar requirements apply to public prosecutors. The only difference is that no 3-months “quarantine” applies to a transfer to some other position. There is also a voluntary association – Union of Public Prosecutors of the Czech Republic, which has adopted its own Ethical Code of Public Prosecutor.⁷⁹

Integrity Mechanisms (practice)

To what extent is the integrity of members of the judiciary ensured in practice?

Score (courts and public prosecution service): 0 25 50 75 100

In practice, there is reliable protection of proceedings' participants against decision made by a judge who is biased. Both the Constitutional and Supreme Courts repeatedly decided on the issues of bias in such a sense that the judge should not handle and decide an individual case not only if his/her bias is proved but also in the case when “his/her impartiality may be doubted.”⁸⁰ However, the Justice Minister, in reaction to reports of the Security Intelligence Service, admitted that in individual cases there may be manipulation in assigning specific cases to specific judges.⁸¹ Related to this is a problem that the citizens do not have access to information (at least from official sources) that is necessary for verification of impartiality of a judge. There are no documents that would allow the public to check the judge's profile (assets declarations, curricula vitae or any other documents).⁸² In this context, a recent ruling of the Constitutional Court had a breakthrough quality, though it was controversial as well: the ruling

⁷⁶ Regulation of bias is included in s. 8 SŘS, s. 14 OSŘ and s. 30 TR.

⁷⁷ SoudZ, s. 84 par. 4.

⁷⁸ See [Ethical Principles of the Conduct of Judges](http://www.sucr.cz/o-nas/eticke-zasady-chovani-soudce.html); <http://www.sucr.cz/o-nas/eticke-zasady-chovani-soudce.html>.

⁷⁹ <http://www.uniesz.cz/moralni-kodex>.

⁸⁰ Examples of biased judges excluded from further decision-making: a judge who lodged a criminal complaint against an attorney of a party to dispute because the attorney labeled the judge's decision as a „legal bastard“ (Constitutional Court in its ruling I.ÚS 167/94); a judge whose wife – an attorney – provided legal counsel to one participant in the proceedings (Supreme Court in its ruling 2 Cdon 43/96); or all judges of a certain court where their former colleague was a party of a dispute (Supreme Court in its ruling 2 Cdon 1558/96).

⁸¹ <http://www.ceskenoviny.cz/domov/zpravy/pospisil-zprava-bis-se-tykala-jen-nekolika-soudcu-podam-zaloby/687501>.

⁸² The only exception are the Constitutional Court judges whose personal profiles are publicly discussed prior to their appointment in the Senate and whose curricula vitae are available on the Constitutional Court website; <http://www.concourt.cz/clanek/687>.

determined that the information whether the judge was in the past a member of the Communist Party, should be publicly available.⁸³ Thanks to this ruling, the public might be eventually able to get access to other personal information concerning the judges. Similarly, it is possible to make objection for the bias of a prosecutor in the course of criminal proceedings. Yet again, the problem is that the public does not have access to basically any relevant information concerning public prosecutors.

There are no examples of situations when a judge would breach legal restrictions for incompatibility of positions. However, the existing system seems to be able to react to such cases, as may be illustrated by the disciplinary proceedings with a public prosecutor who – besides her professional position – worked as an interpreter, thus violating the prohibition of other profitable activity.⁸⁴

Nevertheless, doubts arise about the way of choosing new judges. Last appointment of 38 judges took place two days before the parliamentary election, in May 2010. Not even the professional public had any information about the coming appointment, there was no official selection process. Among the newly appointed judges was Ms Šedivá, an MP whose mandate was ended – after 8 years – only by her appointment as a judge. The Supreme Court chairman expressed her concern that such nominations may threaten the independence of the judiciary.⁸⁵ As to the other 37 newly appointed judges, the public did not learn anything about their profiles. It is certain that in the process of their appointment, an opportunity to address broad spectrum of lawyers was not used, and it is highly likely that most of them grew up inside the existing system at the position of judicial trainees or assistants to judges, which is a well-established practice in the Czech Republic.⁸⁶ Similarly, public prosecution service prefers to fill the positions of prosecutors with their trainees to the detriment of other legal professions eligible for the position – as it explicitly states in its annual report.⁸⁷

According to available information, there is no official authority that would deal with breaches of ethical behaviour which are not substantial enough to qualify for disciplinary proceedings. The statutes of the Union of Judges include the institute of the Union Court, which may, among other competences, determine whether the behaviour of a Union's member is a violation of the ethical principles.⁸⁸ Yet this

⁸³ Constitutional Court in its ruling I.ÚS 517/10 of 15 November 2010 decided that information concerning membership of a judge or a prosecutor in the Communist Party does not belong among sensitive personal information.

⁸⁴ Disciplinary ruling 12 Ksz 2/2009 of 16 September 2009, available at the website of the Supreme Administrative Court.

⁸⁵ <http://zpravy.ihned.cz/politika/c1-43876970-jmenovani-sedive-soudkyni-ohrozuje-nezavislost-soudu-rika-brozova>.

⁸⁶ A system of so-called “career judges“, i.e. persons who right after finishing law school become judicial trainees, and after they complete practical training and pass a judicial exam become judges, was criticised by the President who in 2005 refused to appoint 32 judges who were under the age of 30, stating as a reason that they do not have the necessary life experience – see <http://zpravy.ihned.cz/cesko/c1-15774950-klaus-odmitl-jmenovat-mlade-soudce>.

⁸⁷ *Zpráva o činnosti státního zastupitelství za rok 2010*, p. 3; <http://portal.justice.cz/nsz/hlavni.aspx?j=39&o=29&k=2750&d=317534>.

⁸⁸ Statutes of the Czech Union of Judges, s. 28.

possibility has not been used so far. In the only case when the Union Court was convened, the member concerned had resigned his membership before the Court was assembled.⁸⁹ The Ethics Committee of the Union of Public Prosecutors is relatively active and it issues opinions concerning specific cases and undesirable actions of public prosecutors.⁹⁰

Executive Oversight

To what extent does the judiciary provide effective oversight of the executive?

Score (courts): 0 25 50 75 100

The judiciary has broad powers in relation to the executive. Review of actions of public administration (which does not apply only to the executive in the sense of the *Executive* pillar/chapter but to the entire system of public administration) is largely in the hands of administrative courts, and in some cases also of the Constitutional Court. Administrative courts may overturn decisions as well as provide protection against inactivity or other unlawful intervention of public administration,⁹¹ and they also play an important role in the area of the elections (see *Electoral Management Body*) and political parties (see *Political Parties*). The limitation of administrative courts and the Constitutional Court consists in the fact that they may review the actions of public administration only based on the motion of a person who is affected by the decision (or any other act) of public administration.

Protection provided by administrative law is largely used by private individuals and by the NGOs protecting the public interest (see *Civil Society*). Despite its short existence (established in 2003), the Supreme Administrative Court has issued a number of key decisions concerning the free access to information,⁹² planning and building permit procedures,⁹³ collection of taxes, asylum law, and other areas.⁹⁴ Decisions issued by the court are being implemented only partially. It often happens that a specific judgement is respected but does not result in any change of administrative practice. According to the Supreme Administrative Court chairman, the executive's reaction to some decisions is to enforce an amendment to the law that makes the formerly unlawful actions legal.⁹⁵

⁸⁹ Information provided in a telephone interview with Libor Vávra, the Union Court chairman.

⁹⁰ During the last 6 months, three opinions have been published on the Union's website (<http://www.uniesz.cz/>).

⁹¹ SŘZ, s. 4.

⁹² For example, the court has inferred the obligation of public administration to allow access to contracts (decision 1 As 17/2008 of 7 May 2008) or to protocols on evaluation of bids in public contracting (decision 1 As 28/2010 of 17 June 2010).

⁹³ For example, decisions repeatedly overturning a part of guiding principles for town planning and development of Prague City in relation to plans for building a new airport, the most recent being the decision 1 Ao 7/2010 of 27 January 2011.

⁹⁴ Interviews with Josef Baxa and František Korběl.

⁹⁵ Interview with Josef Baxa.

The Constitutional Court has similar experience. It has repeatedly handled for example the issue of judicial officials' appointment and reduction in judges' salaries. Compared to the Supreme Administrative Court, the authority of the Constitutional Court is stronger as it may not only overturn an individual decision but may also invalidate relevant legal regulation that was a basis for issuing such decision (see also *Legislature*).

Corruption Prosecution

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

Score (courts): 0 25 50 75 100

Score (public prosecution service): 0 25 50 75 100

While the Czech public prosecution service does prosecute corruption, it is usually able to bring before the courts only less serious cases. Moreover, sanctions for corruption offences are relatively mild. In 2009, 112 individuals were prosecuted for corruption, of which 102 cases led to criminal charges. That roughly corresponds with the number of persons convicted for corruption – 69 in 2009. As to the sanctions, only 7 persons out of those 69 were sentenced to imprisonment (in 4 cases for a period exceeding 1 year). In 7 cases, the court made use of the possibility to impose pecuniary punishment. In the remaining number of cases, only conditional sentences were imposed. Convictions of offering a bribe prevail over those of accepting a bribe (in 2009, the ratio was 42:26).⁹⁶ The activity report of public prosecution service reveals that about one in five prosecuted corruption cases is concerned with the policemen (in 2009, 20 prosecuted persons and 18 charged with the offence of accepting a bribe). Also the other cases mentioned in the report indicate that prosecution service handles rather cases of petty administrative corruption (there is a mention of a case of bribing the driving licence examiner and another case of bribes for prison personnel).⁹⁷

Czech experts in the field of corruption agree on two points, namely that latency of corruption remains high (i.e. that majority of cases remain undetected) and that the judiciary, with only minor exceptions, fails to investigate and prosecute serious corruption offences of public officials.⁹⁸ The latency of serious corruption offences is evident also from the large number of corruption cases discussed in the media, which are never brought before the courts. For many years, the case of former Chomutov mayor and

⁹⁶ *Statistická ročenka kriminality*, Ministerstvo spravedlnosti ČR, 2009, p. 93 and following; <http://portal.justice.cz/Justice2/MS/ms.aspx?j=33&o=23&k=3397&d=47145>.

⁹⁷ *Zpráva o činnosti státního zastupitelství za rok 2009*; <http://portal.justice.cz/nsz/soubor.aspx?id=84948>.

⁹⁸ Baloun, V.: *Korupce – závažná trestná činnost a její rizika pro ČR*. In: *Obrana proti ohrožení společnosti závažnými formami trestné činnosti*. Institut pro kriminologii a sociální prevenci, Praha, 2009, p. 138-152.

former senator Alexandr Novák had been an example of such cases.⁹⁹ Novák was accused of accepting a bribe in November 2003, after his immunity had been removed by the Senate and he was extradited for criminal prosecution. The ruling of a district court that confirmed the accusation of corruption was issued as late as December 2010 (i.e. more than 7 years later) and Novák got 2-years sentence suspended for 5 years and CZK 5-million fine for accepting a 43-million bribe.¹⁰⁰ This judgement (once again surprisingly lenient) is not yet final as the case is presently handled by the court of appeal. Another surprisingly lenient sentence was imposed in April 2011 in the case of former top official of the Czech Consolidation Agency Radka Kafková who was found guilty of accepting a CZK 400,000 bribe for manipulating the sale of debts of the bankrupt company Cetus. Kafková appealed the court's decision which gave her only a fine and a suspended sentence.¹⁰¹ According to political scientist Michal Klíma, "it is characteristic that cases of organised crime and corruption, which extend to the top political tiers and have cross-border consequences, are investigated rather by foreign than Czech authorities. Thus the British and Swedish police investigate the lease of Gripen supersonic fighters, the Austrian police investigate the purchase of Pandur armoured personnel vehicles, and the Swiss authorities investigate the case of MUS (coal mining company) privatisation."¹⁰²

The situation is caused not only by the dependence of public prosecution service on the executive (see *Independence*) but also by insufficient legal framework for investigation and the lack of specialisation. In his critical evaluation of present capacity of corruption prosecution, Adam Bašný has identified three main problems – insufficient protection of sources that would provide information on corruption conduct; insufficient specialisation of prosecution offices; and the lack of professionals with high moral integrity, who would fill the positions.¹⁰³ A report of the Security Intelligence Service (BIS) is more critical, explicitly stating that BIS has detected contacts between judicial representatives and persons with criminal background or the existence of clientelistic networks that may have a considerable influence on judicial proceedings.¹⁰⁴ There is also the separate and very significant issue of the role of the police. A public prosecutor is in many respects dependent on the police despite the fact that formally it is s/he who "owns" the entire process up until the moment of submission of an indictment. According

⁹⁹ http://www.rozhlas.cz/zpravy/spolecnost/_zprava/823954.

¹⁰⁰ This amount was paid to Novák's account in Austria, allegedly for acting as an agent in the sale of shares owned by Chomutov municipality in electricity and gas companies.

¹⁰¹ http://byznys.lidovky.cz/nejbohatsi-urednice-kafkova-dostala-za-obri-uplatek-podminku-pto-firmy-trhy.asp?c=A110422_104237_firmy-trhy_nev.

¹⁰² Klíma, M.: Nebezpečí privatizace stran. *Právo*, 21 February 2011.

¹⁰³ Bašný, A.: *Specializace v české justici. Jak posílit nezávislost obžaloby a soudu u citlivých případů?*. In: *Česká justice*. Transparency International - Česká republika, Praha, 2010, p. 79-125;

<http://www.transparency.cz/publikace-analzy/ceska-justice-otazka-spravy-nezavislosti/>.

¹⁰⁴ <http://www.bis.cz/n/2011-09-07-vyrocní-zprava-2010.html>.

to Deputy Prosecutor General Stanislav Mečl, a major problem of corruption prosecution consists in the lack of qualified people in the ranks of the police.¹⁰⁵

Among the recent high profile cases, present development in the case of Brno-Žabovřesky mayor may be considered as positive. The former mayor was convicted of accepting a bribe of CZK 1 million in connection with a construction project in his town district. In this case, the court had at its disposal not only the recordings of conversations where the mayor's accomplice demanded that the owner of the construction firm pay a bribe but also the wiretapping of relevant telephone calls and documentation of money transfer. The original decision of the regional court has already been confirmed by the higher court (although it lowered the prison sentence from 7 to 4 years); the decision now awaits final confirmation by the Supreme Court.¹⁰⁶

LAWS AND REGULATIONS:

Constitution: Act No. 1/1993 Coll., Constitution of the Czech Republic.

InfV: Decree No. 442/2006 Coll., stipulating the Structure of Information Published on an Obligated Entity in a Manner Allowing Remote Access.

InfZ: Act No. 106/1999 Coll., on Free Access to Information.

KarOdpZ: Act No. 7/2002 Coll., on the Procedure Concerning Judges and Prosecuting Attorneys.

OdpŠkZ: Act No. 82/1998 Coll., on Liability for Damage Caused in the Execution of Public Authority by a Decision or Incorrect Official Procedure.

OSŘ: Act No. 99/1963 Coll., Civil Procedure Code.

PlatFunZ: Act No. 236/1995 Coll., on the Salary and Other Indemnities Associated with the Execution of the Office of Representatives of State Power and Some State Bodies and Judges and Members of European Parliament.

PlatSzZ: Act no. 201/1997 Coll., on Salary and Some Other Requisites of Public Prosecutors.

RozpZ: Act No. 218/2000 Coll., on Budgetary Rules.

SoudZ: Act No. 6/2002 Coll., on Courts, Judges, Lay Judges and the State Administration of Courts.

SŘS: Act No. 150/2002 Coll., Code of Administrative Justice.

StZastZ: Act No. 283/1993 Coll., on State Prosecution.

TR: Act No 141/1961 Coll., Code of Criminal Procedure.

ÚstSoudZ: Act No. 182/1993 Coll., on the Constitutional Court.

¹⁰⁵ Statement at a seminar “Mezinárodní právní instrumenty proti korupci” organised by Transparency International - Česká republika and held on 24 March 2011 in Prague.

¹⁰⁶ http://www.tyden.cz/rubriky/domaci/krimi/soud-snizil-trest-exstarostovi-brna-zabovresk-o-tri-roky_198920.html. Another positive fact is that the proceedings move relatively fast. The bribe was received in February 2010, the regional court decided in September 2010 and the higher court in April 2011.

INTERVIEWS

Interview with Josef Baxa: Interview of the author with Josef Baxa, chairman of the Supreme Administrative Court, 30 March 2011.

Interview with Jaroslav Fenyk: Interview of the author with Jaroslav Fenyk, professor of Masaryk University in Brno, lawyer and former First Deputy Prosecutor General, 13 September 2011.

Interview with František Korbela: Interview of the author with František Korbela, Deputy Justice Minister and the Deputy Chairman of the Legislative Council of the Czech Government, 22 March 2011.



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

PUBLIC SECTOR

- Public sector has adequate financial and human resources.
- Public sector employees are in all respects dependent on political management of the institutions in which they work.
- Individual as well as collective irresponsibility is characteristic of public sector in the Czech Republic.
- It is getting easier to get access to information...with the exception of politically sensitive information which is very difficult to obtain and often it takes a long time and a lawsuit to succeed.

Summary

The Czech Republic has sufficient resources for the public sector to carry out its duties in an effective way, as well as enough qualified human resources. However, the legal framework does not ensure much needed stability for public servants to do their work and rather than encouraging professional expertise and independence, the system is supportive of high level of employee turnover and loyalty to politicians in superior positions. Officials in managerial positions are subject to a strong political influence as they may be arbitrarily dismissed at any time. In practice, also the enforcement of public servants' liability for damages or unlawful conduct depends on political discretion. The result is a situation in which the public sector operates well in the areas where there is sufficient political will, and its operation is inefficient in the areas where there is a lack of political will (for whatever reason). In the latter areas, the public sector employees resort to formalism or they simply refuse to accept any responsibility and outsource all important decisions outside the public sector. A typical example of such practices is the area of public procurement. Public contracts are often awarded in non-transparent ways and in many a case, the results raise doubts also about their effectiveness and efficiency. In spite of the existence of adequate legal regulation, the public does not have enough information concerning real functioning of the public administration, which is reflected in low level of public confidence in this sector. Cooperation of public institutions with other actors in preventing/addressing corruption fails partly because of any visible results in the form of adopted legislation and implemented systemic changes, and partly because of a strong dependence of public sector on the political representation which leads to public sector's inability (and in some cases unwillingness) to enforce much needed changes in confrontation with the government and the Parliament. The table below presents the overall assessment of public sector within the national integrity system. The remainder of the chapter presents qualitative assessments for each indicator.



PUBLIC SECTOR			
Overall Pillar Score: 42 /100			
	Indicator	Law	Practice
Capacity 42 /100	Resources	-	100
	Independence	25	0
Governance 50 /100	Transparency	75	50
	Accountability	75	25
	Integrity	50	25
Role 33 /100	Public Education	25	
	Cooperate with public institutions, CSOs and private agencies in preventing/addressing corruption	50	
	Reduce corruption risks by safeguarding integrity in public procurement	25	

Structure and organisation

This chapter describes the role and competences of central public administration bodies, i.e. the ministries and other institutions with national scope of authority, which coordinate execution of public administration in specific areas. Such institutions and their employees are responsible for effective implementation of the state's policies – they prepare draft legislation, coordinate and control implementation of adopted legislation in practice, manage the state property and their own budgets, which includes decision-making concerning public procurement, provision of services guaranteed by the state, and state subsidies (or at least criteria according to which the subsidies are being allocated). The central public administration bodies delegate some competences to state funds, self-government units or other organisations, which nevertheless remain subject to their supervision and control in performing the competences delegated to them.

Resources (practice)

Score: 1 2 3 4 5

To what extent does the public sector have adequate resources to effectively carry out its duties?

Public sector has adequate resources to carry out its duties. In 2010, central institutions and agencies employed 16,977 people, the largest number being employed by the Ministry of Agriculture (2,013), Ministry of the Interior (1,974), Czech Statistical Office (1,723), Ministry of Defence (1,468) and Ministry of Finance (1,373). In total, all organisational units of public administration employed 198,299 people in 2010 (of which 64,181 were the employees of security forces). There were further 230,784 people employed by the state in its semi-budgetary organisations, most of them in educational institutions (over 200,000).¹

¹ Draft of the 2010 State Closing Account, Figure 10;
http://www.mfcr.cz/cps/rde/xbcr/mfcr/SZU2010_C_pdf.pdf.



In this context, a former employee of the already abolished General Directorate of State Administration (see *Independence*), which performed an analysis of state administration within its preparation for introduction of the civil service, states that the public sector is overdimensioned as regards the number of jobs. According to his opinion, the main reason is the fact that there are no standards for the size of organisational units on individual management levels and managerial posts often arise upon political order without any real need.² There has never been any unification of conditions in this area and no uniform standards exist for material equipment, e.g. for the size and equipment of office spaces, for IT equipment and office technology or for the use of cars. Nevertheless, there are reserves in the system, which is evidenced for example by the fact that the ministries were able to cover some services, for which they did not have sufficient wage funds after the budget cuts during the last years, from operational costs.³

The average salary of central administration bodies' employees in 2010 was CZK 35,341, which significantly exceeds the average salary both in non-business (CZK 24,289) and business (CZK 23,873) sectors according to data of the Czech Statistical Office (CSO)⁴ and also the average salary in the entire public sector (CZK 29,008).⁵ Thus it would seem that the total amount of wage funds, which the public sector has at its disposal, is more than sufficient. However, in the long term the public sector is not able to attract, educate and retain competent employees because it is unable to offer clear opportunities for career advancement due to extensive political interference (see *Independence*).

Independence (law)

Score: 1 2 3 4 5

To what extent is the independence of the public sector safeguarded by law?

Protection of public sector employees against undesirable political interference is non-existent and there are no rules for career advancement. Adoption of legislation that would regulate the position of civil servants in a comprehensive way was one of the conditions for accession of the Czech Republic to the European Union. This requirement was formally fulfilled in April 2002, when the Civil Service Act was adopted.⁶ However, the Act has not yet entered into full force⁷ and the relation between state employees and the state continues to be governed by the Labour Code, which is drawn up primarily for the needs of private sector. Only the members of security forces (see *Law Enforcement Agencies*) have a special act regulating their service⁸ and there is also a special legal regulation of the position of local authorities' officials.⁹ The

² Interview with former employee of the General Directorate of State Administration.

³ Interview with an official of the Personnel Department of a ministry.

⁴ According to the new policy of the CSO the average gross monthly salary is calculated as a proportion of total wage funds (including overtime pay, bonuses and extra pays, refunds of wages, etc.) on one employee per month and the data are adjusted to full employment.

⁵ Draft 2010 state closing account, compare also <http://www.denik.cz/ekonomika/prumerny-plat-ve-statni-sprave-loni-klesl-o--korun.html>.

⁶ SlužZ.

⁷ The introduction of the law was postponed four times. Originally, the new law was scheduled to enter into force on 1 January 2004. The date was postponed to 1 January 2005, then to 1 January 2007, consequently to 1 January 2009 and at the moment the law is supposed to enter into force on 1 January 2012. Immediately after adoption of the law a part devoted to the General Directorate of State Administration came into force, and the institution was really established in 2002 but in 2005 it was abolished. During its existence, it did not manage to appoint the State Administration General Director who was supposed to appoint key officials of individual institutions. See SlužZ and the interview with former employee of the General Directorate of State Administration.

⁸ SluzBezPZ.

⁹ SluzSamZ.



current government does not intend to revive the existing Civil Service Act and prepares a new legal regulation (see *Executive/Public Sector Management*).

The Labour Code provides relatively good protection to ordinary employees who can be dismissed only due to lawful reasons.¹⁰ However, officials in managerial positions which are subject to appointment can be arbitrarily removed by those who appointed them.¹¹ Within the public administration, this applies to all heads of sections and divisions and also to heads of individual departments, with the only exception of the heads of internal audit departments, who can be removed only with approval of the Minister of Finance (in case of central bodies) or with approval of the head of their relevant governing body (in case of other public administration bodies).¹²

Due to the arbitrariness in appointing officials, we can hardly speak of any regulation of career advancement. Remuneration of public sector employees is another unstable element. Although the wage basis is fixed and grows slightly in dependence on the years of service,¹³ the real wage of an employee is in practice decided by his/her superiors through appraisal-related pay, which may reach up to 100% of the wage tariff, and through one-off bonus payments.¹⁴ The employees are not entitled to appraisal-related pay or to bonuses. However, even these rules are not generally binding. Since 2011, so-called contract wages may be used in the more responsible positions in the public sector, which are not governed by any tariffs. There is also a legal possibility to exclude automatic wage increase based on the number of years in service by an internal regulation.¹⁵

Independence (practice)

Score: 1 2 3 4 5

To what extent is the public sector free from external interference in its activities?

According to well-established practice in the Czech Republic, a large number of officials in managerial positions is exchanged after any change of political representation.¹⁶ Even if there are no exchanges, politicians can create undesirable pressure on public sector employees in this way. Selection processes for vacancies are not a rule and it is within the competence of each institution whether and in which way they will be organised.¹⁷ Thus there are neither uniform rules for organisation of selection processes nor any central place where applicants could learn about vacancies in the public sector.

Practices of politicians in appointments to managerial positions are illustrated by the answer of the current Finance Minister Kalousek to the question of the magazine Respekt, on why he appointed the head of the Financial Analytical Unit without a selection process shortly before his departure from the office in April 2009: “I have met Mr Cícer approximately twice through a work project when he was employed at the anti-corruption police. What attracted my attention was his intelligence and range of knowledge.”¹⁸ On the other hand, the example of Mr Michálek illustrates how easy it is to lose a managerial position in the public sector. Michálek was removed from the office of the State Environmental Fund Director after he had documented a corruption offer, which compromised his superior, the Minister of the

¹⁰ ZP, s. 48 and following.

¹¹ ZP, s. 73.

¹² FinKontZ, s. 29.

¹³ See annexes of PlatTarifN.

¹⁴ ZP, s. 131 and s. 134.

¹⁵ Interview with an official of the Personnel Department of a ministry. Compare also PlatTarifN, s. 6a.

¹⁶ <http://hn.ihned.cz/c1-19902660>.

¹⁷ Interview with former employee of the General Directorate of State Administration.

¹⁸ Kalouskovi tajní. *Respekt* 13/2011, str. 32-34.



Environment.¹⁹ The Minister of Education Dobeš serves as another example of using discretionary powers: he exchanged four heads of his office within 6 months and he paid excessively high bonuses to his close colleagues.²⁰ All three examples are extreme in a certain sense. Unfortunately, they provide a realistic picture of the established personnel policy and practices that politicians consider as standard and so far they do not want to give them up.

An official of the Personnel Department of one of the ministries pointed out the fact that merging of the deputy minister position (which is a political appointment) with the position of the section head (which should be a position of the highest management level held by an impartial expert) is common practice at some ministries. At the same time he mentions that the greatest number of exchanges follows after the former opposition gets to the government and consequently to the ministries. Slightly smaller changes follow after the minister within the coalition government has been exchanged and the smallest changes are caused by the exchange of a minister from the same political party.²¹ It is necessary to point out that the established practice of political appointments to the deputy minister position does not have any legal support. A special rules apply only to the appointment of the ministers whose appointment process is regulated directly by the Constitution (see *Executive*). From formal point of view, a deputy minister is a manager according to the Labour Code and the same principles should apply to this position as to section heads or managerial positions on lower management levels.²² In the context of personnel instability, it is necessary to be aware of the fact that the Czech Republic has had 7 governments during the last 8 years (see also *Executive/Accountability*), so the above-mentioned exchanges happen within the horizon of months, not years!

Transparency (law)

Score: 1 2 3 4 5

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Similarly as in the whole area of public administration, it is necessary to differentiate between information that must be mandatorily made public (such information is scarce), and information, to which the public has access upon request, i.e. in effect all information, which is not subject to the lawful reason for its non-provision.

The list of mandatorily published information, which applies to the whole public administration, is contained in the implementing regulation to the Free Access to Information Act. Each institution should make public, among others, its contact information, office hours, information about its activity and organisational structure and also all of the above information in respect to its subordinate organisations, documents of strategic and programme nature, budget, legal regulations relating to the given institution and instructions for citizens how to proceed in various situations.²³ The budgetary rules stipulate the obligation of the Ministry of Finance to publish on the internet its bi-annual report on the implementation of

¹⁹ http://zpravy.idnes.cz/audio-ministr-drobil-vyzyva-sefa-fondu-michalka-at-znici-dukazy-o-korupci-1ra-domaci.asp?c=A101215_115521_domaci_jan;http://zpravy.idnes.cz/drobil-opusti-vladu-po-skandalu-na-ministerstvu-zivotniho-prostredi-1ks-/domaci.asp?c=A101215_131130_domaci_kop..

²⁰ http://zpravy.idnes.cz/odmeny-dostanou-uz-jen-urednici-kteri-pracuji-na-120-slibuje-dobes-pxo-/studium.aspx?c=A110221_161759_studium_bar.

²¹ Interview with former employee of the General Directorate of State Administration.

²² ZP, s. 11 par. 4.

²³ S. 21 InfZ, annex 1 InfV.



the state budget and the state closing account, and the obligation of individual administrators of budgetary chapters to publish the final accounts of their chapters.²⁴

In relation to public procurement, information that must be mandatorily made public through the internet information system include an announcement of the opening of tender process (which contains basic information concerning the contract, qualification requirements and evaluation criteria) and a notification of the result, i.e. announcement of the winner or information about cancellation of the proceedings.²⁵ Detailed information, i.e. for example terms of reference, information about enlisted applicants and their bids, evaluation report and assessment of bids or final contract with the winner, do not have to be published (see in more detail *Reduce Corruption Risks by Safeguarding Integrity in Public Procurement* below). The prepared amendment to the Act on Public Contracts should bring partial changes in the area of transparency.²⁶

Upon request, public administration is obliged to provide basically all information, which it has at its disposal, within the period of 15 days.²⁷ Provision of information may be denied if it concerns classified information, protection of personal data and privacy or copyrights, and in certain other cases.²⁸ There is an important obligation to publish on the internet each information that was already disclosed on someone's request.²⁹ The existing regulation on provision of information on request suffers from one big loophole: a lack of sanction mechanism. This in reality leads to the situation when some information remains secret despite the efforts of the public, the journalists or NGOs and despite successful lawsuits (see *Transparency (practice)* below). Also declarations on assets, liabilities and activities according to the Act on Conflict of Interests are available only upon request (for more detail see *Integrity mechanisms*). Selection processes for vacancies in public administration are not obligatory (see above) and so there is no obligation to inform the public about such vacancies.

Transparency (practice)

Score: 1 2 3 4 5

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

In reality, practices concerning provision of information vary greatly, depending on individual institutions and also on the type of information. Most institutions respect the minimum requirements on provision of information set by the law and also fulfil their legal obligation to provide information upon request. Yet there are some exceptions. For example, the Supreme Audit Office examined to what extent the administrators of budgetary chapters fulfil their obligation to publish their final accounts on the internet³⁰ and found out that in 2009, more than a half of relevant institutions (20 out of 38) did not fulfil this obligation.³¹ It is also very rare for the institutions to publish information, which they provided to other persons upon

²⁴ RozpZ, s. 20, s. 29, s. 30

²⁵ Compare VeřZakZ, s. 146.

²⁶ See [sněmovní tisk č. 370](#), 6th election period.

²⁷ Definition in s. 3 par. 3 InfZ is really wide: *For the purposes of this law, information means any content or a part thereof in any form, recorded on any medium, especially content of a written report on a paper, content recorded in electronic format or in the form of sound, video or audiovisual recording.*

²⁸ InfZ, s. 7-12.

²⁹ This obligation stipulated in s. 5 par. 3 of InfZ aims to motivate the public sector to gradually learn to actively provide comprehensive information, without the need to request it.

³⁰ RozpZ, s. 30 par. 4.

³¹ Opinion of Supreme Audit Office to the 2009 state closing account, p. 14.



request.³² The specialist in the field of free access to information, Oldřich Kužilek, uses differentiation between “expensive” and “cheap” information to describe the situation. The cheap (i.e. politically neutral) information is being available in ever-growing number, especially thanks to the internet. At the same time, the volume of expensive (i.e. politically sensitive) information remains roughly the same, as the public administration continues to deny or at least obstruct access to such information.³³

Public administration is not willing to provide detailed information concerning controversial public contracts or investment projects even upon request. The NGO Otevřená společnost in its competition called Open vs. Closed awarded the first prize in the category non-provision of information to the state-owned forestry company Lesy CR established by the Ministry of Agriculture for its systematic obstruction when processing requests for information and for “privatisation of public administration”, as the company hires an external law firm to process requests for information despite the fact that it has its own legal department.³⁴ The Czech chapter of Transparency International has similar experience with the Ministry of Transport and its subordinate organisation Road and Motorway Directorate that deny access to information concerning the tender for building of the toll system and to the contract with the company Kapsch, which won the tender.³⁵ Although NGOs can demand provision of information through courts, legal disputes take a long time (see *Judiciary*) and the 15-days period for provision of information can be actually prolonged to several years. Example: the association Děti Země has been trying for 3 years (so far without success) to obtain information on contracts concluded with law firms, which provide legal services to the Ministry of Transport and to the Road and Motorway Directorate. These law firms won a public contract for CZK 450 million in 2007 and since then they have been representing the state in disputes with NGOs concerning permissions for construction of the motorway D8 and in disputes for information.³⁶

Another item that the public sector consistently refuses to disclose are the salaries of public sector employees (especially high-level officials), despite the recent verdict of the Supreme Administrative Court confirming that the salaries of state employees are indeed public information and the authorities cannot argue that it is personal information and a violation of privacy.³⁷ Still, some institutions refuse to respect the court’s decision and are not willing to disclose relevant information on salaries of the officials to the journalists who submitted requests for this information after the court’s ruling was issued.³⁸ The Office for Personal Data Protection issued a statement where it recommended to other authorities to ignore the verdict,³⁹ and the Ministry of the Interior hastily inserted, in a form of a legislative rider into an unrelated law (Health Reform Act), a change in the relevant paragraph of the Act on Free Access to Information that would exempt the salaries of high-level public officials from the Act and enable keeping such salaries secret.⁴⁰ Based on the verdict of the Supreme Administrative Court, the news server Aktuálně.cz sent requests to more than 60 authorities asking for information on the salaries of highest-ranking officials. Only a small number of

³² The author succeeded to find this information on the websites of only 4 ministries out of 14, namely: [Finance Ministry](#), [Interior Ministry](#), [Ministry of the Environment](#) and [Ministry of Labour and Social Affairs](#).

³³ Interview with Oldřich Kužilek.

³⁴ See [Výsledky-Otevřeno-Zavřeno-2010](#).

³⁵ See [Otevřený-dopis-Kapsch](#). Compare also the outcomes of the Chamber of Deputies’ Inquiry Committee to this issue in *Legislative/Executive Oversight*.

³⁶ Press release of Děti Země of 5 June 2011 [here](#).

³⁷ See Supreme Administrative Court ruling [5 As 57/2010 ze dne 27.5.2011](#).

³⁸ Respekt 11/7

³⁹ See opinion of ÚOÚ of 3 June 2011, <http://www.uouu.cz/uouu.aspx?menu=14&loc=328>

⁴⁰ See [sněmovní tisk č. 408](#), 6th election period.



them sent relevant information and even those who disclosed some data did so only after a complaint was submitted to the relevant minister.⁴¹

Accountability (law)

Score : 1 2 3 4 5

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

Accountability for proper functioning of public sector is largely ensured by mechanisms that are dependent on internal hierarchy of individual institutions. The legal framework allows for sanctions to be imposed for irresponsible and unprofessional behaviour of civil servants. However, it is generally up to their superiors whether any sanctions will be applied. External control is exercised by law enforcement bodies, the Supreme Audit Office or the Ombudsman, while only law enforcement authorities have at their disposal the use of effective sanctions (see relevant pillars).

Whistleblowing, as the right to report illegitimate, unethical or illegal practices to an independent authority, is incorporated only in the labour law. There is a State Authority of Labour Inspection, which may impose sanctions for violations of labour-law provisions by the employer.⁴² Any other type of wrongdoing should be reported – according to the codes of conduct or similar internal regulations – by the employees to their superiors, which is clearly inadequate (see in more detail *Integrity mechanisms*).⁴³ Criminal law stipulates the duty of an employee to report a criminal conduct, which applies to civil servants and other citizens alike. An employee may be prosecuted for a breach of this duty in case of corruption and other serious criminal offences.⁴⁴ A special position of public officials⁴⁵ is reflected in the scope of their criminal liability. Some offences may only be committed by public officials (e.g. abuse of authority of a public official) while in many other cases, stricter penalties apply to offences committed by public officials (e.g. in case of bribery or machinations in public procurement).⁴⁶

Citizens may direct their complaints against illegal practices of civil servants to administrative courts and they may also claim for damages caused by any illegal decision or improper official procedure. Damages are paid by the state which may then claim recourse from relevant individuals who were responsible for making the decision.⁴⁷ The employees in public sector are liable for damages that resulted from their negligence for up to 4,5 times their monthly salary. There is no limit for damages caused by wilful conduct.⁴⁸ However, recovering damages from employees is only discretionary so it fully depends on the heads of relevant departments/institutions whether such policy will be applied. Citizens can also file complaints concerning misconduct of employees of a public institution. The institution is

⁴¹ <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=712026>.

⁴² Compare InspPrZ.

⁴³ Inadequate whistleblower protection was mentioned also by GRECO in its second evaluation round report in 2006. Recommendations included in the report have not been implemented yet. Compare *Strategie vlády v boji proti korupci na období let 2011 a 2012*, par. 1.18.

⁴⁴ TZ, s. 368.

⁴⁵ According to section 127 of the Criminal Code, the term “public official” applies to all constitutional officials including the President, as well as to judges, public prosecutors, policemen and civil servants.

⁴⁶ Compare TZ, s. XXX

⁴⁷ OdpZ, s. 16.

⁴⁸ PracZ, s. 250, s. 257.



obliged to reply within 60 days and if the complainant is not satisfied with the way the complaint was handled, he may turn to relevant supervisory body.⁴⁹

Accountability (practice)

Score : 1 2 3 4 5

To what extent do public sector employees have to report and be answerable for their actions in practice?

There are no comprehensive data on efficiency of existing control mechanisms. Employees are liable for damages to property and each institution has a special disciplinary committee that handles relevant offences. Accountability in respect to other types of malpractice is more complicated.⁵⁰ A survey of EPS reveals that in majority of cases, the public sector employees are not being held accountable for decisions that were not made in compliance with the law. In the period 2007-2009, the Ministry of Finance alone paid CZK 121,375,873 in reimbursement of costs and in damages incurred due to the unlawful decisions. Most ministries do not keep records of the cases where they were the defeated party and of the damages incurred but according to available information, there are hundreds of such cases. Yet the ministries did not claim recourse from relevant individuals who were responsible for making the decision in any single case⁵¹ in spite of the fact that they could do so (see above).

The level of motivation of employees to report wrongdoing is very low. The meeting of inter-departmental coordination group for the fight against corruption held in March 2009 revealed that none of the participating institutions had yet established any special mechanism for whistleblower protection.⁵² An anonymous survey conducted in 2009 (sample of 1,000 respondents, 28% of which were public administration employees) showed the following results: almost 60% of respondents believe that dishonest practices are being used in their workplace. 58% of employees who had observed serious violations of legal regulations or ethical rules suspected their superior or employer to be involved in such misconduct. It is then hardly surprising that only 25% would report the wrongdoing to a superior while almost 80% of respondents only discuss the situation with colleagues or ignore it completely. On the positive side, 86% of respondents claim that they are worried by such cases of misconduct.⁵³

Low levels of public confidence in complaint mechanisms of individual institutions are evidenced by only a small number of complaints that citizens address to such anti-corruption e-mails or hotlines (see *Public Education* below) and by a large number of legal disputes between the ministries and citizens (see above). The public considers the ministries and other central bodies to be the second most corrupt institutions or areas within public administration in the Czech Republic (political parties are considered to be the most corrupt).⁵⁴

As to the investigation of criminal offences committed by public sector employees, we can repeat what was already said in *Judiciary/Corruption Prosecution*. Only a fraction of cases are brought before the courts and sanctions are relatively mild. In 2009, a total number of 124

⁴⁹ S. 175 SŘ.

⁵⁰ Interview with an official of the Personnel Department of a ministry.

⁵¹ Černý P., Klanicová, K.: *Klientelistický nebo právní stát?*, p. 22-23.

⁵² *Whistleblowing a ochrana oznamovatelů v České republice*, p. 19.

⁵³ Compare *Whistleblowing a ochrana oznamovatelů v České republice*, p. 28 and following.

⁵⁴ See GfK survey and CVVM survey "Mínění veřejnosti o korupci mezi veřejnými představiteli a v jednotlivých oblastech" of 13 May 2011 – see http://www.cvvm.cas.cz/upl/zpravy/101145s_po110513.pdf



individuals were prosecuted for abuse of authority of the public official, 112 of whom were indicted. In the same period, 41 persons were sentenced, with only 1 custodial sentence, 31 suspended sentences, 8 financial penalties and 1 case in which no sanction was imposed. Relatively small number of sentences can be partly explained by difficulties to provide sufficient evidence as for the public official or politician to commit this offence, he/she must not only violate the law but it must also be proved that there was a motive to “cause harm to some other party or secure any improper advantage for himself/herself or any other party”.⁵⁵

According to David Ondráčka, director of the Czech chapter of Transparency International, individual as well as collective irresponsibility is characteristic of public sector in the Czech Republic. This is caused, among other things, by excessive use of outsourcing, which is applied not only to ensure supplementary services but also in some areas where the public sector should be fully accountable. For example, elaboration of the terms of reference/tender documentation or evaluation of projects eligible for subsidies are examples of areas where the state should use its own specialists and should not rely on external consultants who cannot be held accountable.⁵⁶

Integrity Mechanisms (law)

Score: 1 2 3 4 5

To what extent are there provisions in place to ensure the integrity of public sector employees?

In the context of legal framework, integrity of public sector employees is obviously not a priority, as is evidenced by non-existent obligation to organise public tenders, the fact that public sector employees can be easily dismissed (see *Independence*) and the fact that no comprehensive legislation exists to regulate whistleblowing (see *Accountability*).

As concerns the codes of conduct, most institutions use a sample code of ethics for public sector employees that was approved by the government in 2001.⁵⁷ That code, however, does not state any new principles and generally only repeats obligations ensuing from legal regulations.⁵⁸ It does not introduce any monitoring mechanism nor include any provisions on whistleblowing except that the employee is obliged to report any wrongdoing to his/her superior. Similarly, there is nothing innovative about the present code of the Interior Ministry employees, which should serve as a template for creation of codes of ethics in public administration.⁵⁹ Both above-mentioned codes also lack any control, sanction or motivation mechanisms.

The conflict of interest act and the ensuing obligation to submit an annual declaration of assets, liabilities and activities apply to all senior employees who are authorised to make decisions concerning expenses over CZK 250,000 or who are involved in decision-making processes in public procurement or in administrative proceedings.⁶⁰ As is the case with the deputies (see *Executive/Integrity*), such declarations never provide a comprehensive overview of relevant person's assets. Moreover, in case of public sector employees, there is no public

⁵⁵ Compare the decision of Supreme Court 7 Tdo 72/2010 of 17 February 2010.

⁵⁶ Interview with David Ondráčka.

⁵⁷ See resolution of the Czech government [č. 270 z 21.3. 2001](#).

⁵⁸ For example: the employee must not accept gifts or any other benefits, must avoid conflict of interest, must not abuse official information or abuse his position/authority in any other way, must adhere to the law and conduct his duties in a non-partisan way.

⁵⁹ Code of Ethics for the employees of the Ministry of the Interior and the press release issued on the occasion of its introduction on 16 November 2010 [here](#).

⁶⁰ StřetZ, s. 2 par. 3.



control of the information provided as the law effectively prohibits such control (see *practice* below).

Public sector employees may not be members of management or supervisory body of any private company and they can be engaged in any commercial activity only upon written permission of their employer. They may perform, without any limitation, scientific, educational, literary, publication and artistic activities, as well as management of their own property.⁶¹

Integrity Mechanisms (practice)

Score: 1 2 3 4 5

To what extent is the integrity of public sector employees ensured in practice?

It is difficult to assess integrity of public sector employees in a situation when valid regulations contain such loopholes that strict adherence to them may actually be contraproductive.

The above-mentioned assets declarations are one example. The public does not have an easy access to such declarations, for several reasons. Each institution keeps its own register of declarations.⁶² A person who wants to check a declaration or make a copy of it must either personally visit the relevant institution or submit a written application for on-line access. Moreover, some institutions demand that the signature on the application form be legally attested.⁶³ In other institutions, the access code is valid only for 24 hours from its first use.⁶⁴ Also, information acquired from the register may not be made public (in case of public sector employees)⁶⁵ and any breach of the duty to submit assets declaration is handled as a disciplinary offence, i.e. the proceedings are closed to the public. In practice, therefore, the public oversight of possible conflict of interest in case of public sector employees is non-existent. On the other hand, political representation has at its disposal comprehensive information concerning assets of senior public service employees which can be misused, for example to assess to what extent a particular civil servant is dependent on his/her salary.

Similar situation applies to the codes of ethics. A study carried out by Transparency International reveals that in most institutions, the codes are a part of internal regulations and the employees are made familiar with their existence during their induction training.⁶⁶ However, as long as the codes do not go beyond legal obligations and their violation is not sanctioned and linked to relevant control mechanisms and career advancement, the documents are largely disregarded in practice.⁶⁷

As an example of the fact that requirements on integrity of civil servants are not governed by clear criteria but depend rather on consideration of political representation, we can mention a case of Radek Šnábl, the head of International Law Department of the Ministry of Finance, who is involved in sensitive issues of arbitration proceedings against the Czech Republic and

⁶¹ PracZ, s. 303 par. 3-5.

⁶² Declarations are not archived in a central database but separately by each institution, see section 14 StřetZ.

⁶³ For example the Ministry of the Interior, according to the test carried out by the author.

⁶⁴ For example the Ministry for Regional Development, see viz <http://www.mmr.cz/Ministerstvo/Komunikace-s-uradem/Zakon-o-stretu-zajmu>.

⁶⁵ Only information concerning the declarations of deputies, senators, members of government, members of the Council for Radio and Television Broadcasting and paid full- or part-time municipal council members may be published, compare StřetZ, s.13 par. 5.

⁶⁶ See *Aplikace etických kodexů ve státní správě v ČR*.

⁶⁷ Interview with David Ondráčka.



who remains in his office even after being convicted of tax evasion.⁶⁸ In a news report broadcasted by the Czech Television, the Finance Minister declared that Šnábl was irreplaceable.⁶⁹

Public Education

Score: 1 2 3 4 5

To what extent does the public sector inform and educate the public on its role in fighting corruption?

The public sector declares its readiness to curb corruption and appeals to the public to cooperate and report corrupt practices. At the same time, the public is being repeatedly provided by the media and indirectly by the institutions themselves with information concerning ineffectiveness of anti-corruption mechanisms. As a result, the public is deeply suspicious of such appeals and not very willing to report wrongdoing. According to the GfK survey carried out in April 2010, 16% of respondents would report corrupt practices in public administration anonymously to the police and mere 6% would be willing to report corruption and testify in court. The majority of respondents would only discuss their experience with their relatives or friends (40%) or keep completely quiet about it (25%).⁷⁰

Anti-corruption policy falls under the competence of the Interior Ministry, which issued an anti-corruption guide for the citizens describing how to report corrupt practices and how to behave if they are confronted with corruption. The guide generally refers citizens to the police and in case of any doubts to the central anti-corruption hotline 199. It does not mention internal control mechanisms of public institutions.⁷¹ The hotline 199 is funded by the Ministry and operated by non-government organisations (from 2007 to 2010 by Transparency International, since 2011 by Oživení). The hotline receives and deals with several thousand inquiries each year. For most complaints, however, no satisfactory legal solution exists or, if the solution exists, relevant authorities do not use it. In practice, therefore, the hotline is losing its original purpose of providing the callers with practical solutions (which was the primary objective of the project) and serves rather as an information service, providing clients with real-life possibilities and collecting data that enable its operators to diagnose dysfunctions of the existing system of anti-corruption measures.⁷² Thus the circle of distrust is completed, as one of the institutions that refuse to handle complaints that are submitted to it is the police (see *Law Enforcement Agencies/ XXX*).

In addition to the central anti-corruption hotline 199, some ministries have their own hotlines or e-mail addresses where people can report corrupt practices. Such complaints are usually handled by their internal audit departments. These other contacts are not much used by the public and according to available data they also do not contain relevant information. For example, the annual report of the Ministry of Labour and Social Affairs states that “there were no concrete proofs of corrupt practices in the complaints that the Ministry received, nor any other concrete information that would give evidence of the alleged corruption” and that “investigation based on such complaints did not detect corruption or any similar

⁶⁸ See <http://www.ceskatelevize.cz/ct24/ekonomika/125684-expert-na-arbitrage-radek-snabl-ma-pohadkovy-majetek/>.

⁶⁹ See <http://www.ceskatelevize.cz/ivysilani/1142743803/>.

⁷⁰ See http://www.gfk.cz/imperia/md/content/gfkp Praha/press/2010/100413_korupce_tu_byla_a_bude.pdf.

⁷¹ See *Společně proti korupci. Protikorupční manuál pro občany*.

⁷² *Závěrečná zpráva o provozu protikorupční linky 199 za rok 2010*, p. 16 and 20; <http://old.transparency.cz/pdf/alac-zprava-linka-2010-zaverecna.pdf>.



misconduct”.⁷³ The Ministry of Finance received 57 complaints through its anti-corruption hotline and e-mail address in 2010 and 3 criminal complaints were lodged based on the information received. The report did not say whether and how the police proceeded with investigation of the complaints.⁷⁴

Cooperate with public institutions, CSOs and private agencies in preventing/ addressing corruption

Score: 1 2 3 4 5

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

Cooperation between the public sector and other actors in the field of curbing corruption takes place especially on the level of submitting comments to draft pieces of legislation and policy documents. The other level is represented by the support provided by the state to anti-corruption initiatives. However, such support is rather symbolic.

Anti-corruption policy falls under the competence of the Interior Ministry, which prepares the government’s anti-corruption strategy (see in more detail *Executive/Anti-corruption reforms*) and subsequently coordinates its implementation. The strategy is in effect executed by the political representation (i.e. at the level of the government and the parliament). The role of public servants in implementing the strategy is rather passive, which is largely caused by their extreme dependence on the actual political representation (see *Independence*).

Public consultation on draft legislation is an integral part of the legislative process, according to the legislative rules of the government. The principle of public consultation is described in more detail especially in the General principles of regulatory impact assessment (RIA), which were approved by the government in 2007.⁷⁵ However, there is no single platform that would enable all the relevant stakeholders to engage in the consultation process (see also *Executive*) and representatives of civil society and business community agree on the fact that in practice such consultation process does not work. It is frustrating to participate in endless discussions and negotiations with public authorities and keep submitting comments to any draft law while its final wording is decided elsewhere.⁷⁶ As an example we can use the commitment of the government stated in its anti-corruption strategy – to prepare a new regulation that would significantly increase transparency and accountability in property management at the municipal level. In this case, already in the phase of submitting comments to the draft law by the ministries, most proposed new provisions seemed toothless, establishing obligations that could be easily circumvented or would not have a desired effect.⁷⁷ It is quite typical for such “creeping disintegration” of the original purpose of the draft already in the preparatory phase that it is not clear – from publicly available materials – who is responsible for the radical changes made to the original draft.

Despite the fact that the Ombudsman and the Supreme Audit Office are included in the interdepartmental comment procedure and their recommendations are presented directly to the Parliament, either in the form of their annual reports or by submitting comments to individual

⁷³ See *Výroční zpráva za rok 2010 o činnosti Ministerstva práce a sociálních věcí v oblasti poskytování informací*, p. 5; http://www.mpsv.cz/files/clanky/10427/Vyrocní_zpráva_za_rok_2010.pdf.

⁷⁴ See http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/mf_protikorup_linka_60790.html.

⁷⁵ See par. 6. of General principles of regulatory impact assessment (RIA), available at: <http://www.mvcr.cz/clanek/hodnoceni-dopadu-regulace-ria.aspx>

⁷⁶ Interview with Jiří Barta, interview with Vratislav Kulhánek.

⁷⁷ See TIC statement: http://www.transparency.cz/doc/aktuality/2011-06-27-USC-stanovisko_TIC.pdf



draft laws (see in more detail *Ombudsman and Supreme Audit Institution*), their recommendations are rarely implemented.

As concerns direct support of anti-corruption initiatives, the Interior Ministry announces two programmes each year – Fight against Corruption and Prevention of Corruption – and within their framework provides financial support to anti-corruption projects of NGOs. In 2011, the Ministry's support amounted to CZK 5.5 million, of which 2.1 million went to the operation of anti-corruption hotline 199 and the remaining funds were divided between 5 watchdog-oriented NGOs.⁷⁸ Regarding the overall amount of subsidies directed to the non-profit sector (see in more detail *Civil Society*), it is obvious that financial support of anti-corruption initiatives is not a priority. The state does not plan to increase its financial support to this area in the near future.⁷⁹

Reduce Corruption Risks by Safeguarding Integrity in Public Procurement

Score: 1 2 3 4 5

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

Each year, 17.5% of GDP (CZK 635 billion in 2009) is spent on public procurement, of which the public funds are used for 14% of GDP (508 billion in 2009).⁸⁰ Most experts argue that these funds are used ineffectively in the Czech Republic and quote two main reasons for this: the existing legal framework and the practices used by individual institutions.

The Act on Public Contracts regulates in great detail the procedures of public administration in awarding contracts for purchase of goods, services and construction works. However, the procedures and subsequent examination of public contracting by the Office for the Protection of Competition (ÚOHS) do not apply to so-called small-sized public contracts. The limit for such contracts, which do not even have to be publicly announced on the internet by the contracting authority, is relatively high (CZK 2 million for deliveries or purchase of goods and services; or 6 million for construction works).⁸¹ The Index of non-transparent public contracts⁸² shows the percentage of public spending that is not subject to the obligation to appear in the Public Procurement Information System (i.e. small-sized public contracts and other types of contracts exempt from the law). The Index showed a declining trend from 80% in 2004 to 29% in 2008⁸³ but in 2009 it started to climb again.⁸⁴ According to the analysis prepared by zIndex project, in 2010 alone public contracts in the value of at least CZK 8 billion were awarded to suppliers with anonymous ownership structure who use the bearer

⁷⁸ Namely: Transparency International – Czech Republic, Oživení, Otevřená společnost, Ekologický právní servis and Čmelák – Společnost přátel přírody. See the minutes of the Subsidy Committee meeting of 9 December 2010, available at: <<http://www.mvcr.cz/soubor/zapisdv-09122010-pdf.aspx>>.

⁷⁹ Interview with Hana Frištenská. Compare also the minutes of the meeting of the Government Council for NGOs of 16 May 2011, available at: <<http://www.vlada.cz/scripts/detail.php?pgid=536>>.

⁸⁰ *Veřejné zakázky, Doporučení subkomise NERV proti korupci*, p. 1.; <http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Doporuceni-subkomise-NERV-proti-korupci.pdf>.

⁸¹ ZVZ, s. 18, s. 12 and s. 6.

⁸² See in detail Pavel, J.: *Ukazatele transparentnosti trhu veřejných zakázek*; http://old.transparency.cz/pdf/publikace/vz_index_transparentnosti_metodika.pdf.

⁸³ See *Zakázky malého rozsahu v České republice*, p. 12; http://www.transparency.cz/doc/TIC_ZMR_publikace.pdf.

⁸⁴ See *Veřejné zakázky, Doporučení subkomise NERV proti korupci*, p. 6.; <http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Doporuceni-subkomise-NERV-proti-korupci.pdf>.



shares⁸⁵ (for more information on bearer shares see *Business/Transparency*). An example of a dubious public contract awarded to a company with non-transparent structure is the case of Kardio Port, a supplier of overpriced healthcare material for the Institute of Clinical and Experimental Medicine (IKEM). The company whose turnover had not until then exceeded CZK 100,000 a year, made a bid for the supply of special healthcare materials in the value of CZK 437.7 million. There are grounds for suspicion that the real price paid by IKEM was many times higher.⁸⁶

In spite of the fact that the law considers open bidding as standard procedure in public procurement and allows for the use of other types of awarding public contract only in some specific cases,⁸⁷ only 45% of all public procurement was allocated in open bidding procedures in 2009 while 20% of contracts were awarded to companies who were the only bidder. Based on the small number of bidders in some tenders, the experts of the Czech government's National Economic Council (NERV) suggest that it is possible, without violating the law, to prepare tender specifications that are tailor-made for one particular supplier. NERV also draws attention to inefficiency of the existing control mechanisms (Supreme Audit Office, ÚOHS, internal control mechanisms in public administration).⁸⁸ The ÚOHS is entitled to impose sanctions, including the ban on performance of a contract already concluded,⁸⁹ yet it is not authorised to examine effectiveness and economical utilization of the funds. In 2009, the ÚOHS issued 186 decisions concerning public procurement and in 69 of these cases it imposed a penalty. The total amount of penalties imposed did not exceed CZK 4 million.⁹⁰ While the Supreme Audit Office (SAO) may examine the effectiveness and economical utilization of the funds, its findings result only in recommendations (see *Supreme Audit Institution*). For example, the SAO called attention to inefficient use of financial resources earmarked for road construction projects when its audit revealed that in the period 2008–2009, almost two thirds of contracts (worth CZK 62.8 billion) were awarded to a small group of 5 contractors and in case of 46 tenders (worth CZK 13.2 billion), there were only two competitors or even just one.⁹¹ The attempts to restrict competition can be seen also in frequent misuse of the threshold set for construction works. The law allows the contracting authorities to use simplified below-the-threshold procedure for construction contracts in the value not exceeding CZK 20 million which results in accumulation of contracts just below the threshold (see Figure xx).⁹²

⁸⁵ <http://blog.aktualne.centrum.cz/blogy/jiri-skuhrovec.php?itemid=13176>

⁸⁶ http://wiki.zindex.cz/doku.php?id=ikem_-_zakazka_nezname_firme_za_437_mil

⁸⁷ ZVZ, s. 21, s. 22-25.

⁸⁸ See *Veřejné zakázky, Doporučení subkomise NERV proti korupci*, p. 1.; <http://www.vlada.cz/assets/media-centrum/dulezite-dokumenty/Doporuceni-subkomise-NERV-proti-korupci.pdf>.

⁸⁹ ZVZ, s. 118.

⁹⁰ 2009 Annual Report of ÚOHS, p. 17.;

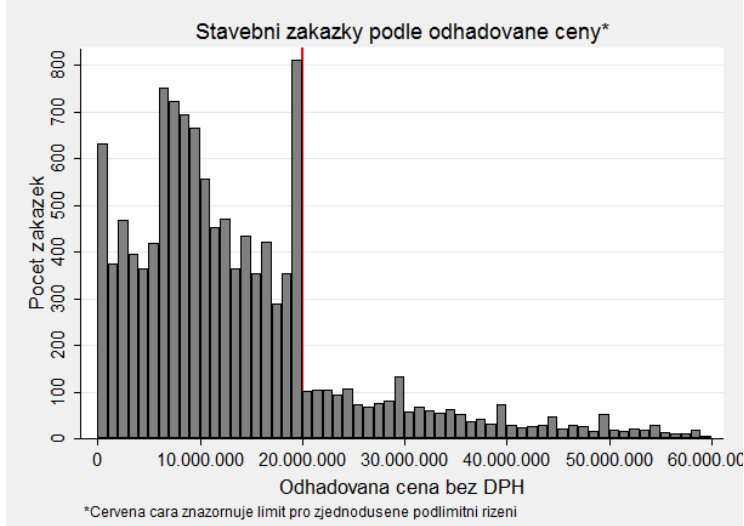
http://www.compet.cz/fileadmin/user_upload/VZ_verejnost/Vyrocní_zpráva_2009.pdf.

⁹¹ See SAO audit conclusion [No. 09/27](#), published in SAO Bulletin No. 4/2010.

⁹² Source: NERV report *Boj proti korupci*, p. 44.



The law establishes the possibility to conduct centralised purchases through a “central purchasing body”⁹³ but no such institution has been created to fulfil that role for public sector. With few exceptions, not even the ministries use this opportunity to centralise purchases for their subordinate agencies.⁹⁴ The law does not



regulate elaboration of the terms of reference/specifications so it is up to the individual institutions to set up their own standards. In more complex cases, public institutions frequently outsource preparation and management of tender procedures to external legal firms which increases both the costs and corruption risks. It is because of such intermediaries and consultants involved in public procurement processes that corruption in this field flourishes. At the same time, they also make the most profit from the situation.⁹⁵ The undesirable role of intermediaries who may prepare a “tailor-made tender” without relevant public officials or politicians being held accountable was pointed out also by the member of the Chamber of Deputies’ committee of inquiry for the case of Kapsch (see *Legislative/Executive Oversight*).

According to the survey carried out by the Association of Small and Medium-Sized Companies in February 2010, 3 out of 5 managers of such companies believe that it is impossible to win a public contract in the Czech Republic without bribery, kickback or some other “incentive”. One positive outcome is the finding that almost half (44%) of entrepreneurs would be ready to make public announcement if they met with corrupt behaviour, despite the fact that in this way they would greatly reduce their chances to win any future contracts (for more detail concerning engagement of entrepreneurs in anti-corruption initiatives see *Business*).⁹⁶

LAWS AND REGULATIONS

KompZ: zákon č. 2/1969 Sb., o zřízení ministerstev a jiných ústředních orgánů státní správy České republiky.

PracZ: zákon č. 262/2006 Sb., Zákoník práce

SlužZ: zákon č. 62/2003 Sb. o volbách do Evropského parlamentu.

SlužBezZ: zákon č. 130/2000 Sb. o volbách do zastupitelstev krajů.

ÚřSamZ: zákon č. 491/2001 Sb. o volbách do zastupitelstev obcí.

VeřZakZ: zákon č. 137/2006 Sb., o veřejných zakázkách.

InspPrZ: zákon č. 251/2005, o inspekci práce.

⁹³ ZVZ, s. 3.

⁹⁴ See *Zakázky malého rozsahu v České republice*, p. 17.;
http://www.transparency.cz/doc/TIC_ZMR_publicace.pdf.

⁹⁵ Interview with Vladimír Kulháněk.

⁹⁶ See research AMSP; http://www.amsz.cz/uploads/soubory/pruzkum4_web_final.pdf.



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

POLICE (LAW ENFORCEMENT AGENCIES)

The police lack independence. As is the case with the public sector, such situation encourages loyalty to political representation and results in passive approach to investigation of politically sensitive cases. Thus our relatively high number of policemen and their reasonable salaries represent unused potential. Political representation keeps sending contradictory signals to the police (hiring new policemen or reducing their numbers), which leads to further destabilization of the police. The most recent budget cuts are seriously endangering proper functioning of the Police of the Czech Republic.

The developments during the last few months have confirmed that political representatives see the police as an important source of power. Both the police and the Interior Ministry (to which the police are subordinated) are the subject of political competition even within the government coalition. Unless a political party has control over both these institutions, it strives to control some other law enforcement agency (General Inspection of Security Forces, Financial Analytical Unit of the Ministry of Finance). It seems that political representatives are unable to imagine that top police officers could be independent – they are convinced that “if someone is not ‘our man’, he must be dependent on some other political power”.

Transparency of the police activities has significantly increased in recent years. Responsibility for unlawful conduct (especially of individual police officers) is ensured relatively well and it is implemented in practice. The situation may further improve when the new General Inspection of Security Forces is formed. On the other hand, a system of holding individual police departments and police forces in general accountable is not institutionalised in the everyday practice although the police have been committed to implementation of the project of quality management since 2001.

While a general framework for integrity exists, in practice the issues of integrity of individual police officers are not given enough attention. One worrying factor is the high rate of leaks of information concerning criminal proceedings. Also, the police management does not pay enough attention to the cases of illegal use of police databases.



The extent of detection, investigation and prosecution of corruption cases is inadequate despite the fact that the police have at their disposal most criminal law institutes necessary for corruption prosecution. One of the reasons why such institutes are not used more frequently is political debate on the acceptable extent of violation of privacy in the course of corruption investigation. Efficiency of corruption prosecution is often hampered by insufficient cooperation between police investigators and public prosecutors and sometimes also by their diametrically opposed legal opinions concerning the investigation of some cases. While there are many signals confirming undue external interference in politically sensitive investigations, there are no signals that would give ground for hope in some significant improvement of the present situation.

The table below presents the overall assessment of police forces in terms of capacity, governance and role in the national integrity system of the Czech Republic as well as the individual indicator scores. Detailed qualitative assessments for each indicator are available in Czech language [here](#).

POLICE			
Overall Pillar Score			
		43 /100	
	Indicator	Law	Practice
Capacity 42 /100	Resources	-	50
	Independence	50	25
Governance 63 /100	Transparency	75	75
	Accountability	75	50
	Integrity	75	25
Role 25 /100	Corruption prosecution	25	

National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

ELECTORAL MANAGEMENT BODY

Overall pillar score			
		65	/100
	Indicator	Law	Practice
Capacity 75 /100	Resources	-	100
	Independence	50	-
Governance 58 /100	Transparency	75	75
	Accountability	50	50
	Integrity	50	50
Role 63 /100	Campaign regulation	25	
	Election Administration	100	

Summary

Election processes in the Czech Republic run smoothly and there are sufficient financial resources available. There are detailed provisions in relevant laws concerning the election administration and the road of a politician to his office, from his name on a candidate list to a ballot distributed to a citizen's mail box, then from the citizen's hand to a sealed ballot box to final results announcement, is being overseen by election commissions, public officials, political parties and independent courts. However, legal regulation of broader context of the elections is inadequate, namely there are no provisions concerning effective regulation of pre-election campaign and campaign financing. According to the statement of the Constitutional Court, the Czech legislators "should consider whether electoral culture of voters, candidates and public officials reaches such a level that it is superfluous to regulate these issues or whether they should regulate election behaviour through clearly defined rules that would create a situation of legal certainty for stakeholders in the election process and at least create conditions for achieving election economy."

The assessment presented in the table below is in a certain sense schizophrenic as it strives, within individual indicators, to evaluate various levels of highly decentralised system. This applies especially to the assessment of election administration system in terms of its



governance. The remainder of the chapter presents brief qualitative assessment for each indicator.

Structure and Organisation

The elections in the Czech Republic are administered collectively by a number of executive bodies along with local self-government.¹ The entire system is in many respects strongly decentralised. The body that is co-ordinating elections is the State Election Commission (SEC), which is composed of representatives of ministries, the Czech Statistical Office (CSO) and the Office of the Czech President. The SEC does not have its own administrative apparatus. At the central level, the preparation and organisation of the elections is co-ordinated chiefly by the Ministry of Interior and the CSO, while a significant proportion of practical tasks is delegated on regional and municipal levels. The independent oversight functions over the proper electoral procedure are exercised by administrative courts to which the political parties, candidates and individual voters may turn with complaints. The Czech Republic has at the moment four different election laws – for the elections to the Parliament, to regional councils, municipal councils and to the European Parliament. As the administration of each type of elections is almost identical, with only a few exceptions, the Ministry of Interior seeks to establish a single electoral code.²

Resources (practice)

Score: 1 2 3 4 5

To what extent does the electoral management body have adequate resources to achieve its goals in practice?

There are sufficient material and human resources to administer the elections. Despite the fact that the SEC is a permanent body³, it does not have its separate budget. The Ministry of Finance bears the direct election costs while the costs related to the SEC operation and some other costs related to the elections are borne by the individual administrative bodies which actually exercise the necessary tasks. First and foremost it is the Ministry of Interior whose Minister is also, by law, a chairman of the SEC⁴ and whose employees constitute the SEC's secretariat. The Ministry of Interior provides guidelines for organisation of elections and, among other tasks, arranges printing and distribution of ballots and other electoral materials. The Czech Statistical Office (CSO) is responsible for technical system of processing the election results and for information technologies ensuring the transfer of results from electoral districts. When the results are processed, the CSO prepares data that form the basis for declaration of final election results. The Ministry of Foreign Affairs is responsible for administering elections for Czech citizens living abroad who may vote at embassies and consulates.⁵

Direct costs of elections to the European Parliament held in 2009 reached CZK 473 million, of which 78 million went to the CSO, 109 million to the Ministry of Interior and 286 million to the regions and municipalities.⁶ The municipalities provide a lump-sum reimbursement to

¹ We will refer to them collectively as electoral management bodies (EMBs) throughout the text.

² The intended subject matter of the Electoral Code was submitted by the Ministry of Interior for the interdepartmental comment procedure on 6 April 2011 under No. [MV-88038-31/VS-2010](#).

³ VolKrajZ, § 7.

⁴ Other members and substitutes are appointed by the Government upon the Minister's proposal, see § 7 VolKrajZ.

⁵ VolParlZ, § 9-11.

⁶ State Closing Account 2009; http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/statni_zav_ucet.html?year=2009.



the members of district election commissions in the amount of CZK 1,300 (member) and 1,600 (chairman) for one electoral event⁷, cover the costs of the necessary equipment in the polling stations and other expenditures related to organisation of the electoral event on the spot. For the 2009 elections to the European Parliament, there were 14,777 electoral districts and 8,401 voters, i.e. approximately 570 registered voters for one district election commission.⁸ As revealed from the answers of the Ministry of Finance to inquiries of the self-government concerning individual expenditure items, the factual costs of the elections are higher because the municipalities involve also their own (human and material) resources in the administering of elections⁹. Another item that can be considered as an expenditure of the state directly related to election administration are the contributions provided by the state to political parties (see *Political Parties*).

Independence (law)

Score: 1 2 3 4 5

To what extent is the electoral management body (EMB) independent by law?

The EMBs are by law interconnected through personnel with other functions of state administration and self-government. With the exception of district election commissions, their independence is not sufficiently ensured.

As to the State Election Commission (SEC), it is by law headed by the Minister of Interior who also has major influence over its composition as the Government appoints and removes other SEC members upon his proposal.¹⁰ All reservations mentioned in *Public Sector/Independence* apply to the independence of public officials whose activities the SEC co-ordinates through its members and who are involved in administering elections, i.e. they may be easily removed from office and they may act under political influence. On the level of self-government, a significant role in the EMBs' activities is played by the mayors who usually have clear party preferences.

Of all the EMBs, the highest level of independence is enjoyed by the district election commissions (DECs), which are the only electoral body to have a direct contact with voters due to their physical oversight of the polling and subsequent counting of the votes. The DEC members are nominated by political parties running in the elections. Any voter who is not himself a candidate may become a member of the DEC. There is no limit for a number of DEC members so the actual number depends on the interest of the parties and their ability to nominate the members. Only in cases when political parties do not use this opportunity, the DEC members are appointed by the mayor. Each DEC must have at least 5 members.¹¹

Independence (practice)

Score: n/a

To what extent does the electoral management body function independently in practice?

In practice, the lack of EMBs independence does not result in any serious problems, as evidenced by smooth election processes (see Election Administration) and by the fact that not even the experts in the area of election procedures draw attention to the issue of EMBs

⁷ The amount of lump-sum reimbursement for the elections to the Parliament is stipulated by §12 of Ministry of Interior regulation No.233/2000 Coll. Similar amounts apply to reimbursements for other electoral events, see No. 152/2000 Coll., 59/2002 Coll., and 409/2003 Coll.

⁸ CSO Annual Report 2009; http://www.czso.cz/csu/redakce.nsf/i/vyrocní_zpravy.

⁹ See <http://verejna-sprava.kr-moravskoslezsky.cz/cz/volby/dotazy-k-financovani-voleb-8520/>.

¹⁰ VolKrajZ, §7.

¹¹ Compare VolParlZ, §14e.



independence or any other aspects of their operation.¹² As the EMBs are responsible chiefly for technical aspects of election administration, have narrowly defined competences, and are subject to oversight by electoral courts (see Accountability), we decided not to evaluate this indicator.

Transparency (law)

Score: 1 2 3 4 5

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

While there are sufficient provisions in place which require information concerning the electoral process to be made public, little or no attention is given to information concerning the actual functioning of the EMBs. Nevertheless, such information (and generally any information related to the elections) are subject to the Free Access to Information Act and thus can be requested under this Act.

The parliamentary and all other types of elections are announced by the President at least 90 days prior to the election date. The announcement always includes the dates of the elections and is published as a separate item in the Collection of Laws.¹³ The duty to directly inform the voters lies with the mayors who must at least 15 days in advance inform the voters about the time and place where the elections in their municipality will be held. They also arrange distribution of ballots and inform the voters about any other organisational issues.¹⁴ The SEC is only required by law to announce and make public the overall election results.¹⁵ According to the SEC rules of procedure, its meetings are not open to the public but the rules also presume that the minutes of the meeting will include a report for media if necessary.¹⁶

Information on party funding is available to the public in the Office of the Chamber of Deputies.¹⁷ Neither the SEC nor other EMBs exercise control of or comment on party funding (see in more detail below and in *Political Parties*). The rulings of administrative courts concerning electoral issues are public and are always published on the official board.

Transparency (practice)

Score: 1 2 3 4 5

To what extent are reports and decisions of the EMB made public in practice?

Election-related information is available to the public to a greater extent than required by law, primarily thanks to a special server operated by the CSO¹⁸ which presents all the results of elections that have been held since 1990. This publicly accessible database includes voting results down to a level of individual election districts, which in effect eliminates any manipulation in vote counting. The server also offers complete lists of candidates and various cross-sectional indicators such as the average age of candidates, voter turnout or information on preferential votes. On the contrary, the CSO and the Ministry of Interior's websites are rather chaotic and do not contain some basic information. For example, they do not include

¹² Interview with Jan Outlý.

¹³ VolParlZ, § 1.

¹⁴ VolParlZ, § 14c, § 15.

¹⁵ VolParlZ, § 8.

¹⁶ The rules of procedure are included in §1-4 of the Ministry of Interior's regulation No. 152/2000 Coll.

¹⁷ PolStrZ, § 18.

¹⁸ Server www.volby.cz.



protocols on election results and information for voters are blended together with guidelines for electoral bodies and information for media.¹⁹

Time limits for individual actions (such as registration of candidate lists, corrections to the voter register, obtainment of the voter's pass to vote outside the voter's electoral district, etc.) are stipulated by law. The Ministry of Interior's website then publishes an updated time schedule (according to the dates of the actual electoral event) of the tasks of individual EMBs, political parties and voters. Neither the Ministry nor the SEC operate any special hotline providing information about the elections. However, there is an e-mail address volby@mvr.cz.

The citizens' major source of information regarding the elections is the media which traditionally pays a lot of attention to the topic. Also the political parties spread information within their pre-election campaigns. The results of elections to the Chamber of Deputies are officially published also in one national daily (*Hospodářské noviny*), usually in its Tuesday issue, i.e. on the third day after the unofficial results have been announced. From this day the time limits start running for challenging the election results in court.²⁰

Accountability (law)

Score: 1 2 3 4 5

To what extent are there provisions in place to ensure that the EMB has to report and be answerable for its actions?

Responsibility for administering elections is divided between various institutions according to their appropriate roles in the election process as defined by law. As was mentioned above, the SEC is a part of the executive and the organisation of elections is not separated from execution of state administration. The relationships between individual EMBs follow the principles of subordination. The law for example stipulates that if the mayor does not fulfil his tasks within the election process, his role will be taken over by the head of relevant regional authority.²¹ At the top of this hierarchy is the SEC or rather the Government, which appoints the SEC members.

The law does not define a particular method of how the EMBs should be answerable for their actions and their financial management, there are only provisions regarding information duties towards the public and other stakeholders (see Transparency). Financial management of the EMBs may be audited by the Ministry of Finance within its financial audits or by the Supreme Audit Office. As to the delicts committed by individual persons, public officials may be sanctioned according to the labour-law regulations (for more detail see *Public Sector*), and any person according to the criminal law (see *Integrity*). The SEC does not have at its disposal any sanction mechanisms; the complaints related to election organisation or technical issues are handled by individual EMBs according to their appropriate roles.

The individual oversight of the EMBs activities is exercised by administrative courts which are authorised to examine (upon a proposal) essentially any decision of public administration bodies involved in administering elections. The important aspect of electoral justice is relatively short time limits for pronouncing the decision. The courts must decide within 3 days on objections to the list of eligible voters (any citizen may be a petitioner), and within 15 days on objections against refusal to register a list of candidates or against removal of a particular

¹⁹ See for example <http://www.mvr.cz/clanek/volby-archiv-volby-do-poslanecke-snemovny-parlamentu-cr-probehle-27-a-28-kvetna-2010.aspx>.

²⁰ Interview with Václav Henych, compare also <http://www.rozhlas.cz/zpravy/volby/zprava/739090>.

²¹ VolParlZ, § 97b.



candidate from the list, and on a motion to cancel registration of another political party's candidate lists or its candidate (a political party or the affected candidate is the petitioner).²² Depending on the circumstances, it is possible to challenge before an administrative court the validity of election in general, the validity of vote or the validity of elections of a certain candidate, all within 10 days of declaration of election results. The court decides within 20 days. Naturally, there are limits as to the extent of intervention of the court to the election that already took place. The law explicitly states that the motion to invalidate elections (vote, election of a candidate) is legitimate only if the electoral law was breached in such a way that could have affected the election results.²³

Accountability (practice)

Score: 1 2 3 4 5

To what extent does the EMB have to report and be answerable for its actions in practice?

As was already mentioned, the SEC does not have its own budget so it is the individual EMBs that are answerable for their actions. For example the CSO devotes a part of its annual report as well as a brief commentary in its closing account to elections. Yet most of the funds for election administration come directly from the state budget and the efficient utilization of such funds is supervised by the Ministry of Finance, which directly covers the costs of individual EMBs related to elections.²⁴ According to publicly available sources, the Supreme Audit Office has not yet carried out a comprehensive audit of efficiency and effectiveness of election administration.

As concerns the overall accountability of EMBs' actions, the only coherent source of information is the data concerning the complaints handled by the court. The total of 70 complaints was filed by voters and political parties in relation to the elections to the Chamber of Deputies in 2006. The court did not acknowledge any of these as the defects discovered could not have affected the election results. The defects consisted for example in the election commission not taking into account preferential votes or in the fact that the voter register was incomplete.²⁵ Similar situation applied to the parliamentary election in 2010 when the court received 55 complaints, 10 of which arrived late and the rest were unsuccessful.²⁶

Only on several occasions of elections on municipal level the court acknowledged that the breach of election process was of such a serious nature that the election must be repeated. Especially the cases of Krupka²⁷ and Český Těšín²⁸ towns aroused attention and were widely covered in media – both involved buying of votes for a particular party. Similarly, efforts to deliberately increase the number of voters through last-minute changes in their registered place of permanent stay (address) led to repeated municipal elections in Hřensko and Karlova Studánka in 2010.²⁹ Such excesses cannot be effectively prevented by EMBs or by the police. On the positive side, such attempts to manipulate elections were aimed at voters, not at the members of DEC.

²² Compare SŘS, § 88 and following, VolParlZ, § 86 and following.

²³ §90 SŘS, § 87 VolParlZ.

²⁴ Interview with Václav Henych.

²⁵ See <http://www.ct24.cz/parlamentni-volby/91744-prvni-stiznosti-na-volby-prisly-z-rad-volicu/>.

²⁶ See http://www.lidovky.cz/volby-plati-nejvyssi-spravni-soud-zamitl-vsech-55-stiznosti-pln-ln-domov.asp?c=A100629_165434_ln_domov_tsh.

²⁷ See http://usti.idnes.cz/v-krupce-cekaji-na-volby-mesto-trati-miliony-na-poplatich-pne-/Usti-zpravy.aspx?c=A110301_1540736_usti-zpravy_oks.

²⁸ See http://ostrava.idnes.cz/soud-zrusil-kvuli-nakupovani-hlasu-volby-v-ceskem-tesine-pme-/Ostrava-zpravy.aspx?c=A101115_161227_ostrava-zpravy_sot.

²⁹ http://zpravy.idnes.cz/v-hrensku-a-karlove-studance-mozna-pujdou-znovu-k-volbam-rozhodl-ustavni-soud-1yp-/domaci.aspx?c=A110504_105336_domaci_bar.



Integrity (law)

Score: 1 2 3 4 5

To what extent are there mechanisms in place to ensure the integrity of the EMB?

Non-systematic nature of restrictions that aim to ensure the integrity of EMB members is partly caused by the variety of persons involved in the EMB activities. There are public officials, politicians, and ordinary citizens. The evaluation of integrity described in the chapters *Executive* and *Public Sector* applies to the SEC members and to administrative apparatus. One group that is caught in a clear conflict-of-interest situation is the mayors who usually have clear political preferences but at the same time are in charge of allocating advertising space in the municipality and have the influence over the contents of municipal bulletins (see Campaign Regulation below).

The integrity of the DEC members is guaranteed chiefly by the fact that their members are nominated by individual political parties that run in the elections. The imminent conflict of interest is eliminated by the condition that the DEC members may not simultaneously be candidates. During their term, the DEC members are bound by confidentiality – in particular, they must not provide any information concerning the progress of the election until they sign the protocol on election process and voting results.³⁰ The DEC members are also the only ones who swear an oath before taking their office. Regarding preventive measures, it is important to mention the training organised by the CSO for selected members of the DEC members responsible for inserting the voting results to the central system of processing the overall election results.³¹ Detailed rules of conduct of DEC commissions is included in the law, which is probably why there is no specific code of ethics for the DEC members.

One shortcoming of the existing rules revealed in cases of repeated municipal elections (see Accountability) that may have negative impact on integrity is the fact that the DEC members are entitled to lump sum remuneration irrespective of how many times the elections are repeated. However, if the DEC member does not participate in the repeated elections, his remuneration is reduced proportionally. This fact may reduce his willingness to report violations of rules as the repeated elections would mean more work for the same money.

Misbehaviour of the EMB members may result, in extreme cases, in criminal penalty. In particular, wilful miscount of ballots, wilful violation of secrecy of vote or other serious obstruction of electoral process constitute a criminal offence.³²

Integrity (practice)

Score: 1 2 3 4 5

To what extent is the integrity of the electoral management body ensured in practice?

In practice, there are no serious problems with EMBs' conduct of duties or at least no such problems are known. At the same time, there is no systemic monitoring of individual misbehaviour, its evaluation and sanctioning. A long-standing member of the SEC stated that violations of electoral rules at the municipal level are usually rather trivial and do not affect the electoral process as such. As an example he described the situation when the voters breach the secrecy of vote by taking their children to go with them behind the screen and the election

³⁰ VolParlZ, § 16.

³¹ VolParlZ, § 11, § 17, see the wording of the oath at the head of the chapter.

³² TrestZ, § 351, offence called *obstructing preparation and conduct of elections and referendum*.



commission tolerates such behaviour. He also admitted that neither the SEC nor the Ministry of Interior has any tools to impose sanctions for violation of duties.³³

Also the cases that were handled by the courts (see Accountability) or reported in the media provide evidence that the EMBs do not wilfully engage in illegal or unethical conduct. The issue of conflict of interest which applies not only to the mayors but also to the politicians in the SEC (which alongside the Minister of Interior includes five deputy ministers, i.e. persons in clearly political positions) is in practice compensated for with the principle of collective decision-making.

Criminal penalties for obstructing the election are not being applied in practice³⁴; even the case of vote buying in Český Těšín was laid aside by the police.³⁵ This fact has led the Ministry of Interior to consider a more precise definition of this offence to be included in the proposed electoral code so that it would be clear that the offence covers also the practice of influencing the elections through buying of votes.³⁶

Campaign regulation

Score: 1 2 3 4 5

Does the EMB effectively regulate candidate and political party finance?

Regulation of campaign financing is clearly insufficient in the Czech law; the EMBs have virtually no competence to regulate election campaigns. While the election law stipulates that the “election campaign must be conducted with honesty and integrity”³⁷, the provision is too vague and there is no sanction specified for dishonest conduct (e.g. for publishing false information regarding political opponents). The issue was also dealt with by the Constitutional Court, which explicitly stated that current legal regulation lacks “a system of tools for protection of elections and electoral rights, as well as other subjective rights in the course of election campaign (e.g. shortened proceedings concerning corrections and apologies in the press), so that it would be possible to impose sanctions for violation of such rules against a person who caused such a violation.”³⁸

Existing regulation applies to allocation of space and airtime for pre-election campaign.³⁹ The election law enables the mayors to allocate space for election posters; such space must be available to all parties on non-discrimination principle. While some municipalities use this option, there is a massive use of commercial space and some parties also resort to illegal placing of posters (subsequently they usually put the blame on their supporters).⁴⁰ In case of elections to the Chamber of Deputies, all political parties are allocated 14 hours of free airtime in public radio and television (Český rozhlas, Česká televize) for their election advertising. The broadcasting time for individual spots is equally divided between prime time and less attractive time slots.⁴¹ A tool that stands outside any legal regulation or oversight is

³³ Interview with Václav Henych.

³⁴ Compare Statistical Yearbook of Crime. *Statistická ročenka kriminality*, Ministerstvo spravedlnosti ČR, 2009; http://cslav.justice.cz/portal/page/portal/cslav_public/cslav_public_rocenky.

³⁵ <http://www.nasipolitici.cz/cs/politik/1580-marian-kus/profilujici-informace-a-kauzy>.

³⁶ The intended subject matter of the Electoral Code of 6 April 2011, document No. [MV-88038-31/VS-2010](#), p. 127.

³⁷ § 16 VolParlZ.

³⁸ Ruling of the Constitutional Court [Pl.ÚS 73/04 ze dne 26.01.2005](#), which overruled the previous decision of the Supreme Administrative Court [Vol 10/2004](#).

³⁹ § 16 VolParlZ.

⁴⁰ Compare <http://www.mediafax.cz/krimi/3031887-Policie-se-zabyva-nelegalnim-vylepem-plakatu-CSSD-na-Zlinsku> and http://decinsky.denik.cz/zpravy_region/zacaly-se-objevovat-na-cestno-vylepene-volebni-plak.html.

⁴¹ Compare § 16 odst. 4 VolParlZ, Interview with Václav Henych.



the use of free bulletins, especially of those published on the municipal level. Some such media are often used by the ruling establishment as a sort of permanent election campaign.⁴²

The parties are entitled to a contribution from the state to finance their election campaign but they get the contribution retrospectively and the amount depends on the total number of votes received. Thus the actual campaign is often financed by loans and credits.⁴³ There are no limits on campaign expenditure. In their annual financial reports that must be submitted to the Chamber of Deputies, political parties are required to specify only their total campaign costs without detailed breakdown of expenditures, and they receive the state contribution irrespective of the actual costs (for more detail see *Political Parties*). With regard to the extent of paid advertising there is a general consensus that real campaign costs are higher than reported by the parties.⁴⁴

The EMBs examine only formal requirements of the candidate lists, such as valid registration of the party or citizenship and age of candidates. They have no competence to regulate election campaigns. The government's anti-corruption strategy speaks only of "an analysis of possible legislative solutions"⁴⁵ in the context of political party financing and campaign regulation, which in practice probably means that there is no intention to change current legal framework as the politicians actually do not want any changes. However, the head of public administration department of the Ministry of Interior says that his department was assigned a task to prepare an analysis (by the end of June 2011) and a subject matter (by the end of 2011) of the new legislation.⁴⁶

Election Administration

Score: 1 2 3 4 5

Does the EMB ensure the integrity of the electoral process?

As concerns organisational and technical aspects of elections, the EMBs handle them flawlessly. Citizens (including first time voters) have all relevant information concerning their electoral right and the election process, partly because the elections are always organised in the same way and usually also on the same place. Besides the information provided by the media and political parties' campaigns, the fact that voters receive their ballots together with detailed guidelines to their mailbox some days before the election date also plays an important role in informing them about the candidates. Disputes concerning the registration of candidate lists and voter registers, if any, are resolved before the actual voting starts.

As to the effectiveness, the results are processed practically in real time. The CSO starts releasing partial results on its website shortly after the polling stations close, and the final results are usually known already by Saturday night.⁴⁷ The election results get extensive media coverage. In case of elections to the Chamber of Deputies, the Czech television

⁴² Compare final report of the project Radniční listy bez cenzury. Kužilek, O.: *Závěrečná zpráva projektu Radniční listy bez cenzury*. Oživení, o.s., Praha, 2006;

http://www.bezkorupce.cz/documents/radnicni_listy/shrnuti-pruzkumu.pdf.

⁴³ See <http://aktualne.centrum.cz/domaci/volby/strany/clanek.phtml?id=669658>.

⁴⁴ Compare <http://www.novinky.cz/domaci/207570-poslanci-cssd-prilepsuji-partajni-kase-strana-jim-pronajima-kancelare.html>.

⁴⁵ Strategy of Government in Fight against Corruption for the years 2011 and 2012, point 5.4.;

<http://www.mvcr.cz/clanek/uplna-verze-strategie-vlady-v-boji-proti-korupci-na-obdobi-let-2011-a-2012.aspx>.

⁴⁶ Interview with Václav Henych.

⁴⁷ As a rule, elections take place on Friday from 14:00 to 22:00 and on Saturday from 8:00 to 14:00, see VolParlZ, §1.



broadcasts not only news reports and official results but also the exit poll predictions⁴⁸, which do not substantially differ from final results.⁴⁹

Objectivity of votes counting process is ensured at the municipal level by district election commissions (see Independence). Their results are submitted in an electronic format to the employee of the CSO, an institution responsible for storing and centrally processing the data.⁵⁰ Independent observers are allowed to observe the election procedure. The election law does not restrict the observers' presence during the polling, the only condition being that there must be no disruptions in the polling station. To be present when the votes are counted, i.e. after the close of polling station, the observer needs a permission issued by the SEC.⁵¹ According to the SEC website, an application for such permission must be submitted at least one week before the election date.⁵² A long-standing member of the SEC says that in practice, however, the permissions are issued even on the day of elections and the time limit is simply a safeguard against a situation when the SEC chairman (who is authorised to issue permissions) is not available. This possibility is used mostly by journalists, and there are usually several dozens of such applications per one election event.⁵³

LAWS AND REGULATIONS:

VolEPZ: zákon č. 62/2003 Sb. o volbách do Evropského parlamentu.

VolKrajZ: zákon č. 130/2000 Sb. o volbách do zastupitelstev krajů.

VolObZ: zákon č. 491/2001 Sb. o volbách do zastupitelstev obcí.

VolParlZ: zákon č. 247/1995 Sb. o volbách do Parlamentu České republiky.

⁴⁸ There is a ban on publishing opinion polls in the last three days before the elections and on election day before the close of polling stations, see VolParlZ, §16.

⁴⁹ Compare . <http://www.ct24.cz/domaci/91784-exit-poll-sokoval-odhadem-ihned-po-volbach-a-trefil-se/> and <http://www.scac.cz/vyzkumy/archiv/96-volby-2006>.

⁵⁰ Compare Závažný systém zjišťování a zpracování výsledků voleb Českého statistického úřadu; http://www.czso.cz/csu/redakce.nsf/i/zavazny_system_zjistovani_a_zpracovani_vysledku_voleb_a_vysledku_hlasovani_v_celostatnim_referendu..

⁵¹ § 8 VolParlZ.

⁵² See information on time limits for application submission for the elections in May 2010 on the SEC website [here](#).

⁵³ Interview with Václav Henych.



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

OMBUDSMAN

- *The Ombudsman enjoys high credibility and has good physical security.*
- *Office of the Ombudsman is an example of transparency and openness for the public.*
- *The Ombudsman has no effective sanctions.*

OMBUDSMAN			
Overall Pillar Score		90 /100	
	Indicator	Law	Practice
Capacity 92 /100	Resources	-	100
	Independence	75	100
Governance 92 /100	Transparency	100	100
	Accountability	100	100
	Integrity Mechanisms	75	75
Role 88 /100	Investigation	75	
	Promoting good practice	100	

7.1.1 Resources (practice)

Score: 0 25 50 75 100

The Ombudsman's mission is to protect people against unlawful conduct of authorities and other institutions.¹ The Ombudsman has nation-wide jurisdiction from which only the president, the government, the parliament, the Supreme Audit Office, the authorities in charge of criminal proceedings, and the courts are exempted. The Ombudsman may investigate the procedures of an institution based either on the complaint of a citizen or on the initiative submitted by an MP

¹ The law explicitly states that the Ombudsman “acts to protect people against the conduct of authorities and other institutions specified in this Act if the conduct is against the law, does not correspond to the principles of a democratic legal state and the principles of good governance, or if the authorities are inactive, and thus contributes to protection of fundamental rights and freedoms”.



or a Senator, or on the Ombudsman's own initiative. In the investigation process, the Ombudsman has access to all relevant documents and has the authority to conduct face-to-face interviews with individual employees of the institution. If the Ombudsman detects any maladministration in the institution's practices and the institution refuses to take corrective measures or to collaborate in investigation process, the Ombudsman is authorised to publish his findings. These are the fundamental competences of the Czech Ombudsman; particular aspects of the Ombudsman's legal position and actual implementation of his competences are specified below.

The Ombudsman's budget is a separate chapter within the state budget and by all indicators the material resources needed to provide for the Ombudsman's activities seem to be sufficient. The Ombudsman belongs among six privileged institutions that propose their own budget, independent of the Ministry of Finance.² The budget of Czech Ombudsman and his Office reached almost CZK 100 million in 2009. Besides the expenditures to cover the Ombudsman's and Deputy Ombudsman's salaries and salaries of the Ombudsman Office employees, the budget covers all other expenditures, including the administration and maintenance of the building where the Ombudsman Office is located. The fact that during 2005-2009, the Ombudsman was always able to return to the state budget more than 15% of his annual budget, confirms our presumption that material resources of the Ombudsman are sufficient.

As to human resources, since 2006 the Ombudsman's Office has been invariably employing over 95 people whose average monthly salary was almost CZK 31,000 in 2009.³ The salary level is comparable with other institutions and is about 32% above the national average. About two thirds of employees come under legal department, which directly deals with particular agendas in the field of people's protection against unlawful conduct of authorities.

7.1.2 Independence (law)

Score: 0 25 50 75 100

Legal status of the Ombudsman is not embodied in the Constitution; it is governed by the Act (No.349/1999 Coll.) that for the first time established the institution of the Ombudsman in the Czech Republic. Principles of impartiality and independence are explicitly included in the Act within the oath that the Ombudsman takes before the Chairman of the Chamber of Deputies. Indirectly, the principle of the Ombudsman's institutional independence permeates the entire Act – from budgetary independence of the Ombudsman's Office to compensation to relatively extensive investigation powers.

The Ombudsman's independence starts at the moment when he/she is appointed and takes an oath. The Ombudsman as well as his deputy is elected by the Chamber of Deputies for 6-year term and the candidates are nominated by the Senate and the president (each submits 2

² Other institutions are: Chamber of Deputies, the Senate, Office of the Czech President, Constitutional Court, and the Supreme Audit Office. Prospective objections of the government concerning the extent of their proposed budgets are decided directly by the Budget Committee of the Chamber of Deputies.

³ The data are derived from the Ombudsman 2005–2009 final accounts available at www.ochrance.cz.



candidates).⁴ Anyone eligible to be a senator, i.e. any citizen over 40 years of age, may become an Ombudsman. One person may only serve two terms in succession. A simple majority of MPs present is required and – although the law does not require it – a secret ballot method is used. The Ombudsman may be removed from office only for the reasons specified by the law, namely in a situation when he starts to perform a function that is incompatible with the ombudsman post or when lawfully convicted of a criminal offence. In respect of the latter, it should be mentioned that the Ombudsman holding the office may only be prosecuted with the approval of the Chamber of Deputies.

The Ombudsman's remuneration and remuneration of the Ombudsman Office employees are within the Czech standard salary range. The Ombudsman and Deputy Ombudsman remuneration is determined by the law as identical to remuneration of the president and vice-president of the Supreme Audit Office, i.e. For the employees of the Ombudsman Office, general salary tariffs (valid for the entire public administration) based on expertise and on length of service apply (in more detail see Public Sector chapter).

The Ombudsman has relatively high level of independence on other state authorities (with the exception of the Chamber of Deputies). Not even the authorities in charge of criminal proceedings may access the files of the Ombudsman Office without an express consent of the Ombudsman or the Chairman of the Chamber of Deputies. Furthermore, the law excludes any official supervision over the complaints received or over the way they are handled. The nature of the Ombudsman Office position also excludes the possibility of judicial review of its activities as it does not render any binding decisions.

7.1.3 Independence (practice)

*Score: 0 25 50 75 **100***

Up to now, the functioning of the institution of Ombudsman in the Czech Republic shows sufficient level of independence. Neither attempts to discredit the institution, nor any political pressure trying to influence the way it conducts its activities have been registered. It must also be said that none of the persons who held the office up to now has provided any pretext for discrediting by infringement of duties or some other unethical conduct. The first person who hold the office – since the establishment of the Czech Ombudsman in 2000 until his death in May 2010⁵ – and who built good reputation of the institution of Ombudsman was Otakar Motejl, a lawyer who defended dissidents in communist courts and who as the Minister of Justice (the post he held between 1998-2000) unsuccessfully tried to put through a radical reform of judiciary. He was succeeded by former Constitutional Court judge Pavel Varvařovský who was elected in September 2010.

Besides the moral qualities of the person holding the office, the independence of Ombudsman is ensured simply by the fact that the Ombudsman does not have any executive powers that could be misused. In this context, it is interesting to follow a dispute that is currently in progress at the

⁴ Regarding the problems that arise in situations when candidates are nominated only by a single constitutional institution or when such institution may veto their appointment (as is the case of Constitutional Court judges and other judges, for example), this seems to be a stable construction.

⁵ Otakar Motejl was re-elected in 2006, after the completion of his first 6-year term.



Constitutional Court, in which the Supreme Administrative Court challenges the authority of the Ombudsman to initiate disciplinary proceedings against judges or state attorneys as unconstitutional. The Supreme Administrative Court considers the possibility to entrust the Ombudsman with this allegedly executive power as an constitutional excess.

Similar arguments were used also by former Ombudsman Otakar Motejl when he assessed the first ten years of the institution's existence. Motejl mentioned gradual broadening of Ombudsman's competences as a risk that threatens factual independence of the institution as it results in its convergence with the executive. He had in mind especially detention and anti-discrimination agenda where the Ombudsman is in charge of systemic monitoring of observance of the rights and thus fulfils some of the obligations of the state that result from international agreements and the EU law. The Ombudsman Office does not have any enforcement powers in these areas, yet it is authorised and obliged – in both areas – to conduct investigations also in private establishments and private legal relationships. Another threat to independence can be seen in the fact that the Ombudsman may be overloaded with this agenda at the expense of handling the complaints related to malfunctioning of state institutions.

7.2.1 Transparency (law)

Score: 0 25 50 75 100

The law imposes the Ombudsman with a special information obligation toward general public, which includes publishing written activity reports as well as ad hoc communication concerning individual cases and issues that his office deals with. The law does not specify the method of fulfilling this obligation, nor does it impose any obligatory time limits. However, it is obvious from the context that open and continuous communication with public is an integral part of the Ombudsman's role.

Publication of the investigation results, of opinions and recommendations which the Ombudsman formed in fulfilling his duties, also represents the only sanction (or pressure) that he has at his disposal. However, there are limits to disclosure of information concerning the individual cases to the public as the law requires the Ombudsman and his employees not to disclose the information that they learned during the course of their work. The law explicitly assumes that the Ombudsman will disclose particular results of an investigation only in such cases when the institution in question does not respect his recommendations or refuses to collaborate in investigation process. In such cases, the Ombudsman is even authorised to name the official who – according to the Ombudsman's opinion – violates his or her duties.

The Ombudsman's Office is also obliged to provide information in compliance with the Free Access to Information Act, which means that like other public authorities it has an obligation to publish all fundamental information concerning its activities on the Internet and, on request, provide virtually any information that are not subject to personal data protection or which are not protected for any other legal reason (for example the above-mentioned non-disclosure requirement).



The Ombudsman, his deputy and senior officers are subject to the obligation to submit declarations according to the Conflict of Interest Act (see subchapter Integrity below).

7.2.2 Transparency (practice)

Score: 0 25 50 75 100

The Ombudsman Office primarily provides information on its website, which contains – in a transparent format – all legally required information and other relevant facts concerning its activities. According to the Ombudsman’s 2009 annual report, the website (www.ochrance.cz) registered 722,303 visits in 2009 and the visit rate is ever-increasing.

Media represent another channel of providing information to general public. The Ombudsman provides journalists with press releases, opinions and statements. The number of printed or broadcasted mentions of the Ombudsman’s activities amounts several thousand a year. The Ombudsman and his deputy also frequently appear in TV and radio programs, provide interviews and take part in various debates. General public is also the target group for *Cases for the Ombudsman* series, prepared in collaboration with the Czech TV (in 2009, 16 new episodes were broadcasted), which brings the attention to the Ombudsman’s activities using selected cases.

The tools of communication with expert public include conferences and roundtables organised to address selected issues of public administration in regular intervals (in 2009, 12 such events were organised). Such forums create a platform where state administration representatives, NGO representatives, as well as independent experts may present their (often contradictory) perspectives. The Ombudsman Office also publishes collections of summarised opinions on particular subjects which it repeatedly encounters in complaints (in 2010 for instance, two collections – “Prison service” and “Noise level”- were published), and in collaboration with the Ministry of the Interior, a series of recommendations concerning good practice in administration, with special focus on municipalities. The publications – as well as all the individual legal opinions – are available to the public on the Ombudsman’s website.

We may conclude that information concerning the Ombudsman’s activities and their results are fully available to general public.

7.2.3 Accountability (law)

Score: 0 25 50 75 100

As was already stated, the nature of the Ombudsman Office position excludes any sort of review (even judicial review) of its activities. An informal evaluation of the Ombudsman’s outcomes therefore represents the only way to measure whether the institution fulfils its duties in a responsible way. The Ombudsman is accountable not only to the Chamber of Deputies (as explicitly stated in the law) but also directly to general public. Accountability to the Chamber of Deputies is reflected in the Ombudsman’s obligation to provide the Chamber with activity report every three months and to submit – by 31 March – a comprehensive annual report covering the activities of the previous year. These reports are discussed by the Committee for Petitions and the annual reports are also discussed by the Chamber of Deputies’ plenary session. The ombudsman is also obliged to make publicly available information and activity reports and to



provide the public with information on its activities on a regular basis, namely to inform about the cases still awaiting redress, and about recommendations concerning amendments to legal regulations (see previous subchapter for more details).

The Ombudsman Office, which is a separate organisational unit of the state, is structured as a traditional hierarchy of a monocratic institution. The Office is managed by the Head of the Office who is appointed and revoked by the Ombudsman, his/her immediate superior. The Head of the Office acts as immediate superior to all the staff but some important personnel issues (including salary levels of individual department heads) are subject to prior approval of the Ombudsman. As to the employees of the Ombudsman Office, the description of general situation in public sector (see Public Sector chapter) applies, i.e. there are no effective mechanisms of protection of whistleblowers who would call attention to unlawful or unethical practices.

7.2.4 Accountability (practice)

Score: 0 25 50 75 100

Based on the short history of the institution of Ombudsman in the Czech Republic we may conclude that it does fulfil its role of public defender of rights. As the Ombudsman does not render any binding decisions by which the rights of individuals would be affected, the responsibility for proper performance of his duties is rather at the moral and reputational levels. The Ombudsman is responsible for using such arguments in promoting the principles of good governance that would be convincing for general public and at the same time acceptable for the institutions to which the recommendations are addressed. Otherwise the ombudsman risks that the institutions will not pay attention to its recommendations and the public will stop submitting the complaints. So far, the number of complaints either stays the same or shows a tendency to increase. Also the opinion polls reveal that the ombudsman belongs among the most credible institutions – according to STEM surveys, in 2009, 72% of the Czechs (78% in 2010) trusted the Ombudsman while the credibility of the Supreme Audit Office was about 50%.

On the other hand, the Chamber of Deputies to which the Ombudsman reports his findings concerning practical problems in implementation of legal regulations by the authorities and his recommendations for amendments of legal framework does not fulfil its role. The Chamber of Deputies often discusses the Ombudsman's activity reports not earlier than 12 or more months after they were submitted, and that in a very formal way, i.e. without drawing any consequences from the reports.⁶ Lack of willingness to consider the recommendations of the Ombudsman and act on them is proved by the fact that some recommendations are being repeated in one report after another.

7.2.5 Integrity Mechanisms (law)

Score: 0 25 50 75 100

The Ombudsman is by the law limited in his activities with the aim to guarantee his impartiality. He is not allowed to hold the post of the president, a deputy, a senator, a judge, or any other

⁶ For example, 2007 and 2008 reports were discussed together in June 2009 – and the discussion took mere ten minutes.



function in public administration, and – similar to the judges – he cannot be engaged in any other sort of profitable activity. If he manages his own private property or is engaged in scientific, educational or art activity, his conduct must not present any threat to the credibility and trust in independence and impartiality of the Ombudsman post. He also must not be a member of any political party.

As a public official, the Ombudsman is fully subject to the Act on Conflict of Interest, which means that he is obliged to submit declaration of activities, gifts and property that he acquired during his term of office. The declarations are filed by the Chamber of Deputies and the public is authorised to request access to them. Data acquired in this way are not available for further publication so that for example media cannot use them (in more detail see XXX).

Ombudsman Office employees are subject to generally valid code of conduct for public administration employees (see Public Sector chapter) and senior employees have the same obligation as the Ombudsman – to declare any property they acquired during their term of office. However, this does not change the fact that like the legal regulation of the position of any other public administration employees, the legal regulation concerning the position of the Ombudsman's staff is entirely insufficient.

The law guarantees sufficient confidentiality of communication between the citizens and the Ombudsman. As mentioned above, the Ombudsman's files are confidential and other state authorities have no access to them (see Independence subchapter). Approval of the Chairman of the Chamber of Deputies is required to release the Ombudsman and his staff from confidentiality pledges.

7.3.2 Promoting good practice

Score: 0 25 50 75 100

Successful results of the Ombudsman in individual cases (see previous chapter) concern especially lowest level of public administration, i.e. the level where there are most frequent direct contacts between citizens and the authority. The Ombudsman's general recommendations and critical statements concerning legislative procedures tend to be less successful. Generalised summaries of the Ombudsman's findings from individual investigations are published in regular intervals in his statements and in comprehensive format in the annual report for the Chamber of Deputies. The fact that some recommendations repeatedly appear in one report after another indicate the lack of active involvement of the parliament and the government in taking appropriate measures. However, the Ombudsman also has the opportunity to bring its suggestions into the drafts of bills prepared by the government's own initiative. Former Ombudsman Otakar Motejl, a longstanding member of the Legislative Committee of the Czech Government, had an advantage in this respect.

As a rule, the Ombudsman's recommendations concerning good governance and other areas are clearly formulated and based on solid arguments, and the Ombudsman adequately informs concerned institutions as well as general public (see subchapter Transparency). The lack of



willingness to implement particular recommendations cannot be blamed on the lack of the Ombudsman's efforts.



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

SUPREME AUDIT OFFICE

- *The SAO has the courage to publicly criticize and control the inefficient management in politically sensitive cases.*
- *Cases of the SAO President and unwillingness to submit the documents on management to control threaten the credibility of the conclusions of the SAO.*
- *Credibility is further reduced by the fact that the collegium of the SAO is frequently occupied by veteran politicians.*
- *In practice still prevails formally oriented control of the legality over the analysis of effectiveness, efficiency and performance.*

Supreme Audit Office			
Overall pillar score 76 /100			
	Indicator	Law	Practice
Capacity 92 /100	Resources	-	100
	Independence	100	75
Governance 71 /100	Transparency	100	75
	Accountability	100	50
	Integrity	50	50
Role 67 /100	Effective financial audits	75	
	Detectioning and sanctioning misbehaviour	50	
	Improving financial management	75	

Summary

The Supreme Audit Office (SAO) has sufficient powers, financial means and human resources to exercise control over the management of state property and to set example through its audit conclusions for other audit mechanisms within public administration. Recent speculations concerning the lack of transparency in SAO's own financial management and the SAO President's reluctance to allow the institution to be audited has led to declining public confidence in the SAO. Also the increasing number of nominations of new SAO members, from the ranks of former politicians may raise concern over the independence of the SAO.



Notwithstanding this, the SAO fulfils its control function and provide the Parliament, the public administration and the general public with relevant information on the management of state property and its insufficiencies. The SAO is sometimes criticised for the fact that many of its audits are concerned rather with legality and regularity of financial management than with efficiency and effectiveness. However, this is partly the fault of public sector itself as there are still serious shortcomings in its financial management and accounting practices. While the SAO provides the public sector with many valuable recommendations, including desirable changes in relevant legislation, it has no sufficient enforcement mechanisms, nor the authority to impose sanctions.

The table below presents the overall assessment of the SAO's role within the national integrity system of the Czech Republic as well as the individual indicator scores. The remainder of the chapter presents qualitative assessments for each indicator.

Structure and Organisation

The Supreme Audit Office (SAO) is an independent institution which audits the management of state property and the implementation of the state budget. The SAO exercises its control function independent of the legislative, executive and judicial powers. It is entitled to audit not only the adherence to legal regulations (legality) but also the efficiency, economy and effectiveness. The SAO is entitled to carry out audits across the whole range of public sector, including the ministries and other institutions of central government, all agencies and offices subordinated to such institutions, state funds, state-funded institutions, state-owned enterprises, and any other legal entities or individuals involved in management of state property or state funds. The SAO is not entitled to audit self-governing institutions,¹ political parties,² intelligence services, and state-controlled companies. The focus of auditing activities and resulting evaluation reports are collectively decided by the managing body of the SAO, the 17-member Board. The SAO submits its reports on audit results ("audit conclusions") – approximately 35 such reports a year – to the Chamber of Deputies, the Senate, the Government, and also to the public. The SAO also prepares its opinions on the report of the course of implementation of the state budget and on the report on the state closing account, as well as opinions on legal regulations that concern its scope of activity.

Resources (practice)

Score: 1 2 3 4 5

To what extent does the SAO have adequate resources to achieve its goals in practice?

The operational costs of the SAO, including the wages of its employees and other expenditures related to its activities, are covered from the separate chapter of the state budget. Similar to some other institutions,³ the SAO prepares its own draft budget, independent of the Ministry of Finance, which is subject to approval of the Chamber of Deputies. The draft budget as well as the final accounts is also subject to approval of the SAO Board.

Taking the long-term perspective (i.e. considering the period 2005-2009), we can say that the overall amount of financial means provided to the SAO from the state budget has been

¹ The extension of SAO's competences to include also the self-governing institutions is the subject of the amendment to the law submitted by the Government to the Parliament in May 2011, see [sněmovní tisk 351](#) and [sněmovní tisk č. 352](#).

² See the Constitutional Court ruling [Pl. ÚS 26/94 ze dne 18.10.1995](#).

³ The Chamber of Deputies, the Senate, the Office of the Czech President, the Constitutional Court and the Ombudsman, see RozpZ.



continuously increasing. The resources provided to the SAO are sufficient for it to perform its duties. Any unused funds from the previous year are transferred to a reserve fund from which the SAO may withdraw additional money in the following year. In 2010, the SAO had at its disposal a budget of CZK 563 million, 96% of which it actually used. The number of employees of the SAO oscillates around 450. In 2010, there were 466 employees and their average monthly salary reached CZK 42,735.⁴ As is the case with other leading state officials, the salary of the SAO Board members is derived from the average salary in non-business sector for the year before last. The coefficient for the year 2010 was determined as 3.8 for ordinary members, 5.15 for the SAO Vice-president, and 6.25 for the President.

The SAO pays great attention to employee selection and their continuous training. This applies especially to the employees of the Audit Section who are subject to a selection process followed by rigorous initial training course, at the end of which the employee must pass an exam.⁵ The Audit Section, which is vital for performance of the SAO's duties, employs 71% of all SAO employees. 81.5% of SAO employees are university-educated.⁶ The SAO is headquartered in Prague (332 employees worked in the head office in 2010) and it has 9 regional departments located in larger cities throughout the Czech Republic (employing the remaining 134 people).

Independence (law)

Score: 1 2 3 4 5

To what extent is there formal operational independence of the audit institution?

The SAO as an independent audit institution is established in the Constitution⁷ and the details of its status, jurisdiction, organisational structure and relation to other state bodies are defined by law.⁸ The independence of the SAO is guaranteed first and foremost by the status of its Board members and its President. However, some political pressures applied during the process of their selection and appointment cannot be completely ruled out.

The President and the Vice-president of the SAO are appointed by the President of the Republic upon the proposal of the Chamber of Deputies for a term of 9 years, and they can be reappointed.⁹ The remaining 15 Board members are elected by the Chamber of Deputies upon the proposal of the SAO President. Their term of office lasts until the age of 65. The only basis for removal of the SAO members from their office is the disciplinary proceedings. The President and the Vice-president may also be removed from office when they have not performed their official duties for more than six months. The term of office of any Board member ceases automatically if he/she is lawfully convicted of a criminal offence.¹⁰ Neither the Board members nor ordinary employees of the SAO enjoy a special immunity; they may be prosecuted as any ordinary citizen.

To be eligible for the office of the SAO Board member, a person must be a citizen of the Czech Republic, must have a clean record, be a university graduate and must be at least 30 years of age (35 in case of the President and the Vice-president). Moreover, the law requires that all SAO Board members' experience and moral qualities provide the guarantee that they

⁴ SAO Annual Report 2010, p. 29; <http://www.nku.cz/assets/publikace/vyrocní-zpráva-nku-2010.pdf>.

⁵ Interview with Miroslav Leixner, see also SAO Annual Report 2009, p. 29.; <http://www.nku.cz/vyr-zpravy/vyrocní-zpráva-nku-2009.pdf>.

⁶ SAO Annual Report 2010, p. 31; <http://www.nku.cz/assets/publikace/vyrocní-zpráva-nku-2010.pdf>.

⁷ The Constitution, Chapter 5, Article 97.

⁸ Act No. 166/1993 Coll., on the Supreme Audit Office („NKÚZ“).

⁹ NKÚZ, § 10 par. 2.

¹⁰ NKÚZ, § 10, 12.



will properly fulfil their official duties.¹¹ The rules concerning the incompatibility of offices – similar to the rules that apply to the Constitutional Court judges – are also specified by law (for more detail, see Integrity). However, the law does not prohibit the SAO Board members from being members of a political party.¹²

To ensure the highest possible degree of independence and objectivity, the principle of collective decision-making applies to all the important decisions taken by the SAO. The plan of auditing activities, the draft budget of the SAO and its final budgetary statement, the annual report, most of the SAO's audit conclusions, the rules of procedure of the Board and of the SAO Senates, and the Disciplinary Rules are subject to approval of the SAO Board.¹³ The SAO Senates approve the audit conclusions for which they were established.¹⁴ Another collective body of the SAO is the Disciplinary Chamber, which handles disciplinary proceedings against the Board members (for more detail, see Accountability).

The independence of the SAO is fully revealed in its own choice of objects and purpose of its auditing activities, as well as in broad powers of the auditors. All Board members are entitled to submit suggestions to the draft audit plan and the approved Annual Audit Plan is then followed by the SAO in conducting its auditing activities. When conducting an audit, the SAO employees are entitled to enter the facilities of the audited institutions and demand any documents and other evidence as well as the access to information systems. The audited entities are obliged to provide full co-operation, otherwise the SAO may impose (even repeatedly) a penalty of CZK 50,000.¹⁵

Independence (practice)

Score: 1 2 3 4 5

To what extent is the SAO free from external interference in the performance of its work in practice?

In practice, the independence of the SAO can be assessed primarily with regard to its conduct of auditing activities. Also the composition of its Board, which approves the focus of planned audits, provides an indirect indicator of the SAO's independence. In recent years, political nominations have prevailed in appointments to fill vacated positions in the SAO management. Among 7 new SAO members appointed since December 2005, there are 5 former deputies¹⁶ and 2 former SAO employees. Moreover, one of those 2 former employees has also become an active member of a political party (TOP 09) shortly before his appointment.¹⁷ Also the current SAO Vice-president, who assumed the office in 2008, is a former deputy for CSSD.

The law only states that the office of the SAO member is incompatible with the office of a deputy (for more detail, see Integrity) but questions may arise concerning the ability of former politicians to carry out impartial audits involving their former party colleagues or political

¹¹ NKÚZ, § 12 par. 3 subpar. b).

¹² NKÚZ prohibits the SAO Board members from holding any office in political parties but does not prohibit the party membership.

¹³ NKÚZ, § 13 odst. 3.

¹⁴ NKÚZ, § 14 odst. 3.

¹⁵ NKÚZ, § 17, § 21, § 24 and § 28.

¹⁶ Antonín Macháček and Rudolf Kufa are former CSSD deputies; Karel Sehoř, Pavel Hrnčíř and Daniel Riesiegel are former ODS deputies. In each case the new SAO member assumed his office immediately after the end of his term as a deputy. See <http://www.psp.cz/sqw/detail.sqw?id=227&o=4>, <http://www.psp.cz/sqw/detail.sqw?id=5474&o=5>, <http://www.psp.cz/sqw/detail.sqw?id=277&o=5>, <http://www.psp.cz/sqw/detail.sqw?id=371&o=5>, <http://www.psp.cz/sqw/detail.sqw?id=5497&o=5> a <http://www.psp.cz/sqw/detail.sqw?id=5298&o=5>.

¹⁷ <http://www.top09.cz/kdo-jsme/celostatni-revizni-komise/petr-neuvirt-550.html>.



opponents currently in charge of the ministries or other audited entities. Even if the choice of audited entities (which is subject to the collective approval of the entire SAO Board) and the individual audits were carried out in a strictly professional and objective manner, direct involvement of former politicians may have a negative impact on credibility of the results. It is the SAO members who are in charge of individual audits and who are responsible for preparation of audit conclusions based on protocols and documents collected by the employees of the SAO Audit Section.¹⁸

In an interview conducted with two long-standing members of the SAO, they stated that they noticed no indications of political influence on decision-making of the SAO Board following the arrival of new members, the former deputies. However, they admitted that the SAO would benefit from strictly professional nominations, e.g. of the SAO employees for whom the office of the SAO member could mean reaching the peak of their career. According to their opinion, the SAO's independence is evidenced by politically sensitive audits carried out, such as the audit of the state forestry enterprise Lesy CR or the audit of funds earmarked for the removal of environmental damage.¹⁹

Transparency (law)

Score: 1 2 3 4 5

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAO?

The SAO is obliged to publish all important documents concerning its activities and its outcomes in the SAO Bulletin. The law explicitly states the SAO's obligation to publish the rules of procedure of the Board and of the SAO Senates, the Disciplinary Rules, the plan of audit activities, the audit conclusions, and the annual report. The Bulletin is published on a quarterly basis; the law does not specify the format in which it should be published.²⁰ The audit conclusions sum up and evaluate the facts ascertained in the course of the audits. In its annual report, the SAO is obliged to include evaluation of its activities including economic impact of its auditing activity.²¹ The SAO is fully subject to the Free Access to Information Act, which requires it to make publicly available other specified documents and on request provide, with a few exceptions, all available information concerning its activities (for more detail, see *Public Sector*).

The exceptions include above all the audit protocols,²² which contain – contrary to the audit conclusions – a detailed description of ascertained facts and a specification of defects and legal regulations that have been contravened. The protocols and other background material on which the audit conclusion is based may be made available only to the audited entities and, on request, to the Chamber of Deputies, the Senate, the Government, and the law enforcement authorities.²³

Transparency (practice)

Score: 1 2 3 4 5

To what extent is there transparency in the activities and decisions of the SAO in practice?

¹⁸ Interview with Miroslav Leixner, compare also NKÚZ, § 11.

¹⁹ Interview with Jiří Kalivoda and Jan Vedral.

²⁰ NKÚZ, § 45.

²¹ NKÚZ, § 4, § 18.

²² InfZ, § 11 par. 4.

²³ NKÚZ, § 30.



The SAO has a website (www.nku.cz) where it publishes all the legally required documents as mentioned above, as well as a wide range of other information pertaining to its activities. The website contains expert publications, press releases and statements, information on SAO's financial management, and information on its operation and organisational structure. Press releases present brief summaries of the audit conclusion, which the lay public may find hard to understand. Regrettably, the SAO has abandoned its tradition of organising regular press conferences where it used to present the results of its auditing activities on a quarterly basis.²⁴ The SAO website includes a user-friendly FAQ section, which presents the activities of the SAO and other institutions with supervisory powers using practical examples to help general public understand their competences.²⁵ Unlike the websites of other state institutions, the SAO website is being regularly updated. Moreover, the SAO uses its regional departments to provide information to the public.

The public does not have access to the audit conclusions that contain confidential information, yet the SAO publishes the list of such audit conclusions. Since its establishment in 1993, the institution has carried out the total of 19 such audits, mainly concerning the Army of the Czech Republic. The case of alleged misuse of public funds by the SAO President Dohnal (see Accountability) casts doubts on transparency in the SAO activities. The SAO can also be reproached with the fact that it does not include in its annual reports assessment of economic impact of its auditing activities.

Accountability (law)

Score: 1 2 3 4 5

To what extent are there provisions in place to ensure that the SAO has to report and be answerable for its actions?

Adequate provisions are in place to ensure that the SAO and its individual representatives are answerable for their actions. The SAO is required by law to submit to the Chamber of Deputies, the Senate and the Government its annual report within two months of the end of the budgetary year.²⁶ The annual report should contain an evaluation of the plan of auditing activities, a financial assessment of their impact and an evaluation of other SAO activities. Before it is submitted to the relevant institutions, the annual report must be approved by the SAO Board. The law further authorises the Chamber of Deputies to audit the SAO's financial and property management. The Chamber may establish a separate body for this purpose.²⁷

The law also establishes the accountability of the President, the Vice-president and the SAO members for disciplinary offences.²⁸ A disciplinary offence is defined as a culpable violation of the duties ensuing from the law, or any behaviour that would impair the dignity or undermine confidence in the independence and impartiality of the SAO. The accountability for disciplinary offences ceases upon the expiration of one year from their commission. Disciplinary proceedings may be initiated by the Board members or by the deputies and any such motion is being handled by the SAO Disciplinary Chamber, consisting of the SAO President and two judges of the Supreme Court. In the case of disciplinary proceedings against the SAO President, the Vice-president substitutes his position in the Disciplinary Chamber. A variety of disciplinary penalties may be imposed for a disciplinary offence, ranging from a reprimand to a proposal for removal from the office, which is subject to

²⁴ Interview with Jiří Kalivoda and Jan Vedral.

²⁵ See <http://www.nku.cz/cz/poskytovani-informaci/nejcastejsi-dotazy.htm>.

²⁶ NKÚZ, § 18.

²⁷ NKÚZ, § 33.

²⁸ NKÚZ, § 34 and following.



subsequent approval of the Chamber of Deputies. An appeal may be filed with the Supreme Court against the ruling of the Disciplinary Chamber.

The audited entities may file their objections according to the procedure which is a part of each audit carried out by the SAO.²⁹ They may file objections, in a written form and within the period stipulated by the law, against the audit protocol to the head of the team of auditors, who will rule on the objections. If they are not admitted, the audited person may appeal to the SAO Board or to the relevant SAO Senate which would subsequently approve the audit conclusion. Based on well-founded objections, the audit protocol may be changed or dismissed, or there may be a further investigation of the disputed matter. Besides the right to file objections against the audit protocol, an audited entity is also entitled to file objection claiming bias of an auditor or a SAO member in charge of the audit.³⁰

Accountability (practice)

Score: 1 2 3 4 5

To what extent does the SAO have to report and be answerable for its actions in practice?

Since December 2009, the current SAO President František Dohnal has been refusing to provide co-operation to the Committee on Budgetary Control of the Chamber of Deputies in its audit of the SAO financial management. He argues that the Committee does not have any clear rules of audit procedure and that its members are biased. Yet he refused the Committee's proposal that the audit of SAO would be carried out by external auditors.³¹ A fine of CZK 50,000 was already imposed on Dohnal for not submitting the documents. He was also charged by the police with a criminal offence of abuse of authority by public official³² and subsequently criminal charges were brought against him by a public prosecutor.³³ Dohnal brought an action against the Chamber of Deputies but the court ruled against him.³⁴ The Chamber of Deputies used its right to audit the SAO's financial management for the first time since the institution's establishment in 1993.³⁵ The current affair was preceded by an internal dispute within the SAO between the Board and the President, concerning frugality of some expenditures of the SAO. That dispute has not been resolved yet.³⁶ In the meantime, there were two disciplinary proceedings – one was initiated by the SAO President against 12 SAO members and the other was initiated against the President himself for his statement in the media where he said that political parties interfere in the SAO's activities. The disciplinary proceedings are closed to the public³⁷ and the whole situation is very confusing, despite the information published on the SAO website³⁸ and the copy of the ruling of the Disciplinary Chamber that leaked to the media.³⁹ Moreover, the Supreme Court that was supposed to pronounce a final judgement regarding the alleged disciplinary offence of the SAO President questioned its own competence to decide in the matter and turned to the Constitutional Court

²⁹ NKÚZ, § 27 and following.

³⁰ NKÚZ, § 20

³¹ See <http://www.nku.cz/cz/media/tiskove-prohlaseni-tykajici-se-zahajeni-tzv--kontroly-na-nku-id5028/>.

³² See http://www.tyden.cz/rubriky/domaci/kauzy/dohnalovi-hrozi-deset-let-za-to-ze-nedal-poslancum-dokumenty_197351.html.

³³ See http://www.tyden.cz/rubriky/domaci/krimi/statni-zastupkyne-podala-obzalobu-na-sefa-nku-dohnala_201578.html.

³⁴ See <http://aktualne.centrum.cz/domaci/politika/clanek.phtml?id=711046..>

³⁵ R-Kalivoda, Vedral.

³⁶ See <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=694845>.

³⁷ NKÚZ, § 40.

³⁸ See press releases of the SAO [from 26th June června 2009](#) and [from 30th June 2009](#).

³⁹ See decision of the Disciplinary Chamber of the Supreme Audit Office published at the website of the Czech Pirate Party: http://pirateleaks.cz/media/www/home/blog/karna_komora_nku.pdf.



to have it confirmed. By the time the Constitutional Court confirmed its competence, the case was time-barred.⁴⁰

This chaotic state of affairs is reflected in the results of opinion polls. According to the data of STEM agency, for many years the SAO had enjoyed very high credibility among the Czech public, around 70%. However, the affair of alleged misuse of the SAO's funds and negative presentation of the SAO President Dohnal in the media resulted in decreased public confidence in the institution. Since the autumn 2009, the credibility level of the SAO has been down to 50%.⁴¹ This trend is confirmed also by the Public Opinion Research Centre. Its surveys reveal that confidence of the Czech public in the SAO has dropped since 2009 from its long-term level of about 55% to approx. 40%.⁴²

According to the former Director of the SAO Audit Section, the current SAO President made two major mistakes in relation to the Chamber of Deputies. First, he was not strong enough to resist the pressure regarding the nominations of new SAO members from the ranks of former politicians. Second, he made an enemy of the Committee on Budgetary Control, which should normally be his ally in enforcing the audit conclusions.⁴³

In practice, the objections claiming bias of a SAO member or employee are extremely rare. There has probably been only one example, and it was not a problem of political affiliation.⁴⁴

Integrity mechanisms (law)

Score: 1 2 3 4 5

To what extent are there mechanisms in place to ensure the integrity of the SAO?

As is the case of other leading state officials, there are specific provisions in place concerning the incompatibility of offices, which should prevent the problem of conflict of interest of the SAO Board members. However, there is no legislation against the “revolving doors” practice. The SAO Board member may not hold an office of deputy, senator, judge, prosecutor, or any office in public administration or local self-administration, or any office in a political party. He or she may also not perform any paid activity with the exception of scientific, educational, literary, publication and artistic activities, provided such activities do not impair the dignity of the SAO or do not undermine confidence in the independence and impartiality of the SAO.⁴⁵ The SAO members are also subject to the limitations and obligations ensuing from the Act on Conflict of Interest⁴⁶ that apply to the members of Government (see *Executive*). The only difference is that the declaration of property and other assets filed by a SAO member may not be made public (see *Public Sector*).

Integrity of the SAO employees should be ensured primarily by the labour law and regulations. However, such regulations rather encourage the employees' loyalty to their superiors than their independence and professional conduct, as described in more detail in the Public Sector chapter. This is true despite the existence of the SAO Code of Ethics⁴⁷ which defines the key values, principles and standards of the SAO members and employees'

⁴⁰ See <http://zpravy.ihned.cz/cesko/c1-51813150-nejvyssi-soud-zastavil-rizeni-proti-sefu-nku-obvineni-je-promlceno-vzkazal>.

⁴¹ STEM surveys, <http://www.stem.cz/clanek/2007> and <http://www.stem.cz/clanek/2122>.

⁴² See the CVVM press release concerning [výzkumu důvěry z dubna 2011](#).

⁴³ Interview with Miroslav Leixner.

⁴⁴ Interview with Jiří Kalivoda and Jan Vedral.

⁴⁵ NKÚZ, § 10 par. 6, 7 and § 12 par. 7, 8.

⁴⁶ StřetZ, § 2 par. 1 subpar. i).

⁴⁷ The SAO Code of Ethics is based on the Code of Ethics of the INTOSAI, of which the SAO has been a member since its establishment in 1993.



conduct, thus aiming to enhance the SAO's reputation as well as its independence, impartiality and objectivity. The Code also covers the issue of conflict of interest, particularly the obligation to avoid such public or political activities that could undermine the public's confidence in the impartiality of the SAO. The Code does not include any mechanism for whistleblowing or any other provisions concerning the rules of procedure, with the only exception of the procedure related to disciplinary responsibility of the SAO Board members (see Accountability).

Integrity mechanisms (practice)

Score: 1 2 3 4 5

To what extent is the integrity of the SAO ensured in practice?

Recently there have been two disciplinary proceedings regarding the SAO Board members described above, and two other disciplinary proceedings against the SAO President initiated by the deputies.⁴⁸ Neither these actions nor the criminal proceedings against the SAO President Dohnal has led to any clear outcome, yet it would seem that it is the SAO President who violates not only the ethical standards but also the law by his refusal to allow the Chamber of Deputies to carry out an audit of the SAO's financial management. Considering the conflict of interest policy, questions arise over the nominations of new SAO members from the ranks of politicians despite the fact that the Constitution and other laws do not forbid such practices (see Independence).

As to the integrity of the SAO employees, the situation is similar to the rest of the public sector, i.e. the level of employee integrity depends on the management of the institution, as a result of insufficient legal protection against dismissal without relevant justification. In case of the SAO, all employee-related decisions are at the sole discretion of the SAO President. The principle of collective decision-making does not apply here and in practice, the Board members are only informed about the changes and decisions after they are made.⁴⁹

According to the SAO members, the Code of Ethics is a sort of superstructure which is only applied in case of misbehaviour of an auditor or other employee, and its application is exclusively internal by its nature.⁵⁰

Effective financial audits

Score: 1 2 3 4 5

To what extent does the SAO provide effective audits of public expenditure?

According to the former head of the SAO Audit Section, the SAO in its auditing activities still puts higher emphasis on legality and is less concerned with examining the efficiency, economy and effectiveness. This applies not only to the SAO auditing activities but also to internal audits within government departments, for whom the SAO should serve as an example.⁵¹ The SAO members admit that especially the performance audits are such an arduous task that the institution prefers to carry out other types of audits, namely audits of legality.⁵² As to the efficiency and economy, the SAO expresses its opinion only in cases

⁴⁸ Interview with Jiří Kalivoda and Jan Vedral.

⁴⁹ Interview with Jiří Kalivoda and Jan Vedral.

⁵⁰ Interview with Jiří Kalivoda and Jan Vedral.

⁵¹ Interview with Miroslav Leixner.

⁵² Interview with Jiří Kalivoda and Jan Vedral.. The preference for audits of the sort of "financial audit" and only scarce indications of performance audits was confirmed by the member of the Committee on Budgetary Control of the Chamber of Deputies Roman Sklenák at a seminar on the extension of SAO competences that was held on 14 May 2011. Available at WWW: <<http://www.youtube.com/watch?v=z0eO3otQZyg>>.



where it is able to prepare such an assessment. For example, in its audit of the VZP health insurance company, the SAO did not examine the efficiency and economical utilization of VZP funds because there are no objective criteria for such an assessment defined by law.⁵³ On the other hand, in its audit of finances spent on maintenance of main roads and motorways, the SAO used comparative analysis to quantify financial disadvantages of the new system of maintenance of main roads (according to its report, the costs increased by CZK 296 million a year under the new conditions),⁵⁴ and in its audit of railway corridors modernization project, the SAO pointed out the repeated increases in investment needs from the original CZK 97.1 billion to CZK 135.5 billion.⁵⁵ In its audits of some other investment projects, the SAO is unable to examine efficiency and economical utilization of funds unless the project contains clearly defined objectives, material and financial requirements and timescale.⁵⁶

Compliance with the law cannot be taken for granted within the Czech context and therefore even the audits focused merely on legality and regularity of financial management and accounting are beneficial. From the SAO evaluation it is clear that public sector in general still fails to attach sufficient importance to the area of accounting, and neither recognizes its importance for safeguarding of assets nor views it as a source of sound information for correct decision-making and subsequently for good financial management.⁵⁷ A sad example of this problem are the state's financial obligations under PPP projects that are not included in the state closing account despite the fact that the estimated value of PPP projects underway has reached CZK 203 billion by December 2009.⁵⁸

In its auditing activities, the SAO also examines effectiveness of internal audit systems within public administration. For example, in its audit that focused on the state property managed by Ministry of Finance, the SAO auditors found serious violations of regulations concerning the immovable properties management as well as inaccuracies in the Ministry's inventory records, and concluded that the Ministry only performed the screening and ex-post controls of many activities within this area as a matter of form.⁵⁹ Furthermore, the SAO also draws attention to frequent shortcomings in the area of authority to sign contracts and other serious documents in public administration bodies and to the risks of holding at the same time the authority to approve transactions and be in charge of the budgetary funds – risks that should be eliminated by internal audits.⁶⁰

The SAO clearly cannot cover the entire area of state assets management. In average, it manages to audit about 10% of total expenditures of the state budget every year (CZK 124,608 million in 2010), excluding its financial audits that examine reliability of final accounts of selected budgetary chapters. There are about 40 chapters in the state budget and the SAO aims to regularly audit those chapters that manage the largest proportion of funds, with the remaining chapters undergoing its audit every several years. The SAO also strives to gradually examine the financial management of EU funds provided to the Czech Republic.⁶¹

⁵³ See press release presenting the outcomes of the audit [č. 09/29 ze dne 27.1.2011](#).

⁵⁴ See press release presenting the outcomes of the audit [č. 08/27 ze dne 5.6.2009](#).

⁵⁵ See press release presenting the outcomes of the audit [č. 09/19 ze dne 8.6.2010](#).

⁵⁶ See for example press releases presenting the outcomes of the audits [č. 09/02](#) and [č. 08/29](#).

⁵⁷ SAO Annual Report 2009, p. 18; <http://www.nku.cz/vyr-zpravy/vyrocní-zprava-nku-2009.pdf>.

⁵⁸ SAO opinion on the draft of the 2009 state closing account, p. 29; <http://www.nku.cz/en/publikace/stanovisko-nku-k-navrhu-statního-zaverečného-uctu-cr-za-rok-2009-id5269/>.

⁵⁹ See press release presenting the outcomes of the audit [č. 09/13 ze dne 1.3.2010](#).

⁶⁰ SAO opinion on the draft of the 2009 state closing account, p. 22; <http://www.nku.cz/en/publikace/stanovisko-nku-k-navrhu-statního-zaverečného-uctu-cr-za-rok-2009-id5269/>.

⁶¹ Interview with Jiří Kalivoda and Jan Vedral.



In this context, the SAO in 2008 started to publish so-called EU Report – a separate annual report on the EU funds management in the Czech Republic.⁶²

Detecting and sanctioning misbehaviour

Score: 1 2 3 4 5

Does the SAO detect and investigate misbehaviour of public officeholders?

The SAO audit conclusions often contain findings drawing attention to obvious violations of the law. In most cases, there is clear individual responsibility for such misconduct. The SAO does not have at its disposal any direct mechanism to sanction such misbehaviour. Nevertheless, it is entitled (and in many cases obliged) to inform relevant institutions that have power to impose sanctions. It must be said that the SAO is not consistent in its use of this authority.

During the last two years, the SAO filed only one criminal complaint, which was based on the findings of its audit No. 07/27, focused on the state budget funds which were allotted for the organisation of the 2009 Nordic World Ski Championships. Yet the SAO annual reports imply that the law enforcement authorities would welcome more outcomes of the SAO audits. They required collaboration of the SAO in 9 cases in 2009 and 10 cases in 2010 and the SAO President consequently relieved relevant employees from their duty to maintain confidentiality. The law presumes a more active role of the SAO, i.e. that the SAO would pass to relevant authorities the audit protocols documenting suspicion of criminal conduct even before the audit conclusion is drawn up and published.⁶³ The SAO members argue that the SAO's suspicion of criminal conduct is hardly ever sufficiently documented as the institution is not authorised to demand relevant documents from other entities than the audited persons. Moreover, most of the previous SAO criminal complaints⁶⁴ were laid aside and the usual practice of the Police is to start investigation only after the SAO's audit has been completed.⁶⁵

The SAO's audit conclusions frequently identify cases of violation of the budgetary discipline or the rules for managing the subsidies. Such violations are reported to relevant financial authorities or subsidy providers. In 2010, the SAO submitted 17 such notifications related to funds totalling CZK 407 million.⁶⁶ However, the recent examination by the SAO of collection of penalties imposed for budgetary rules violations revealed that the Ministry of Finance granted exemptions from paying over 31 billion from the total sanctions of CZK 34.5 billion imposed over four years, while the related administration costs exceeded 1.2 billion. Moreover, in granting the exemptions the Ministry followed an internal directive which it refused to make public and thus provide the applicants with clear guidelines.⁶⁷ The public does not have access to information on individual exemptions granted but the media reported some cases that arouse suspicion of corruption. The entities that were granted exemptions by the Ministry included for example the company UT owned by former deputy Wolf (renowned for his "defection" from CSSD to ODS in 2008), or an entrepreneur who obtained the subsidy only because he concealed the fact that he owed money in unpaid taxes. Another exemption

⁶² See <http://www.nku.cz/cz/publikace/eu-report.htm>.

⁶³ § 23 and § 30 par. 3 NKÚZ, § 8 TR.

⁶⁴ Since its establishment in 1993, the SAO has filed 49 criminal complaints. More than half of them were filed during the 1990s.

⁶⁵ Interview with Jiří Kalivoda and Jan Vedral.

⁶⁶ SAO Annual Report 2010, p. 23.

⁶⁷ See SAO Audit Conclusion [č. 10/08](#) published in SAO Bulletin No.1/2011 and [Článek-rozpočtová-nekázeň](#).



was granted to Aeroklub CR, which allegedly misused the subsidy to arrange private trips and scenic flights for politicians, among other purposes.⁶⁸

The situation is even worse in application of sanctions for violation of the Public Procurement Act that are imposed by the anti-monopoly office (UOHS) as unlike the SAO, the UOHS does not examine the effectiveness and economical utilization of funds at all (see *Public Sector/Integrity in Public Procurement*). The sanctions imposed on an institution for violation of budgetary discipline, public procurement rules or any other legal obligation could and should provide grounds for personal liability. Yet it is solely at the discretion of the individual institution's management whether it seeks to recover any compensation from individual employees or whether it decides to dismiss the employee. Any such decision may bear little or no relation to the particular misbehaviour (see *Public Sector*).

According to the former head of the SAO Audit Section, the SAO is responsible for professional conduct of the audit and this is where its role begins and ends. It is up to other institutions to take further action based on the SAO's audit conclusions and the SAO may enforce any changes mainly through such other institutions.⁶⁹ Similarly, the SAO members argue that as concerns the oversight of the government and its implementation of audit conclusions of the SAO, the ultimate authority lies with the Chamber of Deputies.⁷⁰

Improving financial management

Score: 1 2 3 4 5

To what extent is the SAO effective in improving the financial management of government?

The SAO itself states that it “strives, on a long-term basis, to develop efficient system of financial management of the state”. Yet its own audit conclusions and annual reports, as well as other sources, reveal that the SAO is only partially successful in its efforts. Their success rate depends on the willingness of legislators and the executive bodies to act upon the SAO's audit conclusions. In these reports, the SAO draws attention to specific shortcomings as well as systemic problems and even though the audit conclusions do not always include comprehensive recommendations, they at least clearly point out the mistakes that the audited entities should avoid in their future activities.

As already mentioned above, the SAO has only limited direct means to enforce implementation of its recommendations. The former head of the SAO Audit Section believes that the fact that the SAO's auditing activities are performed according to the plan approved and published in advance can be seen as an “educational tool” as the audited entities thus have an opportunity to improve their procedures and systems before the audit is carried out.⁷¹ The SAO may also demand that the audited entities eliminate any identified insufficiencies while the audit is still in progress and submit a written report on the completion of this task.⁷² Another direct tool the SAO has at its disposal is to carry out a follow-up audit which always examines the implementation of measures based on the previous audit conclusions.⁷³

⁶⁸ http://zpravy.idnes.cz/ministerstvo-velkoryse-odpustilo-miliardy-pokut-za-zneuzite-dotace-1k1-domaci.aspx?c=A110620_102716_domaci_hy..

⁶⁹ Interview with Miroslav Leixner.

⁷⁰ Interview with Jiří Kalivoda and Jan Vedral.

⁷¹ Interview with Miroslav Leixner.

⁷² NKÚZ, § 21, subpar. f).

⁷³ Interview with Jiří Kalivoda and Jan Vedral, compare also SAO Opinion on the 2009 State Closing Account, p. 18.



However, this tool cannot be applied in a blanket manner due to limited capacity of the SAO. The above-mentioned examination of the collection of penalties imposed for budgetary rules violations, which revealed the absurd fact that the audit results are not being used, may serve as an example of such follow-up audit. Another example is the audit of the Ministry of Agriculture's final accounts that was carried out in two consecutive years and the second audit examined whether the Ministry really implemented corrective measures resulting from the first audit as it declared.⁷⁴

Among the indirect enforcement mechanisms of the SAO are the tasks imposed on individual institutions by the Committee on Budgetary Control of the Chamber of Deputies and by the Government. While the Government does debate all audit conclusions and the SAO President is present to the debate, the audit conclusions are usually only one of dozens of other points on the Government's agenda and the debate is rather formal and lasts no more than a few minutes.⁷⁵ Government resolutions on the audit conclusions usually contain a part of imposing tasks, in which the Government sets to the relevant Minister the task "to implement measures leading to the elimination of insufficiencies and inform the Government by a certain date of the results". The measures to be implemented are proposed by the ministries whose activities were audited and the SAO members admit that the Ministers do not always pay much attention to the audit conclusions and resulting measures.⁷⁶ Therefore, from the SAO's perspective, it is vital that the institution closely co-operates with the Committee on Budgetary Control. On its meetings, not only the SAO President but also the SAO auditor who was in charge of the audit is usually present, along with representatives of the audited institutions. In 2010, the Committee debated only five SAO audit conclusions (of the total number of 26 completed audits), a steep decline compared to 29 audit conclusions debated in 2009 and probably a direct consequence of the conflict between the SAO President and the Committee (see Accountability). On the positive side, the SAO members claim that the standard of Committee debates of the audit conclusions has been gradually improving.⁷⁷

The SAO also uses its findings from auditing activities within the interdepartmental comment procedure concerning proposed legal regulations. In 2009, it submitted its comments to 33 proposals and in 2010 to 37 proposals. In its annual report the institution quotes as an example of its success the implementation of certain positive changes that were made in the VAT Act based on the SAO's recommendations.⁷⁸

⁷⁴ See SAO Audit Conclusion [č. 10/07](#) published in SAO Bulletin No. 4/2010.

⁷⁵ Interview with Miroslav Leixner. Formal attitude of the Government is evidenced also by the fact that the opinion concerning the SAO Audit Conclusion that is submitted to the Government by the relevant Ministry is not subject to discussion within interdepartmental comment procedure (see attachment No.5 of the Rules of Procedure of the Czech Government).

⁷⁶ Interview with Jiří Kalivoda and Jan Vedral.

⁷⁷ Interview with Jiří Kalivoda and Jan Vedral.

⁷⁸ SAO Annual Report 2010, p. 12.



LAWS AND REGULATIONS:

NKÚZ: zákon č. 166/1993 Sb., o Nejvyšším kontrolním úřadu.

Ústava: zákon č. 1/1993 Sb., Ústava české republiky.



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

POLITICAL PARTIES

- *There is an environment conducive to the formation and operation of political parties.*
- *Thresholds for public funding as well as thresholds for winning seats are not insurmountable.*
- *Oversight of party funding is exercised by politicians themselves and they are not over-diligent about it.*
- *Internal democratic governance of political parties is inefficient, one of the reasons being the low public confidence in political parties and low interest of public to get actively involved.*

Summary

Rather than being a source of visions and solutions for society-wide problems, political parties in the Czech Republic function more like a marketplace for various privileges. The parties have enough independence and adequate financial resources to fulfil the role of a link between citizens and public institutions. However, due to the lack of effective rules and active members willing to protect the public interest, the parties often become the prey of individuals or groups trying to seize the power to promote their particular interests and gain profits. One of the main problems are inefficient rules concerning party funding, reporting of expenditure and financial oversight. The existing legal loopholes allow the parties to accept unlimited donations from private sponsors, own profitable commercial companies and run into debt. There are no provisions regulating pre-election campaign expenditure, which is gradually climbing so high that even the relatively generous state funding cannot cover the campaign expenses and the parties resort to using illegal ways of financing their needs. A number of methods are used for such illegal financing. Most of them involve corrupt practices, result in further strengthening of clientelistic networks, lead to cartelisation of parties and weaken the linkage between the parties and voters. Political parties are not open to public oversight and the existing regulations do not force them to be more transparent. The official oversight body – the Chamber of Deputies – exercises only a formal control and tax inspections are nonexistent. While the parties have democratic statutes and other internal regulations, such regulations do not guarantee their internal democratic governance. The same applies to anti-corruption programmes presented in pre-election campaigns which can hardly arouse confidence when people who promote them are themselves entangled in corruption scandals. In practice, only individuals try to really represent the voters and define the public interest, and such individuals do not have majority in the leading political parties. This state of affairs is reflected in unsuccessful governmental or parliamentary attempts to implement reforms and in the loyalty to opportunistic behaviour of party colleagues who abuse their positions (see relevant pillars).

The table below presents the overall assessment of political parties within the national integrity system. The remainder of the chapter presents qualitative assessments for each indicator.



POLITICAL PARTIES			
Overall Pillar Score 47 /100			
	Indicator	Law	Practice
Capacity 69 /100	Resources	75	50
	Independence	100	50
Governance 33 /100	Transparency	25	25
	Accountability	25	25
	Integrity	75	25
Role 38 /100	Interest aggregation and representation	25	
	Anti-corruption commitment	50	

Structure and organisation

The Ministry of Interior registers 141 active political parties¹, 28 dissolved parties and 9 parties whose activities have been suspended.² Most parties have regional or local nature. 27 parties participated in the last elections to the Chamber of Deputies (held in May 2010)³, 7 of which can be termed “parliamentary parties” as they are currently represented in the Chamber or they were represented in 2006-2010 election period. Namely they are: Czech Social Democratic Party (ČSSD), Communist Party (KSČM), Christian Democratic Union – Czech People’s Party (KDU-ČSL), Civic Democratic Party (ODS), Green Party (SZ), TOP 09, and Public Affairs (VV). In the 2006 elections, one party newly entered the Chamber of Deputies (SZ); in the 2010 elections there were 2 new parties entering (TOP 09 and VV) and 2 parties leaving (SZ, KDU-ČSL) the Chamber. With the exception of the Communists, each of the parliamentary parties has been a part of some coalition government in recent years.

Resources (law)

Score: 1 2 3 **4** 5

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

The legal framework pertaining to the formation and operations of political parties is very conducive. In terms of financing, the state support is dependent on the political party’s election success, which to a certain extent discriminates small and newly established parties as well as independent candidates who receive no financial support at all.

The right to associate in political parties is enshrined in the Constitution and it is regulated by a specific act of law.⁴ No permission of public authorities is required to establish a political

¹ We will use the term „political parties“ for both political parties and political movements.

² Data from the register of political parties and movements as of 20 May 2011; <http://aplikace.mvcr.cz/seznam-politickych-stran/>.

³ See [Article-volby-PS-2010](#).

⁴ Constitution, Art. 20; Act No. 424/1991 Coll., on association in political parties and political movements.



party but all parties must be registered by the Ministry of the Interior which administers the register of political parties and which is entitled to reject registration of a party under certain conditions as defined by law. The parties may appeal against rejected registration to the administrative court, which will decide whether their proposal for registration does or does not have defects. The founders of a political party may also appeal to the Constitutional Court.⁵ A proposal for registration of a political party may be submitted by at least 3 adult citizens who must also submit the party's statutes and a petition signed by at least 1,000 citizens requesting that the party be registered. The Ministry may reject to register the party within 15 days from the beginning of registration proceedings. The registration may be rejected if the registration proposal is incomplete (e.g. a petition is not included, the name of the new party does not differ distinctively from some already established political party, etc.) or on the grounds that the party's objective is to seek to remove the democratic foundations of the state, it has non-democratic statutes or its programme endangers morality, public order or civil rights and freedoms.⁶ Similar principles, i.e. specific reasons defined by law and decision by a court, apply also to a political party's dissolution or suspension of its activities – see *Independence (law)* below. Besides the candidates of registered political parties, independent candidates may run for elections to the Senate or municipal elections (in municipal elections, there may also be associations of independent candidates). Such independent candidates must be supported by a certain number of citizens, as is the case with the formation of a political party.⁷

Political parties receive financial contribution for their activities from the state. All parties that won at least 3% of the votes in the elections to the Chamber of Deputies are entitled to annual contribution of CZK 6-10 million. Each political party is also entitled to receive an annual contribution of CZK 855,000 for each elected deputy or senator and CZK 237,500 for each elected member of a regional council or the Municipal Council of the City of Prague.⁸ The parties are also provided with a contribution for their election campaigns, retrospectively, in the amount of CZK 100 for each vote received in the elections to the Chamber of Deputies, provided the party won at least 1.5% of the total number of votes,⁹ and CZK 30 for each vote received in the elections to the European Parliament where the 1% threshold applies.¹⁰ While this system favours strong parliamentary parties (see also *Resources (practice)* below), smaller parties benefit at least from the fact that the contribution thresholds are lower than 5% threshold for the number of votes that the party needs to enter the Chamber of Deputies.

Political parties may also be financed through the membership fees and through donations (from individuals and legal entities). There is no legal limit on such contributions. The parties are not allowed to conduct business activities in their own name but they are entitled to establish business companies that are engaged in some specified activities¹¹ and in this way help finance their operation or election campaigns.

Tax legislation provides political parties with similar benefits as any other non-profit organisation, namely their membership fees are exempt from income tax and their donors may deduct their donations to political parties from their tax base (compare *Civil Society/Resources*). There are also in-kind forms of state support, including the allocation of

⁵ PolStrZ, s. 6-9, SŘS, s. 94-96, Constitution, Art. 87 par. 1 subpar. j).

⁶ PolStrZ, s. 8, § 4.

⁷ VolParlZ, s. 60,61, VolObZ, s. 20,21 and annex No. 1.

⁸ PolStrZ, s. 20.

⁹ VolParlZ, s. 85.

¹⁰ VolEPZ, s. 65.

¹¹ PolStrZ, s. 17 par. 3 and 4. Business activities allowed by law include, among others, publishing and promotional activities or radio and television broadcasting.



free airtime in the Czech TV and Czech Radio for the election campaign to the Chamber of Deputies¹² and a contribution for the operation of parliamentary party clubs (“deputy clubs”).¹³

Resources (practice)

Score: 1 2 3 4 5

To what extent do the financial resources available to political parties allow for effective political competition?

Political scientists conclude that political parties in the Czech Republic operate rather like a specific type of business enterprise and that in reality they are not so much involved in political competition but rather in fulfilling some specific objectives.¹⁵ While this is not primarily caused by inadequate resources, the current system of political parties financing creates environment that is conducive to “cartelisation” of the established parties, which results in further restriction of effective political competition.¹⁶

Table 1 State contributions to parliamentary parties (in million CZK)¹⁴

	2009	2010	both years
ČSSD	191.5	284.6	476.1
ODS	192.2	258.6	450.8
KSČM	76.1	124.8	200.9
KDU-ČSL	47.4	57.3	104.7
SZ	19.3	21.2	40.5
TOP 09	-	120.5	120.5
VV	-	78.0	78.0
Total state contributions provided to all parties	554.2	1 013.3	1 567.5
Contributions to parliamentary parties as % of the total	526.5 (95%)	945.0 (93%)	1 471.5 (94%)

Public funding provided to political parties does not cover all the expenditures of the parties. In 2009, state contributions were provided to 17 parties. As Table 1 shows, 95% of the total contributions went to parliamentary parties (93% in 2010). Despite rather generous public funding,¹⁷ even the established parties are strongly dependent on other sources of funding, one of the reasons being their ever-increasing expenditure on electoral campaigns which are not limited by law.¹⁸

Table 2 reveals that reported campaign expenditures considerably exceed the amount of state contributions and that political parties spend significant percentage of their total official income on campaigning. There is a well-founded suspicion that in reality, the amount of campaign expenditure may be much higher, as some funds that are used for election

¹² VolParlZ, s. 16, compare also chapter *Electoral Management Body/Campaign Regulation*.

¹³ JedŘPS, s. 77 and following.

¹⁴ See summary of contributions to political parties from the state budget on the website of the Ministry of Finance. Available at: http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/politicke_strany_59503.html?year=PRESENT and http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/politicke_strany_52416.html?year=2010.

¹⁵ Compare Dvořáková, V.: Rozkládání státu. *Tvar* 2011/09; a Klíma, M.: Nebezpečí privatizace stran. Jak odpoví sjezd ČSSD. *Právo*, 21. 2. 2011.

¹⁶ Compare Krnáčová, A.: Financování politických stran v České republice. In: *Transparentní procesy v politickém rozhodování*, Transparency International - Česká republika, Praha, 2006, str. 63-125; http://www.transparency.cz/doc/projekty/stare_projekty/tppr_sbornik_studii.pdf.

¹⁷ Compare GRECO: *Evaluation Report on the Czech Republic on Transparency of party funding*. GRECO, Strasbourg, 2010, par. 53; http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282010%2910_CzechRep_Two_E_N.pdf.

¹⁸ Compare Greco Eval III, par. 33.



campaigns are not recorded in official accounts, being provided by sponsors who also do not appear in the party accounting. Such anonymous sponsors may actually act as a cover for funds that in fact come from public resources. The existing mechanism of financial oversight is inadequate and unable to disprove such suspicions (in more detail see *Accountability*).

Table 2. Campaign expenditure as % of annual revenues in 2010 (in million CZK)¹⁹

	Campaign expenditure	Campaign contribution	Total income	Campaign expenditure as % of campaign contribution	Campaign expenditure as % of annual income
ČSSD	270.2	115.5	718.2	233.9%	37.6%
ODS	541.6	105.8	612.9	511.9%	88.4%
KSČM	31.0	59.0	210.1	52.5%	14.8%
KDU-ČSL	28.1	23.0	125.0	122.2%	22.5%
SZ	16.2	12.8	26.3	126.6%	61.6%
TOP 09	107.2	87.4	180.7	122.7%	59.3%
VV	108.0	56.9	101.8	189.8%	106.1%

The extent to which political parties depend on various sources of income varies in both absolute and relative numbers, as is shown in Table 3. New parties that want to join the political competition and do not yet receive any state contribution are extremely dependent on donations (TOP 09 and VV), while the established parties rely on their future election success and the resulting state contributions and operate with relatively high level of debt (ČSSD, ODS, KDU-ČSL). Both survival strategies create dependence on financial resources beyond the state funding. With the exception of KSČM, membership fees do not account for any significant percentage of total income.

Table 3. Donations, loans, and membership fees as % of total political parties' income in 2009 (in million CZK)²⁰

	State contribution	Total income	Donations	Donations (%)	Loans	Loans (%)	Membership fees	Membership fees (%)
ČSSD	191.5	525.0	24.6	4.7%	270.0	51.4%	17.8	3.4%
ODS	192.2	471.1	97.1	20.6%	142.0	30.1%	16.4	3.5%
KSČM	76.1	191.6	4.6	2.4%	0.0	0.0%	27.3	14.2%
KDU-ČSL	47.4	137.1	7.6	5.5%	58.6	42.7%	4.8	3.5%
SZ	19.3	21.6	1.5	6.9%	0.0	0.0%	0.6	2.8%
TOP 09	-	42.2	40.9	96.9%	0.0	0.0%	1.2	2.8%
VV	-	13.0	11.2	86.2%	0.0	0.0%	0.024	0.2%

Public funds are being used to finance political parties also indirectly, especially through salaries and other compensations provided to elected officials, who (at least partly) use such

¹⁹ Source: [Article-ODS-ČSSD-2010](#), Analysis of the Ministry of the Interior on party financing, own calculations.

²⁰ Source: [Článek-financování-stran-2009](#), Analysis of the Ministry of the Interior on party financing, own calculations.



compensations for the benefit of their political party.²¹ Remunerations provided to politicians for their membership in supervisory bodies of state-owned and municipal companies fall in this category (see *Executive/Management of state-controlled companies*).

Independence (law)

Score: 1 2 3 4 5

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

There are sufficient legal safeguards to ensure institutional independence of political parties. The principle that political parties are separate from the state is enshrined in the Constitution and further specified in the Act on Political Parties.²² State authorities may interfere in political parties' activities only to an extent specified by law. Political parties may not own assets located outside the territory of the Czech Republic, which should guarantee their independence of any foreign country.²³

A political party may be dissolved, against the will of its members, only by a court decision and for reasons specified by law. Besides the reasons for rejection of a party's registration (see *Resources (law)* above), the law stipulates that a party may be dissolved if it aims to seize and retain power to prevent other parties and movements from competing for power through constitutional means or if it aims to restrict equality of citizens. In case of less significant violations, e.g. if the party violates the rules concerning assets management, does not submit required financial reports or does not form its governing bodies within 6 months of its establishment, the court only suspends its activities and decides on its dissolution only after the party fails to take corrective measures within the appropriate time limit. The motion to suspend the activities of a political party and a motion to dissolve a party may be submitted by the government or, if the government fails to act, by the President.²⁴

Independence (practice)

Score: 1 2 3 4 5

To what extent are political parties free from unwarranted external interference in their activities in practice?

The state only rarely interferes in the activities of political parties; their independence is threatened rather by their own methods of operation (see *Integrity and Accountability*) that reflect their interconnectedness with particular economic interests (see *Interest aggregation and representation*). In spite of relatively generous public funding, political parties are to a large extent dependent on other sources of income (see *Resources*).

The first case of dissolution of a political party in the Czech Republic for other than formal reasons occurred in 2010. The party in question was neo-Nazi Workers Party (Dělnická strana) and the Supreme Administrative Court decided to dissolve it not only on the grounds that its programme contradicted principles of democratic state of law but mainly because of its clear support of and incitement to racially and ethnically motivated violence practiced by the neo-Nazi movement supporters. The decision of the Supreme Administrative Court of

²¹ Compare Outlý, J.: Financování politických stran státem. Poznámky k českému modelu. *Acta Universitatis Palackianae Olomouensis, Facultas Philosophica, Politologia*, 2003, p. 99-135; http://www.upol.cz/fileadmin/user_upload/Veda/AUPO/AUPO_Politologia_I.pdf.

²² Charter, Art. 20 par. 4, PolStrZ.

²³ PolStrZ, s. 17.

²⁴ PolStrZ, s. 1-5, 13-15.



February 2010²⁵ was finally confirmed by the Constitutional Court in May 2010.²⁶ In reality, however, the party members continue their activities under the heading of another party – The Workers' Social Justice Party. Most other decisions on suspension of activities followed by dissolution of a political party concerned local parties, which had been inactive for some time and which failed to submit their financial reports to the Chamber of Deputies even within the extended time limit.²⁷

Quite significant are also repeated debates concerning possible banning of KSČM, successor to the former pre-1989 Czechoslovak Communist Party and currently one of the parliamentary parties. Such debates have been continuing practically since the change of regime in 1989²⁸ and the argument is that the party did not sufficiently distance itself from its past and from totalitarian ideology. In July 2011, the present government assigned to the Interior Minister to prepare a proposal to suspend KSČM's activities despite the Ministry's opinion that there is insufficient ground for such action.²⁹

It is worth to mention also one recent excess concerning the state financial support to political parties. In the period 2002-2007, Finance Ministers (nominated by ČSSD and ODS) had been refusing to provide to a rival political party its due contribution for elected members of the Municipal Council of the City of Prague and kept refusing it even after the Supreme Administrative Court in 2006 decided that the party was entitled to the contribution.³⁰ As a result, the party in question had at its disposal smaller funds for its pre-election campaign during the 2006 elections to the Chamber of Deputies.

Transparency (law)

Score: 1 2 3 4 5

To what extent are there regulations in place that require parties to make their financial information publicly available?

Public oversight of political party financing is inadequate. Annual financial reports of political parties are publicly available but the parties are not obliged to publish them online. The reports are available at the Office of the Chamber of Deputies where anyone can access them or make copies or excerpts.³¹ Nevertheless, the structure of required financial information does not allow for effective control of election campaign expenditure. Moreover, the annual reports contain data for the previous year, i.e. the information is available long after the election (in more detail see *Accountability*).

The register of political parties administered by the Interior Ministry features all basic information concerning the party and its governing bodies and also includes a collection of documents containing among others the statutes of political parties. The register is public but the law does not require that the information contained in the register be accessible online.³²

²⁵ Supreme Administrative Court's ruling [Pst 1/2009 ze dne 17. 2. 2010](#).

²⁶ See press release of the Constitutional Court of 31 May 2010. Available from: <http://www.concourt.cz/clanek/3433>.

²⁷ The Supreme Administrative Court decided on 24 motions in 2009 and on 12 motions in 2010 (research by the author carried out in the Court's decisions at www.nssoud.cz).

²⁸ http://zpravy.idnes.cz/stetina-podal-navrh-na-pozastaveni-cinnosti-kscm-kvuli-poruseni-ustavy-1o6-domaci.aspx?c=A110127_123635_domaci_jan

²⁹ <http://zpravy.ihned.cz/politika/c1-52349820-vlada-chce-aby-kubice-sepsal-navrh-na-pozastaveni-cinnosti-kscm>.

³⁰ See [Článek-Evropští-demokraté](#).

³¹ PolStrZ, s. 18, par. 6.

³² PolStrZ, s. 9.



In this way, political parties are much less transparent than commercial companies (see *Business*) or foundations and civil society organisations (see *Civil Society*).

According to GRECO evaluation report, one positive fact in the context of transparency of party funding is that political parties are regarded as single accounting entities, i.e. the annual accounts of the parties have to include all regional and local tiers of the party structure. On the negative side, effective financial oversight is made more difficult by the fact that the parties may establish companies that engage in certain types of business activities and by unclear rules and no restrictions concerning loans, in-kind donations and goods and services provided below market value.³³

Transparency (practice)

Score: 1 2 3 4 5

To what extent can the public obtain relevant financial information from political parties?

In practice, it is very difficult or impossible for the public to obtain information concerning party financing as political parties rarely go beyond minimum legal requirements. The Green Party is an exception, with its financial report available on the party's website. Ironically, financial reports of other parliamentary political parties are accessible online only on the website of their rival Pirate Party, which obtained the copies of the reports for the years 2008-2010 from the Office of the Chamber of Deputies and posted them on the internet.³⁴ In general, political parties publish on their websites their statutes and most recent programme documents.

The Interior Ministry provides online access to basic information from its register of political parties but not to the collection of documents. Moreover, the register is well "hidden" on the Ministry's website and the search engines generally offer its outdated 2008 version.³⁵ The Finance Ministry publishes on its website a summary of contributions to political parties from the state budget (see *Resources (practice)* above).

Accountability (law)

Score: 1 2 3 4 5

To what extent are there provisions governing financial oversight of political parties by a designated state body?

There is no independent body that would exercise financial oversight of political parties. The body competent to check party funding is the Chamber of Deputies (i.e. members of political parties!) to which the parties must submit their annual financial reports by April of the following year. The report includes: (a) annual financial statements, (b) audit report with the auditor's opinion of the financial statements, (c) total income subdivided into individual categories according to eligible sources of income, and (d) summary of all gifts and donations including the identification of the donor. For each donation exceeding CZK 50,000, the report must include a notarised copy of a donation agreement. The parties are also obliged to include in the report their membership fees if they exceed CZK 50,000. On the expenditure side, the party is obliged to report, among others, its election expenses but only as total campaign expenditure, without any detailed breakdown that would allow for effective control of real costs (compare also *Electoral Management Body/ Campaign regulation*).³⁶ Political parties'

³³ Compare Greco Eval III, par. 56, 59 and 60.

³⁴ See PirateLeaks server: <http://pirateleaks.cz/www/home/blog/sponzori2010.html>,
<http://pirateleaks.cz/www/home/blog/sponzori.html>.

³⁵ See <http://aplikace.mvcr.cz/archiv2008/rady/strany/index.html>.

³⁶ PolStrZ, s. 18.



financial reports must be presented in the format and with annexes specified by a regulation issued by the Ministry of Finance.³⁷

The Ministry of Finance may suspend the public funding to be provided for the operation of a political party (see *Resources (law)* above) if its financial report is not submitted or if the report is incomplete according to the check carried out by the Chamber of Deputies. This sanction may be followed by suspension of the activities and subsequent dissolution of the party that violated the law (see *Independence (law)* above). The third form of a sanction is a fine imposed to a party that has accepted a donation contrary to the requirements of the law (e.g. from public sector institutions, state-owned companies, municipal companies or foreigners who do not have permanent residence status in the Czech Republic). If the party fails to return such donation to the donor, it is subject to a fine of twice the amount of the donation. It is a duty of the Chamber of Deputies to inform relevant revenue authority about its findings concerning donations from impermissible sources.³⁸ Revenue authorities are the only state body authorised to examine the accounts of political parties within their standard tax inspections that apply to business and other entities alike. The same standards of bookkeeping, auditing and possible sanctions apply to political parties as to commercial companies (see *Business*).

Accountability (practice)

Score: 1 2 3 4 5

To what extent is there effective financial oversight of political parties in practice?

The practice reveals all the inadequacies of the present system of financial reporting and control over party funding. The annual financial reports submitted to the Chamber of Deputies are being checked by the Supervisory Committee, which then prepares information for the meeting of the Chamber. According to the resolution of the Supervisory Committee concerning the reports for the year 2010, 68 parties submitted complete reports (including all the present parliamentary parties), 28 reports were incomplete (in most cases such reports lacked the auditor's report or donation agreements) and 45 parties did not submit a report. The Supervisory Committee proposed that in case of the parties belonging to the two latter groups (73 parties), the government should submit a motion to suspend their activities, and in case of 11 other parties whose activities have already been suspended, the Committee proposed that the government submit a motion to dissolve the parties.³⁹ The resolution, together with a report informing on the completion of the reports submitted in previous years, was subsequently approved by the Chamber of Deputies without any discussion.⁴⁰ The deputy Koníček who presented the report to the Chamber explained to the media that the control exercised by the Committee is only of a formal nature as it only checks whether the parties submitted all the required documents but does not actually examine the documents themselves.⁴¹

During the last 5 years, revenue authorities have not carried out a single inspection of bookkeeping of any parliamentary party.⁴² As concerns the required audit of financial statements, the same standards apply to political parties as to business entities, i.e. the auditors are independent (at least in theory) but the party chooses an auditor and also pays for his/her services. In this regard, it is interesting to mention that two major parliamentary parties (ODS

³⁷ PolStrV, annexes.

³⁸ PolStrZ, s. 19, 19a.

³⁹ See Supervisory Committee resolution [č. 70 ze dne 27. 4. 2011](#).

⁴⁰ See records of the Chamber's meeting [ze dne 5. 5. 2011, 9:10 hod.](#)

⁴¹ See [Article-finanční-zpráva](#). Compare also Greco Eval III, par. 67.

⁴² Analysis of the Ministry of the Interior on political party funding, p. 12.



and ČSSD) have been using the services of the same auditor for a number of years, which is not exactly usual for “rivals”.⁴³

Ineffective control mechanisms enable the parties to hide their real sponsors and to account only for part of their finances. For example, a leading candidate of ČSSD in Prague, Miroslav Poche, admitted that he gave several thousand Czech crowns that he received as remuneration for membership in supervisory boards of various municipal companies to his party, which recorded his contribution in its accounts as “membership fees” and Poche did not appear in the list of donors. This affair also revealed that in this way, i.e. through engagement of their politicians in the bodies of state enterprises and municipal companies, political parties obtain public funds that they use to finance their activities and operation, while in their accounts such income is recorded as private donations or membership fees.⁴⁴

Other methods of hiding the real sponsors were revealed by the “corruption test”, which showed readiness of representatives of TOP 09 and KSČM to accept a donation of one million Czech crowns for support to a lobbying group’s interest. The party representatives offered to hide the contribution in their “non-party accounts”, by recording it as a payment for advertising in their party bulletin (KSČM) or as a direct payment to an advertising agency (TOP 09).⁴⁵ In a similar way, party coffers of Public affairs (VV) received significant amount of “payments for advertising” from the relatives of Vít Bárta, who is considered to be a real leader of the party. Hidden sponsors paid for ads that did not even include the name of the advertised company.⁴⁶ Doubts arise also about the real sponsor behind 6 million crowns donated to the VV by the deputy Michal Babák, who is unable to demonstrate corresponding assets and who allegedly took out a personal loan to be able to lend money to his party.⁴⁷ The possibilities to illegally finance political parties by money taken out of public procurement were (inadvertently) revealed to the public by an advisor of the environment minister Drobil (ODS), whose corruption proposal was secretly recorded and subsequently made public by Libor Michálek, director of the State Environmental Fund. Another method of illegal party financing is to use non-transparent non-profit organisations that receive part of the profits from lotteries (see *Civil Society/Transparency*).

Questions arise not only in regard to the origin of some donations or membership fees but also over the real costs of election campaign that are most likely higher than the financial reports show. For example, ČSSD explains the disproportion between its massive campaign and reported campaign expenditure by the fact that it used a marketing agency that was allegedly able to negotiate discounts of 70-90%. The experts on marketing are very sceptical about such discounts being possible.⁴⁸

Integrity (law)

Score: 1 2 3 4 5

⁴³ Compare financial reports of ODS and ČSSD published on PirateLeaks website.

⁴⁴ See [Článek-kauza-Poche](#). It should be said that the public learned about such practices partly as a result of the obligation of politicians to submit asset declarations. On the other hand, the level of transparency concerning financial management of municipal companies remains very low, and the uncovered example of indirect funding of a political party is most likely only the tip of an iceberg.

⁴⁵ See [Article-milion-za-zákon](#). See also *Media/Investigate and expose cases of corruption practice*.

⁴⁶ <http://zpravy.ihned.cz/politika/c1-51879760-podnikatel-zivi-casopisy-veci-verejnych-netradicni-reklamou-chybi-v-ni-nazev-firmy>, <http://zpravy.ihned.cz/c1-51871270-skryty-sponzoring-spratelene-casopisy-nadelily-vecem-verejnym-43-milionu>

⁴⁷ http://zpravy.idnes.cz/babakovi-auditori-ziskali-velke-klienty-zkrachovalou-setuzu-nebo-via-chem-luk-domaci.aspx?c=A110427_212951_domaci_abr

⁴⁸ See [Article-kampaň-ČSSD](#).



To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

Democratic nature of the statutes is one of the necessary requirements for the party to be registered (see *Resources (law)*). There are, however, no provisions specifying what is meant by democratically established governing bodies or minimum rights of party members, nor any rules on internal selection of candidates. So in this respect, the fundamental documents are the statutes of individual parties that regulate their own internal democratic governance. Besides the statutes, most parliamentary parties have a system of further internal regulations and they often have also a professional party apparatus that manages their operations. The statutes of all parliamentary parties include the basic organisational structure (2-4 tiers), the way of accepting new members and the rules for election of party leadership on individual levels including the national level. The structure usually includes some control body or conciliation board. New party members are usually admitted by local branches. In case of TOP 09, new members must be approved by the regional council, and in case of VV even the approval of the party's national council is required. As a rule, the statutes include the fundamental programme objectives and specify which body approves other programme documents of the party (usually regional and national congress). In this context, ODS is an exception as its statutes require the members to abide by party programme without any specification of how this programme should be created.⁴⁹

As regards the selection of candidates and putting together a list of candidates for individual elections, the procedures are generally not included in the statutes but are governed by some other internal party regulation. Among the parliamentary parties, only the Green Party makes such regulation public. In its case, primary (internal) elections are held on local and regional levels and the candidates and their order are decided by secret ballot. The national council has the last word on the final lists of candidates but it must justify any changes made in the regional lists.⁵⁰

Integrity (practice)

Score: 1 2 3 4 5

To what extent is there effective internal democratic governance of political parties in practice?

In practice, political parties suffer from a significant democratic deficit. They adhere to formal democracy which is reflected in observing their basic procedures (e.g. selection of candidates by secret ballot) while at the same time there are clear manifestations of clientelism and interconnection with private commercial interests.⁵¹

At least on the local level, two major parliamentary parties – ČSSD (22% of votes in the last elections) and ODS (20%) – have become a regular target of more or less successful attempts to seize power and position within the party and subsequently in public offices. Both parties have experienced mass recruitment of new members who are not interested in the party's activities and become members only to support a certain candidate in exchange for financial profit or some other benefit.⁵² Regarding relatively small number of members of these two

⁴⁹ Compare the statutes of individual parliamentary parties.

⁵⁰ See <http://www.zeleni.cz/underwood/download/files/primarni-volby-psp.pdf>.

⁵¹ Ondráčka, D.: Nedostatky vnitrostranické demokracie aneb Jak se dělá politika uvnitř českých stran. In: *Transparentní procesy v politickém rozhodování*, Transparency International - Česká republika, Praha, 2006, str. 15-62; http://www.transparency.cz/doc/projekty/stare_projekty/tppr_sbornik_studii.pdf.

⁵² See [Article-mrtvé-duše-I](#), [Článek-mrtvé-duše-II](#) and [Článek-mrtvé-duše-III](#).



parties,⁵³ a few dozens of new members may easily take control of a local branch. Moreover, as the membership fees are rather symbolic, such practices are relatively cheap and affordable, for example from a viewpoint of some local entrepreneur. Reactions of the parties to such practices vary. There are cases of expelled members or even abolished local branches. However, the parties as a rule react only after a particular case has been reported in the media, which is an evidence of their inefficient internal control mechanisms.⁵⁴ After the elections, for example, ČSSD admitted that a significant decline in membership that the party experienced in the period from June 2010 to March 2011 was caused to a large extent by its expulsion of members who were recruited deceitfully.⁵⁵ The same deceptive practices made one local ODS branch to expel almost half of its 3,150 members (i.e. almost 5% of the party's membership base) before the 2010 elections.⁵⁶

Such efforts to take control of a local branch are clearly motivated by economic interests. There are for example frequent cases of close connections between politicians, local branches of political parties and construction companies in the process of public contracting. This applies to both regional⁵⁷ and national levels (compare the case of Minister Řebíček in *Executive/Integrity (practice)*). A side-effect of such close connections is the revolving-door syndrome, i.e. the practice of managers from business companies transferring to high positions in political parties and public institutions.⁵⁸ This tendency is quite strong especially in the representative bodies – for example, many local branches of political parties see the deputies as representatives of their respective regions who are supposed to ensure certain advantages for them. Such practices are made easier by the fact that the offices of a mayor, a member of regional council and a deputy/senator are not incompatible. On the contrary, it is quite common for one person to simultaneously hold these offices.⁵⁹

While the newly established parliamentary parties TOP 09 (17% of votes) and Public Affairs (VV; 11%) have even smaller membership bases, they prevent massive recruitment practices by introducing stricter membership requirements (clean criminal record, no outstanding tax and other payments) and a “trial” period that may take up to one year (VV).⁶⁰ Such measures may strengthen integrity but at the same time they can be abused and may actually further strengthen the closed nature of the parties. In case of VV, the party's closed nature was confirmed by recent election of its chairman. Besides its members, the party invited also its “supporters” to participate in the election. However, only less than half of 6,225 registered supporters (2,523) voted via internet or SMS,⁶¹ and the final result was subsequently approved by the party congress in a secret ballot. The whole procedure thus lacked transparency and

⁵³ As of April 2011, ODS had 31,465 members and ČSSD 24,081 members, see [Článek-členové-stran](#).

⁵⁴ Ondráčka (2006), p. 47. Compare also *Legislative/Integrity*.

⁵⁵ <http://zpravy.ihned.cz/cesko/c1-51303610-socialni-demokracie-se-zbavuje-clenu-ktere-naverbovali-velrybari>

⁵⁶ <http://www.novinky.cz/domaci/198546-ods-ztraci-cleny-cssd-i-mensim-stranam-naopak-pribyvaji.html>

⁵⁷ In 2005, Transparency International – Czech Republic prepared an analysis entitled “Clientelistic map of construction contracts”, which brought attention to close links between construction companies and local politicians in public procurement on municipal level in relation to contributions that such companies provided to relevant political parties. Compare *Klientelistická mapa stavebních zakázek* and [Article-stavební-firmy](#).

⁵⁸ For example, Jiří Kittner (ODS) who served for many years as a mayor of Liberec, previously worked as an economic director of construction company Syner, and the ex-chairman of regional council of Liberec region Pavel Pavlík (ODS) joined a consulting company working for a subsidiary of Syner after leaving his office. Both companies had won a number of regional and municipal public contracts while these politicians held their offices. See <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=630548>.

⁵⁹ Ondráčka (2006), p. 30.

⁶⁰ After the elections in May 2010, TOP 09 reported to have 3,250 members and VV 1,950 members. See [Article-VV-TOP09](#).

⁶¹ See [Article-volba-předsedy-VV](#).



can hardly be described as real “election”.⁶² The same party is under suspicion of being simply a “political division” of a private security agency (see *Interest aggregations and representation* below). Moreover, the party’s candidates running for parliament had to sign a loyalty contract that goes against the representative mandate and independence of the deputies (see *Legislative/Independence (practice)*).

Thus, ironically, the party suffering the least “democratic deficit” of all the parties represented in the Chamber of Deputies, is the KSČM (11% of votes), which has the most numerous membership inherited from the communist era and whose deficit is rather “demographic”.⁶³

Interest aggregation and representation

Score: 1 2 3 4 5

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

The above-described problems of internal governance of political parties have also impact on their ability to represent the voters’ interests. According to political scientist Klíma, political parties in the Czech Republic “have become, to a great extent, firms that promote personal and group interests of their managers on national, regional and municipal levels. Their main purpose is not to promote ideas, values and interests of certain social groups but to ensure economic profit and power for a narrow group of party managers.”⁶⁴

A different political scientist sees the reason for this situation in the fact that the parties are small, closed and generally not interested to attract new members from wider spectrum of civil society.⁶⁵ Internal policy-making and especially processes of candidate selection have become so closed and non-transparent that the voters started to rebel against such practices, as was illustrated by their massive use of preferential votes in the elections to the Chamber of Deputies in May 2010. 3.7 million voters cast preferential votes,⁶⁶ which resulted in 14 leaders of various candidate lists and dozens of other former deputies losing their “secure” positions, while 47 deputies (almost a quarter of the total number) got elected from the lowest positions on candidate lists.⁶⁷

The same elections brought great electoral success for Public Affairs (VV). This formerly regional party that based its election campaign on promises to combat corruption obviously perfected the approach to politics that is based on linking business interests, clever marketing and clientelism. A “business arm” of VV party is represented by Vít Bárta, former head of private security agency ABL who sold his stake in this firm to his brother⁶⁸ after he was nominated minister of transport in the new government. Bárta resigned on his post of transport minister in April 2011, after the media published his strategy of development of ABL prepared in 2008, which included the objective to enrich the ABL portfolio using the

⁶² See http://www.lidovky.cz/sjezd-potvrdil-johna-v-cele-veci-verejnych-fjq-/ln_domov.asp?c=A110529_112624_ln_domov_mev

⁶³ The average age of a KSČM member is 70 and in just one year (2010) the party lost 5 thousand members of its total membership base of 66,627. Also KDU-ČSL has a high average age of members (63 years). See [Article-KSČM](#) and [Article-členové-stran](#).

⁶⁴ Klíma, M.: Pravidla korupčního trhu. *Lidové noviny*, příloha Orientace, 4. 12. 2004.

⁶⁵ Pehe, J.: *Politické strany vznikly seshora*, červen 2010; <http://www.pehe.cz/zapisnik/ceske-politicke-strany-vznikly-sezhora>.

⁶⁶ According to section 39 VolParlZ, each voter can indicate 2 preferences for individual candidates within the candidate list he/she chooses.

⁶⁷ See [Article-kroužkování](#). Based on the initiative of senators, an amendment to the election law was prepared, which included provisions aiming to „open“ the candidate lists even further to preferential votes but the Chamber of Deputies returned the amendment to be revised (Senátní tisk 336/2010, sněmovní tisk 210/2011).

⁶⁸ <http://aktualne.centrum.cz/domaci/politika/clanek.phtml?id=702871>



VV party to gain better access to public procurement orders.⁶⁹ The scandal leading to Bárta's resignation was preceded by a series of "smaller" accusations concerning spying on politicians by ABL, non-transparent party funding and bribes offered to his party colleagues to remain loyal. All such accusations had one thing in common: neither Bárta nor VV leadership were able to convincingly explain and disprove them. The only positive thing in this context is the fact that Bárta and his party colleague Škárka did not oppose the decision of the parliament to lift their immunity when the police started to investigate allegations of bribery.⁷⁰ In terms of marketing, there is the celebrity status of the party's chairman and election leader Radek John, formerly a successful writer and journalist, popular as a presenter of regular investigative news programme "Na vlastní oči" of private TV channel Nova. It is also worth mentioning, from the marketing perspective, that these male party leaders have surrounded themselves with attractive females, who got positions in party leadership and subsequently also in the Chamber of Deputies, and who demonstrated their political stance by posing as models for a pre-election calendar.⁷¹ After a year in the government coalition, the Public Affairs' popularity declined steeply. According to a poll by Stem agency, in May 2011 the party would have received only 2.3% of the vote⁷² while in the 2010 elections it won 11%. The ability of this party to represent the interest of voters who supported it mainly because of its anti-corruption programme thus proved to be even weaker than in the established parties against whose tendency to represent their own clientelistic interests the voters rebelled in the first place.

One of the priorities in selection of candidates is their loyalty to the party. Besides the Public Affairs (VV) whose candidates running for parliament had to sign a proclamation that they would vote in accordance with the leadership of the party (see Legislative/Independence (*practice*)), also the head of ČSSD in Central Bohemian region David Rath made the future regional representatives sign the agreement according to which they have to vote in line with their party policy and they must not leave the party during the election period or they face a sanction of CZK 4 million. The interviewed representatives explained their signing of this agreement as a means of protection against blackmail from their rival party, ODS, which had allegedly been buying votes of ČSSD members during the previous election period. While legal experts claim that such agreements are invalid, such practices have at least a psychological effect.⁷³ There is also an argument that elected representatives are able to change their party preference under the pressure of "external circumstances". This is evidenced by the case of the deputy Wolf who left ČSSD to join ODS and whose company was granted an exemption (without any clear explanation) from paying penalty for violation of a subsidy condition.⁷⁴ It is difficult to establish whether the "external circumstances" in any particular case took a form of extortion or a bribe.

Anti-corruption commitment

Score: 1 2 3 4 5

⁶⁹ http://zpravy.idnes.cz/barta-sel-do-politiky-kvuli-zakazkam-vyplyva-z-jeho-tajneho-planu-p9y-domaci.aspx?c=A110407_194147_domaci_cem

⁷⁰ http://zpravy.idnes.cz/bartu-i-skarku-vydali-poslanci-ke-stihani-kvuli-podezreni-z-korupce-11q-domaci.aspx?c=A110830_105723_domaci_kop

⁷¹ http://zpravy.idnes.cz/zeny-ze-strany-veci-verejne-to-poradne-rozjely-nafotily-sexy-kalendar-1zt-domaci.aspx?c=A100422_185418_domaci_kop

⁷² STEM - <http://www.stem.cz/clanek/2203>

⁷³ [Article-příslib-loajality-ČSSD](#).

⁷⁴ See [Article-odpuštění-sankcí](#). This connection was pointed out by the media after the Supreme Audit Office published results of its inspection, which revealed that granting exemptions from paying penalties without any justification is a common practice at the Ministry of Finance – see *SAO/Detecting and sanctioning misbehaviour*.



To what extent do political parties give due attention to public accountability and the fight against corruption?

The fight against corruption was among the main themes in the 2010 parliamentary election campaign. So it comes as no surprise that corruption was given prominence in election programmes and speeches of leaders of all major parties, including proposals of more or less effective measures that should be taken against it. In reality, the implementation of pre-election promises is (not) carried out by the government and the parliament while any concrete measures generally avoid the most pressing issues or stop half way through (see also *Legislative/Anti-corruption reforms* and *Executive/ Anti-corruption reforms*).

Under the heading of “Fight against corruption” in its manifesto entitled Vision 2020, ODS emphasises the need for prevention of corruption in the form of reducing the excessive regulation, restricting the extent of bureaucratic decision-making or establishing more transparent processes.⁷⁵ Public Affairs (VV), the party that originated on a municipal level, based its entire election campaign on the anti-corruption message, highlighting the need of prevention (again the issues of transparency and public procurement) as well as calling for some repressive measures, for example corruption-resistance tests of public officials, establishment of a specialised anti-corruption prosecution service and courts, and introduction of the institute of principal witness in Czech criminal law.⁷⁶ Among the parties that form the present coalition government, the most comprehensive anti-corruption programme was prepared by TOP 09, whose manifesto described a number of concrete measures including transparent campaign funding and control mechanisms applying to state-controlled companies.⁷⁷ The opposition party ČSSD declared an “uncompromising fight against corruption” and promised 10 concrete anti-corruption measures, including bringing into effect the law on civil service and introducing new regulation of conflict of interest, lobbying and public procurement.⁷⁸ The KSČM manifesto does not include a separate chapter on corruption but contains a promise to introduce “measures against organised crime and corruption and their penetration into state, public and political structures”.⁷⁹

Even this cursory glance at party programmes demonstrates that their shared anti-corruption enthusiasm does not necessarily mean that they would be able to agree on concrete systemic measures, let alone co-operate to solve particular corruption scandals. The only result of all this anti-corruption rhetoric is the public even more aware of the problem and even more disgusted with politics in general (see *Foundations*).

⁷⁵ ODS election programme (Vision 2020), p. 7 and 8.

⁷⁶ Election programme of VV.

⁷⁷ Election programme of TOP 09, p. 22-23.

⁷⁸ Election programme of ČSSD.

⁷⁹ Election programme of KSČM.



LAWS AND REGULATIONS

PolStrZ: zákon č. 424/1991 Sb., o sdružování v politických stranách a v politických hnutích.

PolStrV: vyhláška Ministerstva financí č. 273/2005 Sb., o vzoru formuláře pro předkládání výroční finanční zprávy politickými stranami a politickými hnutími Poslanecké sněmovně.



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

MEDIA

- *Public media are exposed to political influences, even if only indirectly.*
- *Media environment is influenced by commercial pressures, including public media.*
- *Media cover corruption and corruption cases, in most cases, however, in most cases there is not a deeper investigative journalism.*

Summary

The media produce information and it is important to bear in mind that in many respects, information is a product like any other. In terms of resources, on the one hand the media enjoy extensive freedom as well as some special privileges (e.g. the right to protect their sources), on the other hand they are limited by their dependence on the advertising market, which is their vital source of income and which is primarily interested in the media outlets' ratings (readership, listenership). This dependence on advertising market is not strictly limited to private media outlets as even the public service broadcasters engage in competition for advertisers' funds, despite their guaranteed income from licence fees, which makes them susceptible to commercial pressure concerning their content and the form of presentation of their information. Public service broadcasters are also confronted with some political interference, even though such influence is only indirect. Nevertheless, the media have sufficient independence and it is basically up to individual media outlet's management and its professionalism to what extent it will succumb to external pressure. The public does not have access to comprehensive information regarding ownership structure of private media, their internal policies and rules of conduct in relation to ethical dilemmas inherent in journalism. There is little regulation from the state authorities and no effective self-regulation exists within the profession.

The media like to report on cases of corruption and often play an active role in uncovering corrupt practices. The fact is that most corruption cases are not brought to the courts (for which the media can hardly be blamed – see *Judiciary* and *Law Enforcement Agencies*), therefore it is difficult to judge whether the media simply reproduce the information or whether they are engaged in serious investigative work. It is certain, however, that only a few individuals get involved in time-consuming investigative journalism. Reporting of the news and current affairs covers society-wide topics, including information on the activities of the government and other governance actors but it is often shallow and too succinct.

The table below presents the overall assessment of the media within the national integrity system. The remainder of the chapter presents qualitative assessments for each indicator.



MEDIA			
Overall Pillar Score		54 /100	
	Indicator	Law	Practice
Capacity 75 /100	Resources	100	75
	Independence	75	50
Governance 46 /100	Transparency	25	25
	Accountability	75	50
	Integrity	50	50
Role 42 /100	Investigate and expose cases of corruption practice	25	
	Inform public on corruption and its impact	75	
	Inform public on governance issues	25	

Structure and Organisation

There are two public service broadcasters in the Czech Republic – Czech Television (CT), which offers 4 nationwide channels (including one sports channel), and Czech Radio (CR) with 4 nationwide and 11 regional stations. There are also a number of private radio and TV stations, of which 4 nationwide TV channels and 3 radio stations are most relevant in the context of news media.¹ As regards print media, 74 dailies and 95 weeklies focus (at least partly) on reporting the news and current affairs.² Along with more traditional formats (broadcast and print), media content is to a large extent available also online – partly for free, partly for registered users only, or to anyone for a fee. At the same time, news and commentaries are generated directly on the Internet, either produced by newsrooms of “traditional” media or independent online media, or by the increasingly powerful blogosphere and other forms of spreading the news and information on individual and non-commercial basis. An important role is played also by the Czech News Agency (CTK), a public corporation established by law whose mission is to provide comprehensive coverage of news from the Czech Republic and abroad.

Resources (law)

Score: 1 2 3 4 5

To what extent does the legal framework provide an environment conducive to a diverse independent media?

Media are guaranteed sufficient freedom and the legal framework promotes their diversity. Restrictions are rather of economic nature (see Resources/Practice). There are clearly defined requirements on public service providers (CT and CR) which are established by law and

¹ See NewtonMedia monitoring at <http://www.newtonmedia.cz/monitorovana-media>. The same source monitors also 269 internet servers, of which only a minority is primarily focused on reporting the news and current affairs.

² According to the Ministry of Culture register as of 17 June 2011. For comparison, the NewtonMedia service monitors 39 dailies. As concerns the audio-visual media, a process of digitisation of terrestrial broadcasting is under way, which creates new channels, and the number of satellite and cable TV channels available to Czech viewers is also increasing.



obliged to fulfil public service remit, which includes “providing a balanced offer of programmes that is targeted at all groups of the population to ensure that such channels and programmes reflect diversity of opinion”.³ At the same time, public service providers have a guaranteed income as the law requires every user of radio and/or television receiver to pay a fee directly to CR and/or CT.⁴

Other radio and TV broadcasters that create their own programming and are responsible for its content need a licence (or registration, in case of broadcasters of adapted programmes). The licences are issued by the Council for Radio and TV Broadcasting (RRTV) based on its evaluation of economic, organisational and technical readiness of the applicant and on consideration of beneficial aspects of the new station’s programming. To ensure plurality, the RRTV prevents accumulation of licences. Licence application and conditions are debated during a public hearing but the vote on granting the licence is carried out in non-public session. Licences are issued for relatively long period of time (8 years for radio broadcasting and 12 years for TV) and they may be extended, upon application, for double the original licence period. The licence may be revoked or the application for its extension may be refused only under the conditions stipulated by law. The decision of the RRTV to revoke or not to issue or extend the licence can be appealed to the administrative court.⁵

There are no restrictions on setting-up print media entities; they only have to be registered with the Ministry of Culture which maintains the register of print media. Thus the law does not regulate concentration of print media ownership, which is only subject to general restrictions by the competition law. Internet media enjoy even higher level of freedom as only so-called audio-visual services must be registered. Such services must adhere to certain conditions concerning their content and are subject to oversight of the RRTV, along with the radio and TV broadcasting.⁶ The entry into journalistic profession is unrestricted by law.

Resources (practice)

Score: 1 2 3 4 5

To what extent is there a diverse independent media providing a variety of perspectives?

Mass media have at their disposal considerable financial and human resources, yet economic pressure has significant influence on their contents, variety and quality. Not even their symbiosis with the new media can compensate for this weak point due to the fact that despite the new media’s ability to provide access to primary sources of information and alternative perspectives, they are unable to spread their message to wider audience.

As concerns public service broadcasters, CT has 2,825 employees and the budget of CZK 7,300 million⁷ while CR employs 1,470 people and has the budget of CZK 2,200 million.⁸ For comparison, the biggest private TV broadcaster – Nova – has 800 employees⁹ and the daily

³ ČTZ, s. 2-3, ČRoZ, s.2-3.

⁴ The current annual licence fee is CZK 450 (radio) and CZK 1,620 (TV). See RTPoplZ, s. 6. According to Prof. Jiráček, the amount of licence fee should not be stipulated by law as a fixed amount. Instead its definition should include an inflation-escalator clause or some other way of automatic adjustment, which would limit arbitrariness of legislators. Interview with Jan Jiráček.

⁵ RTVZ, s. 12-19, s. 55 and following, s. 63-65.

⁶ AVMedSlužZ, s. 2, 4.

⁷ CT Annual Report 2010. *Výroční zpráva o činnosti České televize za rok 2010*;

<http://www.ceskatelevize.cz/rada-ct/vyrocní-zpravy/>. CT licence fee income reached CZK 5,792 million in 2010, which exceeded the expected revenue by CZK 2.4 million.

⁸ CR Annual Report 2009. *Výroční zpráva Rady Českého rozhlasu o hospodaření Českého rozhlasu za rok 2009*;

<http://www.rozhlas.cz/rada/dokumenty>.

⁹ <http://www.digizone.cz/clanky/nova-propousti-a-omezuje-chysta-se-jeji-prodej>.



Lidové noviny employs 89 editorial staff¹⁰. The numbers, however, do not show the whole picture, as (not only) private media outlets are using more and more freelance staff and services of independent companies in their effort to keep down their payroll costs.¹¹ The Czech News Agency (CTK), which is a public corporation established by law but not subsidised by the state, had 357 employees in 2009, whose average monthly salary was CZK 36,868 and almost 70% of the total number was editorial staff¹². The CTK is the only source of news reports which offers comprehensive coverage of topics and regions and at the same time maintains very high professional standards. Therefore the CTK to a certain extent actually determines the Czech media's agenda.¹³

In general, it can be said that the media market in the Czech Republic is too small to support the existence of so-called "niche media" that would be viable and at the same time could satisfy demand of minority audience.¹⁴ In their efforts to increase their readership or viewership, mainstream media strive to attract the majority population and actually adopt some tabloid tactics and style. Increasing pressure from media owners to prefer speed over depth in the news reporting "creates an environment that leads to volatility, superficiality and biased reports lacking in context."¹⁵ Also the concentration of media ownership (especially of regional print media outlets) has negative impact on media diversity and variety of perspectives. The German media group Verlagsgruppe Passau has clearly dominant position on the Czech regional print media market which results in a situation when the content of regional newspapers is – for the most part – prepared centrally and only their regional supplements are prepared by individual regional editorial offices.¹⁶

The lacking variety of perspectives is only partly supplied by public service broadcasters. Moreover, their viewership numbers are relatively low – for example, the news channel CT24 regularly attracts only about 2.5% of total audience.¹⁷ The TV channel with highest rankings is TV Nova, with over 30% of total audience. Among the daily newspapers, the tabloid Blesk enjoys the highest readership.¹⁸ The most successful radio station of the public broadcaster CR, Český rozhlas 1 - Radiožurnál, ranks fourth in radio audience surveys, behind three private stations.¹⁹ To prevent further decline in their ratings and to defend their *raison d'être*, public service broadcasters adapt to the style of private media that appeals to average media consumer.²⁰

In the context of new media, prof. Jirák highlights the importance of social networks, with their ability to mobilise wide audience, although their messages are rather of emotional nature

¹⁰ See http://www.lidovky.cz/ln_redakce.asp?y=ln_redakce/redakce_uvod.htm#members

¹¹ Interview with Jan Jirák.

¹² Annual Report on the Activities and Financial Management of CTK 2009.

¹³ Interview with Zdeněk Šámal.

¹⁴ Šmíd, T.: *Vliv vlastnictví médií na jejich nezávislost a pluralitu*; <http://www.louc.cz/pril01/vlmed2004.doc>

¹⁵ Jirák, J.: Czech Newspapers Reviewed. *New Presence: The Prague Journal of Central European Affairs*, 2005, č. 1, p. 44-45.

¹⁶ Metyková, M., Waschková Císařová, L. (2009). Changing journalistic practices in Eastern Europe: The cases of the Czech Republic, Hungary and Slovakia. *Journalism*, 2009, č. 10, str. 719-736.

¹⁷ Data for 2010. Available at WWW: <http://www.ato.cz/vysledky/rocní-data/share/15>

¹⁸ With 1.343 million daily readers, Blesk has the largest readership, followed by MF DNES (816,000 daily readers) and Právo (418,000). Media projekt for the period 1 October 2010 – 31 March 2011, available at <http://www.uvdt.cz/Upload/901.pdf>

¹⁹ http://m.ihned.cz/c4-10000115-51774480-700000_mamdetail-poslechovost-radii-bez-vyznamnych-zmen-nejposlouchanejsi-nadale-impuls-a-blank

²⁰ Interview with Zdeněk Šámal.



than of information value.²¹ According to his opinion, the blogosphere, which is quite popular in the Czech Republic and many celebrities and opinion leaders participate in it, is chiefly a sort of performance that does not have the ability to address wider audience with one message. Jirák also points out that a significant number of young journalists do not view journalism as a life-long profession but rather as an opportunity to master certain skills and establish useful contacts that will help them advance their future career elsewhere.²²

Independence (law)

Score: 1 2 3 4 5

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Sufficient legal safeguards are in place to ensure the independence of media. The Constitution enshrines fundamental principles of independence of journalist profession – freedom of expression, the right to information and the ban on censorship.²³ There are no legal provisions on editorial independence within individual media outlets. To a certain extent, however, various codes of conducts deal with this issue (see Integrity).

Freedom of expression is manifested in the right of journalists to protect their sources and in their “licence to report”, i.e. their freedom to impart information, which restricts otherwise broadly defined privacy laws. Protection of a source enables the journalists to withhold from the court or other public authority their sources of information as well as anything that would reveal the identity of such sources. The right to protect sources of information does not apply to criminal conduct, which the journalist is obliged to prevent or report.²⁴

For the purposes of printing and broadcasting the news it is possible to use visual and audio recordings without consent, provided such use does not violate the rights of the person concerned.²⁵ At the same time, privacy protection for public figures is more narrowly defined, based on presumption that such persons voluntarily allow for public scrutiny of their actions and statements and therefore must be prepared to endure higher level of criticism.²⁶ So-called Muzzle Law, which has been in effect since 2009, is considered to be a threat especially in the context of investigative journalism. The law significantly restricted the possibilities to inform public about criminal proceedings, introducing the ban on publishing any account from police wiretapping and increasing the sanction limit for unauthorised publication of information to CZK 5 million.²⁷ This was reflected in the World Press Freedom Index where the Czech Republic ranked 24th in 2009, a decline from its 16th place in 2008.²⁸

The journalists’ right to information is ensured in the same extent as for any other Czech citizen by the Act on Free Access to Information, which applies to the entire public administration as well as to state-controlled companies (see Public Sector/XXX).

The independence of licensing and oversight of broadcast media is ensured primarily by the right to appeal against negative decision (see Resources). The independence of the RRTV

²¹ As an example, he mentions the wave of media interest created by publication of the video that shows the Czech President pocketing a ceremonial pen during his state visit in Chile. Available at: <http://www.youtube.com/watch?v=G89nV7zureo>.

²² Interview with Jan Jirák.

²³ Charter, Article 17.

²⁴ TiskZ, s. 16, RTVZ, s. 41.

²⁵ ObčZ, s. 12 par. 3.

²⁶ Compare the Constitutional Court ruling [I.ÚS 367/03 ze dne 15.03.2005](#).

²⁷ Compare Act No. 52/2009 Coll., which amended the Criminal Code and the Act on Protection of Personal Data.

²⁸ Press Freedom Index, available at: <http://en.rsff.org/>



from political influence is doubtful. While the RRTV has a separate budget, as is the case with the Ombudsman or the Supreme Audit Office (SAO), its 13 members are appointed by the Prime Minister upon proposal of the Chamber of Deputies for a 6-year term and, similar to the SAO members, there are no provisions specifying their qualification requirements or prohibiting their membership in a political party. Moreover, the reasons for their removal from office are defined very vaguely.²⁹ Similar procedures (although somewhat more transparent) apply to the establishment of the Council of the Czech Television, Council of the Czech Radio and the Council of CTK (for their responsibilities see Accountability/Law below). Their members are elected by the Chamber of Deputies from among candidates nominated by organisations and groups representing various interests.³⁰ According to prof. Jirák, the level of political influence on composition of all three councils remains high as there are no specific provisions concerning the councils' composition or qualification of their members.³¹

Independence (practice)

Score: 1 2 3 4 5

To what extent is the media free from unwarranted external interference in its work in practice?

The media are vulnerable to many pressures and unwarranted external interferences (economic, political and from the side of law enforcement authorities). However, the journalists do not face life threats and so far none has been convicted for reporting the news.³²

As mentioned above, there are doubts concerning the independence of the RRTV as well as the Councils of CT, CR and CTK. In the period from 2009 to 2011, half of the RRTV members were former deputies or senators and while there have been no politicians (with one exception) in the councils of CT and CR during the recent term, both councils are considered to be a "prolonged hand of the politicians", due to their election system.³³ Yet according to the head of CT's news reporting section, the council members do not directly influence the content of the broadcasting.³⁴ The revenues of public broadcasters come from licence fees and (limited) advertising opportunities. The fact that the Chamber of Deputies is responsible for setting both the amount of fees and the limits on advertising volume increases the chances for political interference.³⁵ Possible impact of the financing system on media vulnerability to

²⁹ RTVZ, s. 7, s. 11.

³⁰ ČTZ, s. 4-8, ČRoZ, s. 4-8.

³¹ Interview with Jan Jirák. Jirák also sees the fact that the Codes of CT and CR are approved by the Chamber of Deputies as an interference in the media independence. In his opinion, the influence of politicians should be limited to approval of legal framework on which the Codes are based.

³² Compare Press Freedom Barometer 2011; <http://en.rsf.org/press-freedom-barometer-journalists-killed.html?annee=2011>. The only known case occurred in 2002 when the Police uncovered an unsuccessful attempt to murder investigative journalist Sabina Slonková. The offender was sentenced to 12 years. Compare <http://www.ct24.cz/kalendarium/22798-kauza-pripravy-vrazdy-sabiny-slonkove/>.

³³ Interview with Jan Jirák; International Press Institute: *Press Freedom Audit Report. Czech Republic. IPI Mission 13-14 May, 2009*, str. 8; <http://www.freemedia.at/press-room/public-statements/features/singleview/4573/>.

³⁴ Interview with Zdeněk Šámal.

³⁵ Metyková, M., Waschková Císařová, L. (2009). Changing journalistic practices in Eastern Europe: The cases of the Czech Republic, Hungary and Slovakia. *Journalism*, 2009, č. 10, str. 719-736.
. The amount of licence fee and limits on advertising volume are a favorite topic of debates in the Chamber of Deputies; most recently such debate was initiated by the resignation of the director of the Czech Television. See [Článek-reklama-ČT](#).



political interference was mentioned also by some CT employees.³⁶ Financial independence is enjoyed by the CTK, for which the major source of income are its services provided to other media.³⁷ In case of private media, the economic pressure has some impact on their quality, as described above in Resources (practice). According to prof. Jiráček, despite the media's efforts to provide the audience with truthful information, their approach to news reporting is determined by economic interests, which applies even to public service broadcasters. The reader/viewer is a consumer and the fact that the media try to attract the advertisers' budgets with their number of "consumers" has significant influence on their content.³⁸

One clear example of interference in the media independence and of intimidation of the journalists was the military police raid on the Czech Television's headquarters in March 2011.³⁹ Defence Minister at first justified the action but later admitted that it was a mistake, and he also suspended its commanding officer. The action was an isolated excess and the only such case in the history of the country after 1989.

Protection of sources is ensured by law. The Constitutional Court, for example, vindicated the journalist who was sanctioned for refusal to reveal his source to the Police but provided the information necessary for criminal investigation.⁴⁰ Another journalist has been recently in a similar situation as she was fined CZK 20,000 by the state prosecutor who was in charge of investigation of the case about which she reported.⁴¹ The journalists also complain about the high number of actions for the protection of personal rights being brought against them by politicians and other celebrities for trivialities.⁴² Such actions, however, have a chance to succeed only in cases concerning tabloids.⁴³ In politically sensitive cases the courts unequivocally defend freedom of expression.⁴⁴

Transparency (law)

Score: 1 2 3 4 5

To what extent are there provisions to ensure transparency in the activities of the media?

There are only minimal legal requirements concerning transparency of the media but supervisory authorities have certain obligations. The obligation of radio and TV broadcasters to provide the audience with easy, direct and permanent access to basic information on the broadcast provider and to inform about the fact that its activities are supervised by the RRTV has been established only in June 2010.⁴⁵ Information concerning print media companies and their titles are available by law in the register of the Ministry of Culture, which is accessible

³⁶ International Press Institute: *Press Freedom Audit Report. Czech Republic. IPI Mission 13-14 May, 2009*, str. 8; <http://www.freemedia.at/press-room/public-statements/features/singleview/4573/>.

³⁷ International Press Institute, 2009.

³⁸ Interview - with Jan Jiráček.

³⁹ <http://www.osce.org/fom/76123>. Armed members of the military police raided the headquarters of CT and searched the office of a journalist who reported on the case of dismissal of a former military intelligence head. The cited reason was to "secure evidence in the matter of well-founded suspicion of a criminal offence consisting in the danger of revealing classified information". The police seized computers and other equipment as well as personal items of the journalist and his colleagues. According to CT, the documents in question have already been declassified and contained information on corruption in the ranks of military police.

⁴⁰ The Constitutional Court ruling I.ÚS 394/04 ze dne 27.09.2005.

⁴¹ <http://zpravy.tiscali.cz/slonkova-zaplaci-pokutu-potvrdil-soud-10881>.

⁴² International Press Institute, 2009.

⁴³ http://aktualne.centrum.cz/domaci/soudy-a-pravo/clanek.phtml?id=702645#utm_source=article-hint&utm_medium=referral

⁴⁴ Compare the case of „Judicial mafia“ in *Judiciary* or the case of former deputy Kořistka, who does not have to apologise to the lobbyists whose corrupt practices he exposed – see Article-kauza-Kořistka.

⁴⁵ RTVZ, s. 32 par. 7.



to public. The law also requires that every copy of every publication must contain such information.⁴⁶

Information that must be made public by law does not include information on ownership structure, editorial staff or circulation.⁴⁷ Ownership structures and relations are unclear and may be easily concealed. Situation in this regard does not differ from other areas of business (see *Business*).

As concerns the public providers CT and CR, the public is by law entitled to have access to their reports on activities and on financial management, which must be made public by the Council of CT and Council of CR at the same time as they are submitted to the Chamber of Deputies. With a few exceptions, the meetings of both Councils are open to the public.⁴⁸ Also the RRTV is required by law to make public (via internet) its decisions, minutes from its meetings and report on its activities.⁴⁹

Transparency (practice)

Score: 1 2 3 4 5

To what extent is there transparency in the media in practice?

Print and broadcast media generally provide information as required by law (see *Transparency-law*). The practice of disclosing information beyond the legal minimum varies. While public service providers publish extensive information on their websites, including the list of their managerial staff⁵⁰ and annual reports on their activities and financial management, not all private media make public information concerning their ownership or their management. Most major dailies disclose their ownership as well as the list of their editorial staff but other private media (radio and TV outlets) rarely disclose information on their ownership.⁵¹ Data concerning viewership/readership/listenership are available on individual media websites (for the purposes of attracting advertisers) or can be obtained from relevant professional associations.⁵²

Accountability (law)

Score: 1 2 3 4 5

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

As was already mentioned above, public service broadcasters are subject to clearly defined requirements. Besides the RRTV (see below), their activities are supervised by their own Councils through which the public control of CT and CR activities is being exercised. The Councils are not entitled to directly interfere in production and broadcast of programmes but they appoint and recall the Director General of CT/CR, inspect the effectiveness and efficiency of the use of financial resources and property, and supervise the fulfilment of the public service remit in CT/CR broadcasting. The Councils submit to the Chamber of Deputies

⁴⁶ TiskZ, s. 7-8.

⁴⁷ Even the Commercial Register often does not provide clear information on ownership structure (see *Business*)

⁴⁸ ČTZ, s.7 par. 3 and s. 8 par. 2, ČRo, s. 7 par. 3 and s. 8 par. 2.

⁴⁹ RTVZ, s. 5 subpar. r).

⁵⁰ CT – list of all employees involved in production of programmes and broadcasting see <http://www.ceskatelevize.cz/vse-o-ct/lide/>.

⁵¹ Research made by the author. For example *Economia*, a publisher of a number of periodicals, states on its website that its majority owner is Respekt Media, a.s., whose sole shareholder is the investor Zdeněk Bakala.

⁵² E.g. Czech Publishers Association, Association of Television Organisations.



for its approval the Code that governs the conduct of employees of both media outlets, as well as annual reports on CT/CR activities.⁵³

The RRTV supervises adherence to the rules by all providers of radio, TV and internet broadcasting. With regard to the fact that the providers are not obliged to submit any reports on their activities, the supervision is based on active monitoring exercised by the RRTV and on the complaints and motions it receives.⁵⁴ In cases of violation of the law or of the licence conditions, the RRTV is entitled to impose financial sanctions and, in extreme cases, revoke the licence. As is the case with licence proceedings, the decisions of the RRTV can be appealed (see in more detail Resources/law). The RRTV submits to the Chamber of Deputies annual reports on its activities and on situation in the field of radio and TV broadcasting and in the area of providing audio-visual services on demand. Also these reports must be made public.

There is no state regulatory body for print media and static internet content. One important difference between print and broadcast media is in their obligation to archive their content. While the publishers must submit 9 copies of every issue to certain libraries, the providers of radio and TV broadcasting are obliged to archive all broadcasted programmes for 30 days, during which period the RRTV may request them to be submitted for its inspection.⁵⁵

The law does not require any self-regulatory body to be established for any sort of media. The only field where self-regulation exists is advertising industry where the publishers and broadcasters have financial interest in its existence.⁵⁶ So far efforts to establish a self-regulatory body to guarantee quality and professional standards in journalism have not been successful (see Integrity/Practice).

Individuals may exercise their right to reply and right to additional announcement.⁵⁷ A person whose honour, dignity or privacy has been denigrated by the published statement has the right to demand that his/her reply (i.e. correction, additional or accurate information) be published in the same media. The reply must be published in the same manner as the original statement, i.e. in case of broadcast media, in the same programme. The right to reply expires if it is not exercised within 30 days of publication of the original information. If the media report on criminal or administrative proceedings in progress, they are also obliged to publish – on request – information on the final result. In both cases it is possible to seek judicial protection of the affected right if the media do not voluntarily fulfil their obligations. The individual is also entitled to seek adequate satisfaction arising from unlawful violation of his/her personal rights, including pecuniary satisfaction of the immaterial detriment.⁵⁸

Accountability (practice)

Score: 1 2 3 4 5

To what extent can media outlets be held accountable in practice?

In practice, accountability of media outlets (not only legal but especially social responsibility) is in the hands of individual editorial offices and – indirectly – the media owners. According

⁵³ ČTZ, s. 4-8, ČRoZ, s. 4-8.

⁵⁴ RRTV Annual Report 2010. *Zpráva o činnosti Rady pro rozhlasové a televizní vysílání a o stavu v oblasti rozhlasového a televizního vysílání a v oblasti poskytování audiomedialních služeb na vyžádání za rok 2010*; <http://www.rrtv.cz/cz/static/o-rade/vyrocní-zpravy/index.htm>.

⁵⁵ TiskZ, s. 1, RTVZ, s. 32 par. 1 subpar. 1).

⁵⁶ Compare [Unie vydavatelů](#), [Rada pro reklamu](#).

⁵⁷ RTVZ, s. 35 and following, TiskZ, s.

⁵⁸ OZ, s. 13.



to prof. Jiráček, there is no motivation for the media to increase the quality of their activities to be more beneficial to the public.⁵⁹

The RRTV in practice monitors especially the adherence to licence conditions, to rules concerning advertising regulation and to the ban to broadcast during the day any programmes that could endanger well-being and development of children and youth. This focus of its supervisory activities is illustrated by its publication of the list of banned vulgarisms that must not appear in broadcast.⁶⁰ Nevertheless, the RRTV also monitors the fulfilment of the obligation to provide objective and balanced information. In 2010, it imposed six penalties for violation of this obligation.⁶¹

Civil-law disputes through which the individual may seek judicial protection of the right of reply and personality rights are lengthy (compare *Judiciary*). The Czech courts are also known to impose relatively low sanctions for violation of personality rights.⁶² At the same time, judicial protection of the right of reply is limited and some experts argue that without legal assistance it is extremely difficult to prepare a reply that would conform to legal requirements.⁶³ While such situation may strengthen the independence of media, it creates significant risk of irresponsible behaviour. Some experts are of the opinion that enactment of so-called Muzzle Law was a result, among other factors, of excessive use of publishing accounts from police wiretapping (see Independence), which were used chiefly to create sensational news stories.⁶⁴

Neither public service broadcasters nor private media outlets have established ombudsmen who would act as intermediaries between the media and the public and deal with disputes concerning media content. The national Ombudsman (see *Ombudsman*) is not entitled to exercise oversight of the media but only of the activities of the RRTV, which is a public administration body.⁶⁵

Integrity mechanisms (law)

Score: 1 2 3 4 5

To what extent are there provisions in place to ensure the integrity of media employees?

As already mentioned above, it is individual broadcasters and publishers who are responsible for media content. There are no special provisions in place to ensure integrity of editorial staff; their accountability results from their employment or other contracts. The law does not require a sector-wide code of ethics. There is a code created by the Syndicate of Journalists but the membership in the Syndicate is voluntary and no sanctions are imposed for violations of the code. However, the Syndicate has its Ethics Committee that deals with complaints, which mainly concern publication of untruthful information or not providing adequate space to one party of a dispute.⁶⁶

⁵⁹ Interview with Jan Jiráček.

⁶⁰ <http://www.ct24.cz/media/113208-media-dostala-seznam-zakazanych-vulgarismu>

⁶¹ RRTV Annual Report 2010. *Zpráva o činnosti Rady pro rozhlasové a televizní vysílání a o stavu v oblasti rozhlasového a televizního vysílání a v oblasti poskytování audiomedialních služeb na vyžádání za rok 2010*; <http://www.rrtv.cz/cz/static/o-rade/vyrocní-zpravy/index.htm>.

⁶² <http://www.epravo.cz/top/clanky/vaclav-moravec-medialni-pravo-trpi-obrovskou-nesourodosti-71864.html>.

⁶³ Moravec, O.: *Veřejnoprávní prostředky ochrany osobnosti před zásahy hromadných sdělovacích prostředků*. In: *Days of Public Law*, Masarykova univerzita, Brno, 2007; <http://www.law.muni.cz/sborniky/Days-of-public-law/files/pdf/ustava/Moravec.pdf>.

⁶⁴ Šmíd, T. (2004): *Vliv vlastnictví médií na jejich nezávislost a pluralitu*; <http://www.louc.cz/pril01/vlmed2004.doc>

⁶⁵ Compare RRTV Annual Report 2010.

⁶⁶ See http://syndikat-novinaru.cz/index.php?web=1&main=5&main_tit=Etika.



Not all print media publish their codes of ethics. The codes that are publicly available include rules on presentation of information and dealing with sources, gifts and hospitality, and conflict of interest. The codes are binding also for freelance journalists and their violation may lead to termination of existing job contract. Media outlets generally do not have ethics committees. Among the codes, the CT Code and the CR Code have a special position as they are legally binding documents and their violation may constitute the reason for dismissal.⁶⁷ Both Codes specify the principles of fulfilling the public service obligation and besides provisions on conflict of interest, gifts and hospitality and editorial decision-making⁶⁸ deal also with some specific issues in regard to investigative journalism. For example, the CT Code contains detailed provision on the use of hidden camera or microphone and the use of reporter's licence.⁶⁹ According to prof. Jiráček, the quality of CT Code is influenced by the CT's membership in the European Broadcasting Union and its inspiration by similar documents from abroad. However, Jiráček sees the weak point in the fact that the Code is subject to approval of the Chamber of Deputies. In his opinion, its role in relation to public service broadcasters should be strictly limited to setting legal framework for their operation.⁷⁰

There are provisions in place concerning the conflict of interest of the RRTV, CT Council and CR Council members, similar to requirements that apply to the SAO members or to the Ombudsman (compare relevant pillars/Integrity).

Integrity mechanisms (practice)

Score: 1 2 3 4 5

To what extent is the integrity of media employees ensured in practice?

Problems arise rather from the existence of strong economic pressure on journalists' work, which may have significant impact on quality of their outcomes, than from non-existent rules or codes of conduct.

The above-mentioned Syndicate is not generally regarded to be an effective organisation by the journalists, neither in promoting their interests nor in setting standards. Its membership base (only about 8% of journalists are members) consists mainly of older people or students who join the Syndicate because of its membership benefits. The opinions of its Ethics Committee are disregarded as obsolete and far from reality.⁷¹ According to prof. Jiráček, the journalistic community does not see benefits of self-regulation because it is too fragmented. Moreover, most journalists consider themselves to be centre-right oriented and as such, they regard any regulation as restrictive. At the same time, the journalists admit that in relation to major advertisers they themselves apply self-censorship, i.e. avoid writing stories that could adversely affect advertisers. Besides such direct self-censorship practices, there is also general trend towards commercialisation of media content (compare also Independence/practice). In a situation when the media's primary objective is to attract and hold attention, simple messages playing on emotions take precedence over materials aimed to stimulate critical thinking.⁷²

Investigate and expose cases of corruption practice

Score: 1 2 3 4 5

⁶⁷ ČTZ, s. 8, ČRoZ, s. 8.

⁶⁸ For example, the CT Code states that the responsibility for news and current affairs programmes' content lies with the editors-in-chief of the respective departments. See [Kodex ČT](#), Art. 5.17.

⁶⁹ CT Code, Article 16.13-16.20. <http://img9.ceskatelevize.cz/boss/pages/english/pdf/ct-code.pdf>

⁷⁰ Interview with Jan Jiráček.

⁷¹ International Press Institute, 2009, p. 12

⁷² Interview with Jan Jiráček.



To what extent is the media active and successful in investigating and exposing cases of corruption?

The media do not play only a passive role in relation to exposing corruption. In a number of cases the investigation of corruption was initiated by publication of a story in the media, in other cases the relevant individuals or institutions were finally forced to react. However, due to relatively low number of corruption cases brought to the courts (see *Judiciary/Corruption Prosecution*), there is always a certain degree of speculation that remains in regard to any case initiated by the media, and the public is left to guess whether the particular story was a result of serious investigative journalism or whether it was just another cheap scandal.

Some experts argue that the media outlets in the Czech Republic do not investigate at all because they lack adequate resources, so that they just collect information from various sources and subsequently publish them.⁷³ The editor-in-chief of the weekly Respekt, which regularly involves in exposing and monitoring of corruption cases, confirmed that the initial impulse often comes from the outside, but said that such impulses are only the beginning of investigation work. His weekly, as well as any other serious publication, would not publish any information without verification and without putting it into context. The notion that the media would simply publish anything that is sent to it cannot be true, if only because the number of such unverified impulses exceeds many times the media outlets' capacity to process such information.⁷⁴

It is worth to mention journalists who won 2010 Open Society Fund journalism awards⁷⁵: Michael Fiala and David Havlík got awarded in investigative reporting category for their series of reports on Diag Human arbitration. Their reports uncovered main actors in the case which illustrates criminal connection between politics and organised crime, and showed incompetent approach of the Czech state in handling the case with suspicion that it may have been handled in that way on purpose, to serve as a vehicle for some people to obtain financial gain. According to the jury, the series of reports saved the Czech state approx. CZK 3 billion, which reveals how powerful investigative journalism can be. The jury awarded also Marie Valášková and Radek Kedroň of the daily Hospodářské noviny for their series of reports on remunerations that local government representatives get from municipal companies, which are being misused to finance political parties⁷⁶, and Sabina Slonková of the internet daily Aktualne.cz for her series of reports on the black market with alcohol.

As an example of journalism balancing between investigative work and provocation we can mention a "corruption test" of six parliamentary parties carried out during 2009 pre-election campaign. A journalist, posing as an owner of gambling clubs network, approached financial managers of all parties in parliament with an offer: one million crowns to be anonymously sent to the party coffers if the party prevents adoption of imminent vital changes in the valid lottery law. Reactions of individual actors not only showed readiness of some parties to have their campaign financed in a way that would not appear in the official accounting records but also revealed methods that could be used to finance party campaign in this way.⁷⁷

Inform public on corruption and its impact

Score: 1 2 3 4 5

⁷³ <http://www.ceskamedia.cz/article.html?id=367991>. Professor Jiráček is of a similar opinion.

⁷⁴ Respekt's Editor-in-chief Erik Tabery statement.

⁷⁵ <http://www.novinarskacena.cz/tiskovezpravy/vitezove-a-vitezky-souteze-novinarska-cena-2010-prevzali-oceneni/vytisknout-clanek/>

⁷⁶ These two investigative journalists systematically monitor and report on the issue of municipal companies as well as on the assets of politicians in the project entitled "Konta-X". See <http://zpravy.ihned.cz/politika-konta-x>

⁷⁷ See [Article-milion-za-zakon](#). For more detail on the test's results see *Political parties/Accountability*.



To what extent is the media active and successful in informing the public on corruption and its impact on the country?

The media inform on corruption mainly in relation to individual cases that are being reported. Corruption has become an established topic and the word “corruption” belongs among the most commonly used ones. Data from media monitoring show that in the last 6 months, “corruption” was mentioned 5037 times (i.e. almost 30 times a day), which means higher frequency than “unemployment” (4061) or “justice” (3232), and almost the same frequency as “education” (5792), “family” (6624) or “health” (8557).⁷⁸

The media can follow a corruption case on a long-term basis, as is proved by the case of former senator Alexandr Novák, which has been monitored by the media since 2003 (see *Judiciary/Corruption Prosecution*) or by the case of so called “judicial mafia” (see *Judiciary/XXX*). Also in the above-mentioned case of “corruption test”, the media outlet kept monitoring fortunes of its main actors and reporting the news. In this way the public learned that deputy Šustr was excluded from TOP 09 but kept working for the party as a consultant, and that former KSČM deputy chairman Dolejš lost his position in the party management but was allowed to remain the party’s candidate and thus got elected to the Chamber of Deputies for another 4-years term.⁷⁹ The media also informed about the fact that the case was investigated by the police and state prosecution but both institutions concluded that no criminal offence has been committed.⁸⁰

As concerns controversial issue of publishing accounts from police wiretapping, there is especially the notorious case of football bosses from 2004 which resulted in several corruption sentences, was dealt with also by the Constitutional Court and drew attention of general public to the issue of corruption in sports.⁸¹ The public was subsequently confronted with the fact that the problem is definitely not limited only to top Czech football league.⁸² Yet even then (i.e. before the so-called Muzzle Law has been adopted), some legal experts warned that it is illegal to publish accounts from police wiretapping.⁸³ Another controversy arises in situations when the journalists reveal their source who participates in relevant corrupt conduct. While such practice may be understandable from a moral perspective, it is unprofessional and the journalists are in this way putting themselves in the role of “agent provocateur” which they should not play.⁸⁴

Inform public on governance issues

Score: 1 2 3 4 5

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

⁷⁸ Research made by the author on 30 June 2011 in the database of NewtonMedia, which monitors 19 types of sources (besides regional and professional publications the service monitors 39 national dailies, 9 nationwide TV programmes, 8 nationwide radio stations and 269 internet servers).

⁷⁹ http://zpravy.idnes.cz/selhali-v-korupcnim-testu-nyni-jsou-z-vyvrhelu-top-09-poradci-poslancu-1zd-domaci.aspx?c=A100709_212521_domaci_abr.

⁸⁰ http://zpravy.idnes.cz/policie-odlozila-kauzu-politiku-keri-selhali-v-testu-milion-za-zakon-1z1-domaci.aspx?c=A100402_134117_domaci_mad.

⁸¹ Compare [Article-Hornikova-stiznost](#). There was even a successful theatre performance based on police wiretap of conversations in relation to corruption in the Czech football.

⁸² Chraňme si své sojky. *Respekt* 18/2011 z 2. 5. 2011 or http://fotbal.idnes.cz/z-ceskeho-fotbalu-uz-zase-kape-spina-dbb-fot_dsouteze.aspx?c=A070612_224402_fot_dsouteze_ber.

⁸³ <http://pravnihradce.ihned.cz/c1-25053060-zverejnovani-odposlechu-v-mediich>.

⁸⁴ Interview with Zdeněk Šámal.



Reports on activities of government and other governance actors is an integral part of both public and private media programmes. The quality and focus of the reports varies to a certain extent, depending on the type of media, yet it is based on some common sources of information and also the news format is similar (see Resources/Practice above).

In terms of broadcast media, the most comprehensive coverage is offered by the public service broadcaster Czech Television, which has also a special news channel CT 24, and by the Czech Radio. Private TV and radio stations also report on the activities of the government, the President and the Parliament. Print media usually present news in wider context and have more space to provide information in more detail. Yet even print media are usually only able to cover the “news of the day”, i.e. provide information on the events that already happened, and the consumer of information is left to search other sources of information if he/she is interested in more details.⁸⁵ The important fact is that such other sources do exist, either in the form of information provided directly by the relevant source/institution or in the form of various commentaries available on the internet.

“Serious” media outlets usually provide balanced reporting and leave enough space for opposite side. According to professor Jiráček, this is not enough for high-quality coverage of topics as the news reporting is lacking independent factual analyses of presented issues, which are being presented (intentionally or inadvertently) in a succinct form and at a very personal level.⁸⁶ For example, a report on the new draft act would focus rather on the attitudes of individual politicians than on the impact of the new regulation. Closely related to this problem is the emphasis which the news (quite understandably) puts on the final decisions instead of reporting on the preparation phase. Thus the citizen is reduced to the role of passive observer as the information is presented only after the decision has been made and it is no longer possible to influence it.

REGULATIONS

AVMedSlužZ: zákon č. 132/2010 Sb., o audiovizuálních mediálních službách na vyžádání.

ČRoZ: zákon č. 484/1991 Sb., o Českém rozhlasu

ČTKZ: zákon č. 517/1992 Sb., o České tiskové kanceláři

ČTZ: zákon č. 483/1991 Sb., o České televizi

RTPoplZ: zákon č. 348/2005 Sb., o rozhlasových a televizních poplatcích a o změně některých zákonů.

RTVZ: zákon č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání a o změně dalších zákonů.

TiskZ: zákon č. 46/2000 Sb., tiskový zákon

⁸⁵ Interview with Zdeněk Šámal.

⁸⁶ Interview with Jan Jiráček.



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

CIVIL SOCIETY

Summary

The Czech Republic has a well-developed and diverse civil society. Its diversity consists not only in various legal forms and specialization of individual civil society organisations (CSOs) but also in their financing, governance and capacity or willingness to engage in activities promoting the public interest. The majority of CSOs are primarily concerned with fulfilment of the needs of their members and their interactions with public sector institutions are only marginal and rather passive, i.e. limited on situations when there is a chance for such CSOs to obtain some subsidy or support for their activities or their members. A significant amount of CSOs focuses on providing non-market oriented services, especially social services, and they are often dependent on state funding. Advocacy and watchdog organisations which openly embrace the role of “guardians of democracy” are in the minority and face serious financial problems due to decreasing donor funding. Recently, however, the anti-corruption efforts of these few organisations (in which they often relatively closely cooperate with state authorities) have been supplemented with a number of more or less formal civil society initiatives, which are able to mobilise the general public and draw its attention to specific issues.

As to the weaknesses, the CSOs suffer from the lack of transparency and generally insufficient internal governance. Beside the well-established organisations that adhere to principles of transparency – either voluntarily or in reaction to their donors’ requirements – and small clubs or societies, which operate primarily on volunteering basis, there exist a relatively large proportion of CSOs that enjoy the advantages of tax exemptions or even use public funds without being answerable to anybody. It is usually difficult to find out who acts on behalf of these organisations and who is answerable for their management. There is a significant risk that in this way, public funds are being diverted to private pockets or directly to political parties.



The table below presents the overall assessment of the civil society in terms of capacity, governance and role in the national integrity system of the Czech Republic as well as the individual indicator scores. Detailed qualitative assessments for each indicator are available in Czech language [here](#).

CIVIL SOCIETY			
Overall Pillar Score		56 /100	
	Indicator	Law	Practice
Capacity 75 /100	Resources	75	50
	Independence	100	75
Governance 42 /100	Transparency	50	25
	Accountability	50	25
	Integrity	50	50
Role 50 /100	Hold government accountable	50	
	Policy reform	50	



National Integrity Study – Czech Republic

Authors: Petr Jansa, Radim Bureš & co., Transparency International

Unedited English version of National Integrity Study.

Final version in Czech language is downloadable on <http://www.transparency.cz/studie-narodni-integrity/>

BUSINESS

- *According to a recent survey, 96% communication with the authorities associated with the business as unnecessarily bureaucratized.*
- *Companies with non-transparent behavior: 51% of Czech joint stock companies use anonymous bearer shares and 11 400 other companies have owners in tax heavens.*
- *Support of entrepreneurs to civil society and anti-corruption activities is rather exceptional.*

BUSINESS			
Overall Pillar Score 55 /100			
	Indicator	Law	Practice
Capacity 81 /100	Resources	75	75
	Independence	100	75
Governance 46 /100	Transparency	75	25
	Accountability	75	50
	Integrity	25	25
Role 38 /100	Anti-corruption policy engagement	25	
	Support for/engagement with civil society	25	

Summary

The Czech Republic has well-developed and prosperous business sector. It can be said that neither its regulatory framework nor its practices show any significant differences from other developed economies. Despite the burden of excessive bureaucracy, slow judicial system and over-complicated legal framework, businesses can operate according to clear rules and free of unwarranted external interference.

Corruption is a separate issue, being repeatedly identified as one of the biggest obstacles to doing business in the Czech Republic. While it is widespread primarily in the area of public procurement, subsidies and other situations of direct interactions between businesses and public sector, corrupt practices are not unusual within the private sector itself. A minor part of the business sector is directly involved in corruption schemes, trying to infiltrate the political structures and enforce its own interests (see *Political parties*). Most entrepreneurs do not like



the situation but remain passive. Active involvement in anti-corruption initiatives and efforts to enforce systemic changes are rare.

Factors contributing to passive approach of majority of the business sector include low level of accountability and liability of individual entrepreneurs and companies' management for illegal conduct and the fact that businesses themselves often operate in non-transparent ways, benefiting from loopholes in legal regulations and inactivity of state authorities.

The table below presents the overall assessment of the business sector in terms of its capacity, internal governance and its role within the national integrity system of the Czech Republic. The remainder of the chapter presents qualitative assessments for each indicator.

Structure and organisation

Both the right to engage in commercial and economic activity and the right to own property are enshrined in the Constitution of the Czech Republic.¹ An individual may engage in business activities directly (upon the issue of a trade authorisation) or through establishment of a company. At the end of 2009, almost 20% of Czech population (1.9 million people) held some sort of a trade authorisation. In terms of companies, the most frequent type is a limited liability company (298,000 at the end of 2009). Joint stock companies and limited partnerships are much less frequent (23,000 at the end of 2009, of which only 16 companies are publicly traded!). There is only a relatively small number of European companies (257 as of April 2010).²

Anyone who meets relevant conditions can conduct business activities or establish a company. The conditions vary according to the type of company and the area of business. A special licence is required to conduct business activities in the following industries: banking, capital markets, insurance, energy, telecommunications and some areas of healthcare. Some other industries (e.g. production and sale of arms, production of liquor, transportation services) require special concession issued by trade licence authorities while ordinary trades and business only need a registration.³ Companies must also be recorded in the Commercial Register.⁴

Resources (law)

Score: 1 2 3 4 5

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

The Czech Republic offers relatively favourable business climate. Despite all the efforts to improve the situation, over-complicated and often outdated legislation and excessive bureaucracy remain burdensome. The Heritage Foundation Index of Economic Freedom puts the country in 28th place⁵; in the World Bank's ranking for ease of doing business the Czech

¹ Charter, Article 11 and Article 26.

² *Statistický přehled soudních agend*, Ministerstvo spravedlnosti ČR, 2010;
<http://portal.justice.cz/Justice2/MS/ms.aspx?o=23&j=33&k=3397&d=47145>,
<http://www.ceskatelevize.cz/ct24/ekonomika/92018-pocet-zivnostniku-v-cesku-se-pomalu-blizi-trem-milionum/>
 a <http://www.finance.cz/zpravy/finance/261885-pocty-zalozenych-evropskych-spolecnosti-v-ceske-republice-stale-rostou>.

³ ŽivZ, s. 10.

⁴ ObchZ, s. 62.

⁵ Heritage Foundation: *Index of Economic Freedom*, 2011;
<http://www.heritage.org/index/country/CzechRepublic>.



Republic is ranked 63rd.⁶ In contrast to these relatively high rankings, the Czech Republic was ranked 118th (out of 139 countries) on the burden of government regulation in the World Economic Forum's Global Competitiveness Report 2010-2011.⁷ The problem of complicated, chaotic and sometimes absurd regulation is highlighted also in the report of National Economic Council of the Government (NERV), which points out insufficient evaluation of the impact of such regulation on national economy.⁸

As was already mentioned, business activities may be carried out by an individual or a company. To start a company, its founders must first conclude a memorandum of association, which usually must be notarised. The company only becomes authorised to carry out its business activities upon registration in the Commercial Register of relevant Commercial Court. The Court is obliged to register the company within 5 days provided the company meets all legal requirements.⁹ The company must also register with Trade Licensing Office. Starting from January 2011, a single registration form is used, which simplifies the process that previously included contacting several other institutions (revenue authorities, social security administration, health insurance company, etc.).¹⁰ For the individual (natural person), this single registration with Trade Licensing Office is a final step in starting a business. If the particular business activity requires a special licence, it may involve a lengthy procedure and in most cases, the decision to award the licence is at the discretion of relevant authorities (compare broadcast licence proceedings in *Media/Resources*).

Property rights and enforcement of contracts is protected by law and it is always possible to seek judicial protection of any affected right. Private-law disputes may also be resolved by an arbitrator chosen by the opposing parties.¹¹ Entrepreneurs may also always seek judicial protection against any decision of a state authority that violates their rights in an unlawful or unconstitutional way. In the International Property Rights Index the Czech Republic was ranked 33rd out of 129 countries.¹²

Bankruptcies and insolvencies are governed by Insolvency Act¹³ which replaced the old law on bankruptcy.¹⁴ The new Act sets tighter qualification standards for trustees and is generally considered to be an effective law.¹⁵ Information on debtors and insolvencies is publicly accessible in the insolvency register.¹⁶

The Commercial Code has been repeatedly amended during recent years. The changes appear with such speed and frequency that commentaries and case law often become outdated even before they are published. Yet as a rule, legal framework for business activities is effective, most serious problems have been solved and the changes are now being made only when they really are necessary.¹⁷ From the viewpoint of small businesses and entrepreneurs, the fact that

⁶ World Bank: *Doing Business*, 2011; <http://www.doingbusiness.org/data/exploreeconomies/czech-republic/>.

⁷ World Economic Forum: *The Global Competitiveness Report 2010-2011*, 2011;

http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf.

⁸ Národní ekonomická rada vlády: *Rámcová strategie konkurenceschopnosti*, 2011; <http://www.vlada.cz/cz/media-centrum/aktualne/nerv-ramec-strategie-konkurenceschopnosti-82538>.

⁹ ObchZ, s. 57 and 62, OSŘ, § 200db.

¹⁰ Single registration form.

¹¹ OSŘ, § 106. Act No. 216/1994 Sb., on Arbitration Proceedings and Enforcement of Arbitral Awards.

¹² International Property Rights Index: *2011 Report*; <http://www.internationalpropertyrightsindex.org/>.

¹³ InsvZ.

¹⁴ KVZ.

¹⁵ Interview with Jiří Markvart.

¹⁶ <https://isir.justice.cz/isir/common/index.do>

¹⁷ Interview with Jiří Markvart, interview with Vratislav Kulhánek.



they do not have a free access to valid legal regulations may be restrictive (compare *Legislative/Transparency*).

Resources (practice)

Score: 1 2 3 4 5

To what extent are individual businesses able in practice to form and operate effectively?

According to the World Bank's study *Doing Business 2011*, starting a business in the Czech Republic requires 9 steps and the whole process takes 20 days, which puts the country in 130th place.¹⁸ Problems in the process of company formation may be caused by the fact that public officials often cling to technicalities. Entrepreneurs may also use the services of company formations specialists and buy so-called readymade company, which is already registered in the Czech Republic. In this way, it is possible to purchase a limited liability company for CZK 20,000 and start a business within 24 hours.¹⁹

Despite the government's efforts to improve conditions for business activities,²⁰ change comes slowly. Communication with institutions is often complicated. According to a recent study, 96% of respondents regard necessary interactions with institutions as excessively bureaucratic.²¹ Business sector is also hampered by slow judicial system (compare *Judiciary*). While commercial courts in general operate more efficiently than other courts, proceedings are too lengthy and therefore, in some cases, companies prefer arbitration.²² In the *Doing Business* index, the Czech Republic is ranked 128th on the indicator "Paying Taxes", with 12 payments per year and 557 hours spent preparing, filing and paying taxes.²³ However, this information does not reflect on the extent to which the tax administration encourages or hampers business activities or specific industries. As an example of regulation that does not make sense from a business perspective, we can mention remuneration of statutory body members that is not tax-deductible in the Czech Republic.²⁴

Most demanding administrative tasks are related to winding up of a business, especially in case of insolvency. The main problem in this context is only a limited capability of state authorities to ensure the adherence to the law in practice, for example as concerns responsibilities of statutory bodies (see also *Accountability*). There is a further problem of

¹⁸ World Bank, *Doing Business 2011*; <http://www.doingbusiness.org/data/exploreeconomies/czech-republic/>. According to the study, the entrepreneur can expect that the cost related to starting a business is about CZK 30,000. In practice, it may cost a little less, as is evidenced by the price of ready-made companies.

¹⁹ E.g. <http://www.ready-made-spolecnosti.cz> or <http://www.spolecnostiprovas.cz/cz>.

²⁰ In 2008, the Ministry of Industry and Trade made a commitment to reduce administrative burden (<http://www.mpo.cz/dokument43985.html>); with the objective to reduce the burden by 20% until 2012. http://www.deloitte.com/view/cs_CZ/cz/tiskove-centrum/abacd9d1bb4ec210VgnVCM1000001a56f00aRCRD.htm; see also *The International Competitiveness Strategy of the Ministry of Industry and Trade*; http://www.businessinfo.cz/files/zahranicni-obchod/Strategie_MK_Strategie_Mezinarodni_konkurenceschopnosti_CR_up.pdf.

²¹ Association of Small and Medium-Sized Companies and Tradesmen of the Czech Republic: *8th edition of AMSP ČR survey – Opinions of entrepreneurs concerning electronic communication with institutions*; <http://www.amspace.cz/8-pruzkum-amspace-cr-nazory-podnikatelu-na-elektronickou>.

²² Interview with Jiří Markvart.

²³ World Bank: *Doing Business 2011*.

²⁴ Interview with Vratislav Kulháněk. Companies solve the problem by so-called simultaneous performance of functions, i.e. they remunerate the members of statutory bodies as their employees, which is better from a tax perspective but it does not make sense in the context of accountability. Such practice is also unlawful (compare recent ruling of the Constitutional Court [3 Ads 119/2010 ze dne 9.12.2010](http://www.podnikatel.cz/clanky/zadne-kontroly-k-soubehu-funkci-slibuji-urady/)), yet revenue authorities have so far tolerated it. <http://www.podnikatel.cz/clanky/zadne-kontroly-k-soubehu-funkci-slibuji-urady/>.

insufficient public awareness of the principles of insolvency proceedings – the public generally does not understand that motion for insolvency does not necessarily mean that the company is insolvent.²⁵ In some cases, insolvency proceedings are misused by competitors who may file insolvency motions for little or no reason. One fact that contributes to this situation is the Czech business culture of late payments. While 90-day delays are common practice, the law considers 30-day delay with payment as a sign of insolvency.²⁶ Poor payment discipline results in secondary financial insolvency of other businesses.²⁷ Forced liquidation of a debtor worsens the situation even further as not all creditors recover their money from an insolvent company²⁸ and the insolvency proceedings are very lengthy. In 2009, 3484 pending insolvency proceedings were under process, 1367 of which have already been going on for 7 or more years and 1367 for 5-7 years.²⁹ Simultaneously, 4570 new insolvency motions were filed in 2009 (4852 in 2010).³⁰

Recently, situation for businesses has worsened due to the amendment to the law on residence of foreigners passed in 2011, which toughened conditions for obtaining work permits for non-EU foreigners. Big multinational companies also complain about excessive paperwork and time needed to get relevant permits for foreign employees.³¹ The amendment complicates situation for international companies that want to transfer their managers or key specialists – for example, it took 210 days for Škoda Auto to complete the transfer of a foreign manager to the Czech Republic.³²

Independence (law)

Score: 1 2 3 4 5

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

There are sufficient legal safeguards to ensure freedom in business activities. Constitutional principles are reflected in individual laws which, to a certain extent, allow for various forms of external interference but at the same time always provide businesses with possibilities to file an appeal against particular unlawful decision (with relevant administrative court) or against the law that enables such decisions to be issued (with Constitutional Court, which can invalidate both the decision and the law) – compare also *Judiciary/Executive Oversight* and *Legislature/ Accountability*. Such appeals may help businesses in their formation phase, for example in licence or concession proceedings, as well as in their operation when they face a number of regulatory and control mechanisms and possible sanctions from state authorities (e.g. in tax collection procedures).

There are provisions in place enabling the state to expropriate land or buildings for clearly defined purposes (e.g. road construction). The state must always give financial compensation and the expropriation may occur only in cases when it is impossible to reach an agreement

²⁵ Interview with Jiří Markvart.

²⁶ Interview with Vratislav Kulháněk.

²⁷ <http://www.penize.cz/zivnosti/59639-druhotna-platebni-neschopnost-dusi-firmy-a-zvysuje-nezamestnanost>.

²⁸ The World Bank's *Doing Business* shows fairly optimistic evaluation – 55,9% recovery rate.

²⁹ Judicial statistics *Statistický přehled soudních agend*;

<http://portal.justice.cz/Justice2/MS/ms.aspx?j=33&o=23&k=3397&d=47145>

³⁰ http://web.creditreform.cz/cs/resources/pdf/20110103_TZ_vyvoj_insolvenci_firem_2010.pdf.

³¹ *The International Competitiveness Strategy of the Ministry of Industry and Trade* also calls attention to this problem; http://www.businessinfo.cz/files/zahranicni-obchod/Strategie_MK_Strategie_Mezinarodni_konkurenceschopnosti_CR_up.pdf.

³² http://byznys.lidovky.cz/stat-zbesile-honi-cizi-manazery-po-uradech-fjl-firmy-trhy.asp?c=A110407_152610_firmy-trhy_ana.



with the property owner.³³ Commercial law defines specific conditions under which squeeze-out may be enforced by the shareholder owning at least 90% of a company's shares.³⁴ Protection of intellectual property (copyrights, patents, trademarks and industrial design rights) is based on international agreements (Paris Convention, Berne Convention, Madrid Protocol, WIPO Treaty) and European law.³⁵

Independence (practice)

Score: 1 2 3 4 5

To what extent is the business sector free from unwarranted external interference in its work in practice?

In practice, the business sector is free from serious unwarranted interference of state authorities. However, enforcement of rights may be a lengthy process and there is also a problem of corrupted public officials in some institutions. For example, bribery and clientelism is widespread in public procurement system (see *Public Sector/ Integrity in Public Procurement*). In case of businesses operating in the areas where most contracts come from public sector (e.g. construction industry, healthcare), refusal to engage in corrupt practices may jeopardize the company's very existence.³⁶ Corruption in public procurement usually involves intermediaries between entrepreneurs and government officials/politicians who often actively approach entrepreneurs with informal offers to help them win certain contracts for a fee. Such practices make detection and prosecution of corrupt behaviour even more difficult.³⁷ Nevertheless, interviewed representatives of the business sector agree that doing business in the Czech Republic does not necessarily have to involve corrupt practices.³⁸

Entrepreneurs can defend their rights by filing complaints or lawsuits against the state authorities. In this regard, the Supreme Administrative Court plays a key role as it adjudicates, among others, matters concerning tax returns (compare also *Judiciary/Executive Oversight*). However, such disputes can take years to resolve, as is illustrated by the case of farmer Ludmila Havráňková who faced the threat of expropriation of her land. The government needed her farmland to complete the construction of the D11 motorway from Prague to Hradec Králové.³⁹ Already in 1993, the farmer's family offered to give up their land in exchange for another piece of land but the government repeatedly tried to expropriate their farmland. The land dispute had been going on since 2004.⁴⁰ Relevant authorities and the government were not willing to accept the family's demand to get new farmland (instead of financial compensation), probably protecting the interests of certain lobby groups. In 2010, the government again threatened to expropriate the farmland in question. The dispute was finally resolved in 2011 when the government agreed to the land swap. Havráňková even suffered a nervous breakdown, caused by the pressure, endless negotiations, ever-changing offers and uncertainty concerning the changes in legislative framework on expropriation.⁴¹

³³ VyvZ, § 1, § 3, § 10.

³⁴ ObchZ, §.

³⁵ Srov. § 1 AutZ. Viz též http://www.sagit.cz/pages/lexikonheslatxt.asp?cd=151&typ=r&levelid=oc_185.htm

³⁶ Interview with Luboš Drobík.

³⁷ Interview with Vratislav Kulhánek.

³⁸ Interview with Luboš Drobík, Interview with Vratislav Kulhánek.

³⁹ <http://www.reflex.cz/clanek/stary-reflex-reflex-cz-reflex-cz-fertek/19534/dalnice-do-hradce-a-ekoteroristka-havrankova.html>.

⁴⁰ http://zpravy.idnes.cz/farmarka-havrankova-prodala-pozemky-k-dostavbe-dalnice-d11-pmr-/domaci.aspx?c=A110603_201402_domaci_cen.

⁴¹ http://www.denik.cz/z_domova/d-nebude-havrankova-se-sesypala20100708.html.



Transparency (law)

Score: 1 2 3 4 5

To what extent are there provisions to ensure transparency in the activities of the business sector?

There are comprehensive provisions to ensure transparency of business activities, with one significant exception: the existence of documentary bearer shares allow for anonymous company ownership. Repeated efforts aimed at restricting bearer shares have failed so far and the draft of the new Business Corporation Act does not envisage any changes in this area.⁴² Some people argue that changes are not needed or could even be harmful for honest entrepreneurs. Moreover, the experts are of the opinion that transparency should be primarily increased within the context of the current legal regulation by enforcement of requirements concerning disclosure of information. Another argument against abolishment of bearer shares claims that companies can always come up with some other way to maintain anonymity of their real owners.⁴³

Basic information concerning entrepreneurs and businesses are recorded in the Trade Register and individuals and companies whose net turnover in the last two accounting periods exceeded CZK 120 million are also recorded in the Commercial Register. Both registers are kept in electronic format and are publicly accessible but the law does not explicitly state that the register must be available online.⁴⁴

All companies are obliged to prepare and publish their financial statements.⁴⁵ All joint stock companies and other companies over a certain size are obliged to prepare and publish annual reports and must have their financial statements and annual report audited by an independent auditor. The threshold is reached by a company with assets exceeding CZK 40 million, with turnover exceeding 80 million or with more than 50 employees. The same conditions apply to individual entrepreneurs. The financial statements and annual reports must be published within 30 days of their approval by the general meeting of shareholders but no later than by the end of the following year. "Publication" means entry into the collection of documents of the Commercial Register, which is publicly accessible.⁴⁶ Stricter information duties apply to the issuers of listed securities, namely there are provisions specifying information that must be included in their annual reports and such entities also have an obligation to publish bi-annual reports.⁴⁷ In case of violation of the duty to submit documents that must be filed in the

⁴² Compare [sněmovní tisk 363](#), Explanatory Report to s. 264 - 293 states: „There are no changes in the concept of bearer shares and their transferability. Contrary to the intended subject matter, there will be no provision stating that bearer shares may be issued only in the form of documented securities. There are a number of reasons for this. One reason is that the intended subject matter approved in 2001 has been outdated. Another, more significant reason is found in the nature of joint stock company as a private company, i.e. with the possibility of anonymous shareholders – a private company, which has no influence on capital markets, may use any ownership structure whatsoever.”

⁴³ Interview with Jiří Markvart.

⁴⁴ This concern may seem trivial but in some other context, the absence of explicit mention of online access may mean that the data are not accessible online. This is the case, for example, of annual financial reports of political parties (compare *Political parties/Accountability*). Availability of data from the Commercial Register is of a key importance. Persons recorded as statutory representatives are authorised to act on behalf of the company and conclude contracts that are binding even if the situation changed in the meantime and the entry does not reflect real state of affairs (compare § 29 ObchZ).

⁴⁵ The duty to publish financial statements was confirmed also by the Constitutional Court in its ruling [I. ÚS 833/08 ze dne 23.5.2008](#), in which it decided against the complaint that financial statements contain too much personal details.

⁴⁶ Compare ObchZ, s. 39 and 40, ÚčetZ, s. 1, s. 20, s. 21, s. 21a.

⁴⁷ KapTrhZ, s. 118 and following. As of 4 June 2011, the Czech National Bank registered only 75 issuers, 49 of which were joint stock companies founded according to the Czech law. Only 16 of these companies were listed,



collection of documents the court may impose a fine of up to CZK 20,000.⁴⁸ Revenue authorities may sanction the company that does not publish its financial statements or annual report and impose a fine of up to 3% of the company's assets.⁴⁹

Accounting, financial and reporting duties in the Czech Republic comply with international standards. Penalties of up to 6% of the value of assets may be imposed for violation of accounting standards.⁵⁰ Each auditor must adhere to relevant laws as well as to internal regulations and principles of the Chamber of Auditors, of which he/she must be a member.⁵¹ Independence of auditors is threatened by the fact that the companies may choose (in compliance with international standards) their auditors and pay for their services. In the Global Competitiveness Report index, the Czech Republic ranks 47th on "strength of auditing and accounting standards".

Transparency (practice)

Score: 1 2 3 4 5

To what extent is there transparency in the business sector in practice?

In practice, a lot of important information is not available to the public. This is partly caused by loopholes in the legal regulation and partly by violations of existing law. General data on companies, their owners and statutory representatives is available – in the extent required by law – online, in the Commercial Register.⁵² However, such data often do not reveal the actual ownership structure, due to previously mentioned bearer shares or so-called chaining of companies, with the chain ending up in tax havens, i.e. in countries with low regulatory standards that do not require providing information on owners and do not require audits.⁵³ According to Čekia information agency, 51% of Czech joint stock companies use documentary bearer shares, 40% use documentary registered shares,⁵⁴ and more than 11,400 companies operating in the Czech Republic (3.36%) has owners from destinations that belong among tax havens.⁵⁵

As concerns the obligation to publish financial statements, most companies publish the data with delay or do not publish it at all.⁵⁶ In some cases, companies try to protect information from competition and possible abuse of such data; in many cases the duty was simply neglected. Some companies may try to hide information on their activities. The important fact is that until recently, adherence to this obligation has not been actively enforced in practice neither by registration courts nor by revenue authorities. However, revenue authorities declared that in future they will pay much more attention to fulfilment of this duty.⁵⁷ The

i.e. such stricter duties apply only to a fraction of total number of companies (see [databáze emitentů ČNB](#) and [seznam kótovaných investičních nástrojů pražské burzy](#)).

⁴⁸ OSŘ, s. 200de.

⁴⁹ ÚčetZ, s. 37 and following.

⁵⁰ ÚčetZ, s. 37 and following.

⁵¹ AudZ, s. 4. Compare also website of the Chamber of Auditors: <http://www.kacr.cz/>.

⁵² <http://www.justice.cz/or/>

⁵³ Besides the "exotic" destinations, countries like the Netherlands, Cyprus or Luxembourg belong among tax havens. See <http://www.financialsecrecyindex.com/2009results.html>.

⁵⁴ <http://www.cekia.cz/cz/archiv-tiskovych-zprav/198-tz101216>.

⁵⁵ <http://www.cekia.cz/cz/tiskove-zpravy/222-tz110216>.

⁵⁶ <http://www.profit.cz/clanek/vetsina-firem-porusuje-zakon-o-ucetnictvi-hrozi-jim-pokuty/>: "As of September 2010, 83% of companies failed to fulfil their obligation to enter their financial statements into the Commercial Register."

⁵⁷ <http://www.finance.cz/zpravy/finance/286355-financni-urady-si-posviti-na-nezverejnovani-ucetni-zaverky-v-obchodnim-rejstniku/>.



issue is quite a serious one, as is illustrated by the case of Eskon, family firm of Zbyněk Stanjura (newly elected chairman of ODS group of deputies), which failed to publish its financial statements for the last 15 years. Eskon is a supplier for some big Czech companies, including the state enterprise ČEZ.⁵⁸ Moreover, the firm had a contract with the town Opava in the period when Stanjura was its mayor.⁵⁹

Non-transparent ownership structures and poor disclosure practices have significant impact on the area of public procurement – for example it is thus impossible to prevent conflict of interest. While the contracting authority may require the bidders to meet certain qualification criteria, the law neither demands that the bidders prove their ownership structure nor does it stipulate any other requirements that would test the bidder's integrity, such as fulfilment of the above-mentioned duty to publish financial statements.⁶⁰ Yet the analysis carried out by the project zIndex revealed that a significant percentage of public contracts go to companies with anonymous ownership structure⁶¹ (in more details see *Public Sector/Integrity in Public Procurement*).

Big international corporations and some Czech companies have corporate responsibility and sustainability programmes but in most cases, such programmes do not deal with the issue of corruption.⁶²

In terms of transparency, even the state-controlled companies disclose only very basic information required by law (see *Executive/Management of state-owned companies*).

Accountability (law)

Score: 1 2 3 4 5

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

As concerns corporate governance of individual companies, the law stipulates some minimal standards for each type of company and individual companies may then establish further internal rules within the legal framework. Responsibility for management of a company always lies with its statutory body, which is also responsible for keeping all compulsory records and accounts. In case of limited liability companies, one or more executive officers constitute the company's statutory body; joint stock companies have collective statutory body – board of directors – consisting of at least 3 members. Statutory bodies are accountable to the company owners (partners, shareholders) who exercise their rights at least once a year at a general meeting where they decide, among other matters, on appointment of statutory and supervisory bodies. Joint stock companies must have supervisory boards; for limited liability companies it is not compulsory. The supervisory board oversees the activities of the company's board of directors and its members are entitled to examine all documents and records of the company. The supervisory board also approves some decisions of the board of directors, in which case it shares responsibility for such decisions with the board's members.⁶³

⁵⁸ <http://aktualne.centrum.cz/domaci/politika/clanek.phtml?id=700829>.

⁵⁹ <http://aktualne.centrum.cz/domaci/politika/clanek.phtml?id=701594>.

⁶⁰ Some experts say that introduction of such restrictions would not be in compliance with the European law on which the Czech law is based (statement of the representatives of the Ministry for Regional Development that has competence over public procurement system, on the meetings of the Platform for transparent public tenders).

⁶¹ Skuhrovec, J. See also <http://www.zindex.cz/>.

⁶² Examples: Škoda Auto - http://www.skoda-auto.cz/company/cze/sustainable_development/pages/hp_tabstrips.aspx; Siemens Czech Republic <http://www.siemens.cz/siemjet/cz/home/citizen/Main/index.jet>.

⁶³ ObchZ, § 137, § 197, § 201 odst. 4.

Enumeration of the supervisory board's duties in the law is very brief so that its role and responsibilities are rather formal unless the company itself specifies its duties in more detail in its statutes.

In case of a breach of duty, members of the limited liability company are entitled to file in the company's name a complaint for damages against the executive officer who caused the damage. In joint stock companies, this right is reserved to the supervisory board and individual shareholders may file complaints only when the supervisory board fails to act. This applies only to shareholders who have shares exceeding certain limit (3% in larger companies, 5% in smaller ones).⁶⁴ Members of statutory bodies may be criminally prosecuted for unlawful conduct. Besides corruption offences (see Integrity) it is worth mentioning other offences typical for business environment, e.g. abuse of information and abuse of position in commercial interactions, insurance fraud, credit fraud and breach of duties in property management.⁶⁵

In terms of government oversight, revenue authorities are entitled to examine bookkeeping of entrepreneurs and companies within their tax inspections.⁶⁶ Oversight of financial market and companies operating on the financial market is exercised by the Czech National Bank which also oversees the capital market.⁶⁷ Public agencies with investigative powers include law enforcement authorities, i.e. police and prosecution (see *Judiciary* and *Law Enforcement Agencies*), and the Financial Analytical Unit of the Ministry of Finance, which monitors suspicious transactions pursuant to the law on money laundering (see *Anti-Corruption Agency*).

Accountability (practice)

Score: 1 2 3 4 5

To what extent is there effective corporate governance in companies in practice?

In practice, the quality of corporate governance depends rather on internal corporate culture than on external mechanisms. While the law clearly stipulates responsibility of statutory bodies, it is not sufficiently enforced in practice and it is very rare that a member of statutory body would be held accountable (i.e. subject to private-law sanctions or criminal liability). Due to this fact the statutory bodies often fail to fulfil their role, which is reflected for example in insolvency proceedings that are initiated too late and even in cases when the situation seems to be clear, no solution is reached.⁶⁸ The same problem applies to multinational companies whose statutory bodies often act according to orders from their corporate headquarters, which are not necessarily in compliance with the Czech law.⁶⁹ As was already mentioned, the role of a supervisory board is – in the basic form as required by law – only formal.⁷⁰

Low level of accountability is clearly evident also in relation to state authorities. For example, companies move their headquarters from various regions to Prague to avoid tax inspections as in Prague the inspections are much less frequent due to high concentration of companies. In 2010, 9926 companies moved their headquarters to Prague.⁷¹ In fact, the tax authorities could

⁶⁴ ObchZ, § 131a, § 181-182.

⁶⁵ TZ, § 210, 211, 220, 221, 255,

⁶⁶ Daňový řád, § 85

⁶⁷ KapTrhZ.

⁶⁸ Interview with Jiří Markvart.

⁶⁹ Interview with Jiří Markvart.

⁷⁰ Interview with Vratislav Kulháněk.

⁷¹ <http://finexpert.e15.cz/ve-snaze-uniknout-danove-kontrolu-se-do-prahy-stehuji-tisice-firem>.



be used to detect corruption practices in much more efficient way.⁷² Unfortunately, current practice is rather benevolent, which is evidenced by the approach of the Ministry of Finance to granting exemptions from paying penalties imposed by revenue authorities for budgetary rules violations that was revealed by the Supreme Audit Office (see *SAO/Detecting and sanctioning misbehaviour*). According to Vratislav Kulhánek, the Czech Republic would benefit from a specialised unit for financial crimes within the police. Kulhánek believes that inactivity of the police in the field of taxes and financial crime is a result of insufficient expertise and experience in this area. He thinks that integrity would be effectively strengthened by the introduction of compulsory assets declarations.⁷³ The Czech National Bank submits annual Financial Market Supervision Reports which describe in detail the bank's activities in this area as well as the changes on the financial market.⁷⁴

Integrity mechanisms (law)

Score: 1 2 3 4 5

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

Legal entities in the Czech Republic are not criminally liable.⁷⁵ In terms of corruption offences, criminal liability was extended to the business sector in January 2010 when the new Criminal Code was adopted. Until then, bribery was punishable only in the context of matters of public interest, which – according to the case law – included also some business activities (e.g. bank credits, healthcare services, bribery in professional sports).⁷⁶

As was already mentioned in *Public Sector*, no specific legislation exists in the Czech Republic to regulate whistleblowing and whistleblower protection.⁷⁷ Existing legal protection for whistleblowers is highly fragmented and it is either derived from general legal principles or from provisions included in various regulations. There is no specialised government body that would receive and handle reports of wrongdoing. In private sector, companies may have internal mechanisms for reporting but it is up to each individual company whether it will introduce any whistleblowers policies. Another area that suffers from insufficient mechanisms that would ensure integrity of all its actors is public procurement (in more details see Transparency (practice) above and *Public Sector/Integrity in Public Procurement*).

While there is no single, universal code of ethics that would apply to the entire private sector, individual industries or professions have their specific codes of conduct (e.g. Ethical Code of the Czech Banking Association,⁷⁸ Code of Ethics of the Chamber of Tax Advisors,⁷⁹ Code of Ethics of the Chamber of Auditors,⁸⁰ etc.). Multinational corporations often have their own

⁷² Interview with Vratislav Kulhánek.

⁷³ Interview with Vratislav Kulhánek.

⁷⁴ ČNB, *Zpráva o výkonu dohledu nad finančním trhem*;

http://www.cnb.cz/cs/dohled_financni_trh/souhrnne_informace_fin_trhy/zpravy_o_vykonu_dohledu/index.html

⁷⁵ The government has been repeatedly submitting draft law on criminal liability of legal entities, most recently in March 2011, see [sněmovní tisk č. 285](#).

⁷⁶ P. Šámal a kol., *Trestní zákoník. Komentář*, § 334.

⁷⁷ Transparency International Česká republika: *Whistleblowing a ochrana oznamovatelů v České republice*.

⁷⁸ <http://www.czech-ba.cz/projekty/ochrana-spotrebitele/eticky-kodex-financniho-trhu>.

⁷⁹ <http://www.kdpcr.cz/default.asp?nDepartmentID=117&nLanguageID=1>.

⁸⁰ Links to codes of ethics of various professional associations are listed on <http://www.csr-online.cz/Page.aspx?kodex>.



codes of conduct⁸¹ and some bigger companies also have compliance departments or compliance officers.

Integrity mechanisms (practice)

Score: 1 2 3 4 5

To what extent is the integrity of those working in the business sector ensured in practice?

Despite the fact that many companies have their own codes of ethics, the overall emphasis on integrity of businesses and employees remains rather marginal and corruption and unethical practices are quite common in the Czech Republic and its business sector. In the WEF index, the Czech Republic scored low and ranked 90th in the category “Ethical behaviour of firms”. Many companies have only pro forma codes of ethics.⁸² According to one survey, 80% of respondents (employees) have not received any anti-corruption training and only one third of respondents find their company’s anti-corruption policy or guideline comprehensible.⁸³

Problems with integrity can be seen for example in the companies’ procurement departments whose employees often get involved in illegal practices and make personal profit at the expense of their employer.⁸⁴ Corruption is widespread in healthcare sector⁸⁵ but the most troublesome – from the perspective of business sector’s integrity – is the situation in public procurement. In many cases it is impossible to win a contract without paying a bribe. This applies especially to construction industry.⁸⁶ A survey carried out by CEEC Research revealed that 28% of construction companies were asked to pay a bribe. Among the managers of construction companies, 86% believe that it is possible to win a construction contract in private sector without bribing but only 59% believes the same is true in public procurement. One out of every three companies is convinced that it is necessary to bribe to get a public contract. The survey also revealed that construction companies consider tender procedures in private sector to be more transparent than tendering for contracts financed by public funds.⁸⁷

According to a survey carried out by Ernst&Young, more than half of Czech managers feel that unethical behaviour can be justified to win a new contract, one third of respondents would be prepared to consider an offer of cash payment to win business and mere 30% said that there was no significant case of fraud or corruption in their company in the last 2 years.⁸⁸ Results of PWC survey revealed that 24% of companies experienced economic crime in 2008. Bearing in mind that most fraud cases are detected rather by chance than through established

⁸¹ For example, the ČSOB has relatively comprehensive code of ethics (http://www.csob.cz/WebCsob/Csob/O-CSOB/CSR/CSOB_CSR_eticky_kodex.pdf). Its code, which complies with the code of the bank’s parent company KBC, is binding for all employees and it covers internal operation of the company as well as its relationship to clients and to the society in general. The Code stipulates that violation of its provisions may result in imposing of sanctions in compliance with labour-law regulation. Somewhat briefer summary of ethical standards is available on the website of another bank, Komerční banka (<http://www.kb.cz/file/cs/o-bance/o-nas/eticky-kodex-kb/kb-strucny-prehled-eticky-pravidel.pdf>).

⁸² Interview with Vratislav Kulhánek.

⁸³ Ernst&Young: *Evropské společnosti podceňují zvýšené riziko související s podvody a korupcí*. http://www.ey.com/CZ/cs/Newsroom/News-releases/2011_Europeanfraudsurvey_CZ

⁸⁴ Interview with Vratislav Kulhánek.

⁸⁵ Interview with Luboš Drobík. Compare also <http://domaci.eurozpravy.cz/politika/29658-transparency-international-zakony-korupci-ve-zdravotnictvi-nevymyti/>.

⁸⁶ Interview with Luboš Drobík.

⁸⁷ CEEC Research, *Kvalitativní studie českého stavebnictví 2011*; <http://www.ceeconstruction.eu/download.php?show=2011>.

⁸⁸ http://www.ey.com/CZ/cs/Newsroom/News-releases/2011_Europeanfraudsurvey_CZ



control mechanisms, the real number will probably be even higher. 30% of all cases concerned corruption and bribery.⁸⁹

Anti-corruption policy engagement

Score: 1 2 3 4 5

To what extent is the business sector active in engaging the domestic government on anti-corruption?

There is a growing interest of business sector in the government's anti-corruption activities. Nevertheless, rather than continuing pressure to introduce systemic change we can witness isolated cases of individual entrepreneurs actively engaging in the fight against corruption. Both the Confederation of Industry of the Czech Republic and the Chamber of Commerce often draw attention to the need to curb corruption. For example, the Confederation mentions corruption in its document Agenda 2010 and highlights its negative effect on economic growth, although the issue of corruption is not seen as a priority, being just one of ten strategic objectives listed in the document.⁹⁰

Notable among recent efforts to actively influence the government's anti-corruption policy is the project Platform for transparent public tenders, which brings together business associations, political parties, public sector institutions and non-governmental organisations. The Platform was established in 2010 on the initiative of the American Chamber of Commerce in the Czech Republic. Among its first steps was a preparation of 39 principles aiming to increase transparency and efficiency in public procurement, which formed the Platform's proposal of amendments to the Act on Public Procurement.⁹¹ Closely cooperating with the Platform is the Alliance for transparent business, a sort of integrity pact under which companies voluntarily commit to certain standards. Currently, the Alliance has 30 member companies⁹² (for comparison purposes, 5 Czech companies have subscribed to the UN Global Compact)⁹³.

Recently, Czech financier Karel Janeček has become actively involved in the anti-corruption efforts. Janeček established the Anti-Corruption Endowment Fund and among his priority topics are better protection of whistleblowers and adoption of an analogy to the US False Claims Act.⁹⁴ As was said in *Public Sector* chapter, representatives of the business sector (alongside with the NGOs representatives) complain that it is extremely frustrating to participate in endless discussions and negotiations with public authorities trying to help promote necessary changes in the law while its final wording is decided elsewhere. This is probably the reason why such efforts remain sporadic.

According to Luboš Drobík who strives to encourage the members of Prague Business Club to engage in anti-corruption initiatives, most entrepreneurs do not consider the fight against corruption as their priority and do not try to help solve the problem as their first and foremost interest is the development of their own businesses.⁹⁵ This view is shared by Vratislav

⁸⁹ PriceWaterhouseCoopers, *Celosvětový průzkum hospodářské kriminality 2009*; <http://www.pwc.com/cz/cs/hospodarska-kriminalita/hlavni-zjisteni.jhtml>.

⁹⁰ Svaz průmyslu a dopravy ČR: *Agenda 2010*; http://www.spcr.cz/files/Agenda_2010.pdf.

⁹¹ <http://www.transparentnizakazky.cz/>

⁹² <http://www.transparentnizakazky.cz/koalice/o-koalici>

⁹³ <http://www.unglobalcompact.org/index.html>

⁹⁴ <http://www.nfpk.cz/>; <http://www.ceskapozice.cz/video/konference/svleknete-se-aneb-milos-zeman-radi-jak-na-korupci>.

⁹⁵ Interview with Luboš Drobík.



Kulháněk who says that most businessmen do not actively seek to change the system, taking pragmatic approach and having learned to live with corruption – either participating in it or operating in industries where they do not have to get engaged in corrupt practices.⁹⁶ However, both respondents agree that businessmen are generally not happy with current situation.

Support for/engagement with civil society

Score: 1 2 3 4 5

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

Support of business community to anti-corruption activities is very limited and often only symbolic. According to an analysis prepared for the Open Society Fund in Prague,⁹⁷ private financial support to watchdog organisations was practically non-existent in 2007 and there are no signs indicating that the situation has significantly improved since then.⁹⁸ If the business sector decides to engage with initiatives to combat corruption, their support is usually provided in the form of services.⁹⁹ An example of a business providing direct financial support to civil society organisations' projects is Siemens, whose reputation has suffered in the recent global bribery scandal that involved its top management. Another example is the above-mentioned Anti-Corruption Endowment Fund established by Karel Janeček, Stanislav Bernard and other leading figures in business and other sectors.¹⁰⁰ It is also worth mentioning anti-corruption initiative "Chceme změnu" (Call for change) of Prague Business Club members¹⁰¹, whose first activity is to be a joint project with civil society organisations focused on evaluation of corruption resistance of selected regional and municipal authorities.¹⁰² Some entrepreneurs also engage in their own projects or particular cases.¹⁰³

⁹⁶ Interview with Vratislav Kulháněk.

⁹⁷ Bouchal, P.: *Spokojený Watchdog (bez náhubku)*. OSF Praha, Praha, 2009.

⁹⁸ Little interest of the business sector to engage in anti-corruption efforts was mentioned also by the organisers of Zlatá koruna conference on corruption, who were unable to find enough companies willing to sponsor the event. (participation of the author on the conference held on 14 June 2011).

⁹⁹ For example, the Czech chapter of Transparency International thus obtains free-of-charge legal consultations from the lawyers of Ambruz & Dark, and free access to media monitoring provided by Newton Media. See <http://www.transparency.cz/podporuji/>.

¹⁰⁰ <http://www.kareljanecek.com/nf-proti-korupci>.

¹⁰¹ <http://www.chcemezmenu.cz/>.

¹⁰² http://zpravy.idnes.cz/podnikatele-daji-michalkovi-milion-na-protikorupcni-mesto-roku-pwu-domaci.aspx?c=A110308_213558_domaci_hv.

¹⁰³ <http://www.kareljanecek.com/nf-proti-korupci>



LAWS AND REGULATIONS

AudZ: zákon 93/2009 Sb., o auditorech a změně některých zákonů.

AutZ: zákon č. 121/2000 Sb., o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů.

Daňový řád: zákon č. 280/2004 Sb., daňový řád.

InsvZ: zákon č. 182/2006 Sb., o úpadku a způsobech jeho řešení.

KapTrhZ: zákon č. 256/2004 Sb., o podnikání na kapitálovém trhu.

Listina: listina základních práv a svobod

ObchZ: zákon č. 513/1991 Sb., obchodní zákoník.

OSŘ: Občanský soudní řád.

TZ: zákon č. 40/2009 Sb., trestní zákoník.

ÚčetZ: zákon č. 563/1991 Sb., o účetnictví.

VyvlZ: zákon č. 184/2006 Sb., o odnětí nebo omezení vlastnického práva k pozemku nebo ke stavbě.

ŽivZ: zákon č. 455/1991 Sb., o živnostenském podnikání.

