

# Corruption and Anti-corruption Policy in the Czech Republic

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# Corruption and Anti-corruption Policy in the Czech Republic

## EXECUTIVE SUMMARY

Available indicators of corruption, ranging from opinion surveys and expert indices to estimates by organs of criminal investigation, suggest that corruption is a serious problem in the Czech Republic, and, more worryingly, that it may be increasing. From the evidence collected for this report, the areas that appear to be seriously affected by corruption are the State administration, the legislative process, judicial system and public procurement. Political party finance appears to have receded as a corruption hot spot since the scandals of the late 1990's. Although the Czech Republic is not ranked as a country seriously affected by "State capture," corruption of the legislative process appears to be an increasingly serious problem, encouraged by uncontrolled lobbying, MPs' immunity and inadequate conflict of interest regulations. The dynamics of corruption have been shaped in very important ways by the nature of Czech privatisation and its consequences.

Since 1998, the Government has placed anti-corruption policy high on its agenda, and has formulated a comprehensive national anti-corruption strategy. A number of the tasks in the strategy have been fulfilled, in particular, changes in criminal law and procedure, increased specialisation of anti-corruption enforcement bodies and changes to political party funding regulation. However, a number of the more important measures have not been fulfilled, such as changes to provisions on conflict of interest or parliamentary immunity, and the strategy has suffered from a lack of publicity. Moreover, the Government increasingly sets a bad example itself, particularly in public procurement. Until the June 2002 elections, the balance of political power favoured an unspoken agreement between the two main political parties to maintain silence on suspected corruption in each other's ranks, and there has been a lack of political consensus to create effective anti-corruption policy.

The EU accession process has been of major importance in influencing Czech anti-corruption policy since 1997. The Commission has identified corruption as one of the country's main institutional problems, and has consistently urged improvements in anti-corruption policy. These factors have contributed both to the creation of sufficient will to produce a national anti-corruption strategy and to reforms of institutions

investigating and prosecuting corruption, for which the Commission has provided significant direct assistance.

Czech bribery legislation is largely compliant with the requirements of international conventions, with the exception of the Council of Europe Civil Law Convention on Corruption. Amendments in preparation as of June 2002 were expected to include criminalisation of bribery in the private sector. A general Act on Conflict of Interest and Asset and Income Declarations exists, but applies only to a narrow range of functionaries, contains no sanctions for violation and is often not observed. The framework for State financial control and audit remains inadequate, with legislation to establish an integrated system only passed in July 2001. However, the Supreme Audit Office has played an important role in uncovering malpractice, while its findings have been implemented with increasing efficiency. The main anti-corruption agency in place is the Department for Revealing Corruption and Serious Economic Criminality, which has played an important role in a number of investigations, although its degree of independence is a possible source of concern. Specialised police, prosecution and court departments have been created and appear to have improved the quality of investigation significantly. The Office of the Ombudsman was established in 2000, but has not dealt with any corruption cases.

There is very little direct evidence of corruption in the Czech public administration, and there are almost no convictions or employees of the State administration for bribery. There have been a number of scandals concerning ministers, but almost no criminal cases and no convictions. To date, the legal framework for public administration has been largely inadequate, failing to regulate conflict of interest or discourage patronage and nepotism. However, a new Civil Service Act will improve the legal framework significantly in both these areas. Procedures for appealing against administrative decisions do not appear to provide citizens with effective redress. A Code of Ethics came into effect in 2001, but is vague and largely repeats provisions already stated elsewhere.

Until recently, a number of significant categories of public expenditure were excluded from the State budget, although recent reforms have ended this situation. Parliament has not functioned as an effective anti-corruption mechanism, and is itself highly vulnerable to corruption, especially through unregulated lobbying. Immunity provisions effectively protect deputies from prosecution for corruption, and Parliament recently rejected proposed reforms in this area.

The Czech judiciary has undergone major reforms since 1999, including new Acts on Courts and Judges and far-reaching changes in court and criminal procedures. There is very little direct evidence of corruption of judges; however, there is a widespread belief that corruption is a serious problem in commercial proceedings and in business registration.

Corruption in political party financing has been one of the most prominent issues in Czech politics, with a number of important scandals in the late 1990's – one of which was the immediate reason for the collapse of the Klaus Government in 1997. Since then, funding rules have been changed to provide parties with sufficient State funding, and evidence of covert funding or corruption is now minimal.

Corruption of public procurement appears to be a serious problem. Despite relatively advanced legislation, supervision and monitoring of procurement is ineffective. Moreover, the Government has increasingly set a bad example, allocating a number of major contracts without tenders.

There are significant problems of corruption in a number of Czech public services, in particular the healthcare system. Anti-corruption mechanisms in the police and customs administration have improved considerably in recent years.

Freedom of speech is guaranteed, although there are isolated cases of the State using other legal provisions to attempt to deter journalists, including a major scandal that broke in July 2002. A Freedom of Information Act came into effect in 2000, although its impact on access to information in practice may have been limited. Broadcasting regulation has suffered from problems of political interference in the activities of public media, which led to the adoption of an improved legal framework in 2001. Licensing policy for private broadcasters has been subject to major problems, and the activities of the Broadcasting Council have resulted in a foreign investor winning an arbitration case against the Czech State. The Czech media has been very active in uncovering corruption, and initiated the downfall of the Government in 1997.

## 1 INTRODUCTION

### 1.1 The data and perceptions

According to available indicators of corruption, ranging from opinion surveys and expert indices to estimates by organs of criminal investigation, corruption is a serious problem in the Czech Republic. Perhaps more worrying, the same indicators suggest that, if anything, corruption may be increasing.

Table 1 below shows the number of convictions under the main anti-corruption paragraphs between 1993 and 2000.

**Table 1: Numbers of convictions under selected paragraphs of the Criminal Code, 1993–2000**

<i>Paragraph</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
160: Accepting a bribe	6	18	23	24	34	20	19	49	28
161: Bribery	47	68	88	111	98	88	88	68	83
162: Indirect bribery	0	3	1	2	1	1	3	1	3
158: Abuse of power by a public official	18	86	78	79	69	100	85	100	99

**Source:** Ministry of Justice of the Czech Republic.

While the number of prosecutions remains stable, the Service for Revealing Corruption and Serious Economic Criminality (a special police unit, see Section 2.5), believes that the incidence of corruption has been growing, both in quantitative terms and, even more worryingly, in terms of the seriousness of cases, especially with regard to corruption among public officials.<sup>1</sup>

#### *International survey evidence*

The Czech Republic's performance in the Transparency International Corruption Perception Index has worsened in recent years, with scores of 4.8 in 1998 (37<sup>th</sup> place), 4.6 in 1999 (39<sup>th</sup> place), 4.3 in 2000 (42<sup>nd</sup> place out of 90 countries) and 3.9 in 2001 (47<sup>th</sup> place) out of 91 countries.

The EBRD/World Bank *1999 Business Environment and Enterprise Performance Survey* found that Czech companies report paying on average around 2.5 percent of annual

<sup>1</sup> Czech Ministry of Interior, *Zpráva o korupci v ČR a o plnění harmonogramu opatření Vládního programu boje proti korupci* [Report on Corruption in the CR and on the Following of the Schedule of the Government's Programme of Fight against Corruption], Ministry of Interior, January 2001, p. 5. (approved by Czech Government Resolution no. 144, 14 February 2001).

revenue on administrative corruption (bribes to influence the implementation of existing rules), compared to 1.6–1.7 percent in Poland and Hungary.

The same survey found that 11 percent of Czech firms reported they are affected by “State capture,” the illicit influencing of formation of laws, regulations, decrees and other policies. The figures for Poland and Hungary were about 12 percent and six percent respectively.

### *Domestic surveys*

The Institute for Public Opinion Research has consistently found that corruption and economic criminality is regarded as a very urgent problem by a higher percentage of respondents (80 percent in October 2000) than any other problem, although according to a survey carried out by GfK-Praha<sup>2</sup> in 1999, only one-fifth of respondents would report an act of corruption to the police. According to the same survey, 26 percent of respondents regarded corruption as a “necessary part of life.” Both this and other surveys<sup>3</sup> have found that around 20 percent of citizens admit to giving bribes occasionally, although four-fifths of this group reported giving only small gratuities. One quarter of respondents said State officials had requested a bribe from them in the past three years.

According to the most recent public opinion research, carried out by SC&C in April 2002, 49 percent of respondents believed that corruption had increased in the previous four years.<sup>4</sup>

## 1.2 Main loci of corruption

The areas most affected by corruption appear to be the State administration, legislative process, judicial system and public procurement. Political party finance was the subject of major scandals in the second half of the 1990’s, and since appears to have receded as a corruption hot spot with the reform of funding rules. Corruption of the legislative process appears to be an increasingly serious problem, encouraged by uncontrolled lobbying, MPs’ immunity and inadequate conflict of interest regulations.

The main dynamics of corruption, (particularly the way in which corruption has impacted the political sphere), have been strongly conditioned by the nature of

<sup>2</sup> GfK-Praha, *Korup ní klima v České republice v roce 1999* [Corruption Climate in the Czech Republic in 1999], Transparency International Czech Republic, September 1999.

<sup>3</sup> E.g., Sofres-Factum, *Názory české veřejnosti na korupci* [Opinion of the Czech Public on Corruption], September 1998.

<sup>4</sup> *Lidové noviny* daily, 25 April 2002.



economic transformation. In particular, the process of privatisation through vouchers and/or sales to Czech entities without sufficient capital created an economy dominated by investment funds and a State-controlled banking system that provided loans on non-market criteria. The result in both cases was widespread asset stripping, both of funds and privatised companies, with the tacit or active acquiescence of State officials. In this whole process corruption was prevalent – during privatisation decisions, the allocation of bank loans and, probably, the creation of legislation to regulate investment funds.<sup>5</sup>

The consequence of this situation for the Government that came to power in 1998 was the need to renationalise a number of large companies, together with a costly process of cleaning up the banking sector. The institutions in charge of administering bad assets and restructuring and selling companies – in particular the Czech Consolidation Agency – also constitute a new locus of corruption, in which the Agency has sold a number of debts without publishing the list of debts, for a tiny percentage of nominal value, and to a consultancy firm that then profited by selling the debts for a higher price (but still a fraction of nominal value) effectively to the original debtors themselves. In this way the original debtors can get rid of their own debt, while the State loses to the extent that it sells debt for a lower than market price.<sup>6</sup> In addition, the bankruptcy process that has occurred in a number of companies as a result of the restructuring process has evidently been prone to corruption.

GfK also carried out a general survey of perceptions of corruption among Czech citizens in 1999 and 2000 (mentioned above), which also asked citizens in which area they believed corruption to be most widespread. The results are shown in Table 2 below, and show that public administration, the police, courts, and healthcare are regarded as most affected by corruption.

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<sup>5</sup> See, e.g., Q. Reed, “Corruption in Czech Privatisation: Dangers and Policy Implications of ‘Neoliberal’ Privatisation,” paper to Princeton University-Central European University Joint Conference on Corruption, 30 October–6 November 1999.

<sup>6</sup> T. Spurný, “Loupež století u konce,” [The Robbery of the Century Has Ended] *Respekt*, weekly, 3 June 2002.

**Table 2: Percentage of respondents believing corruption to be “most widespread” in selected areas, 1998–1999**

<i>Area</i>	<i>1998</i>	<i>1999</i>
Public administration	31	23
Police	9	24
Judiciary	15	16
Healthcare	15	12
Services	9	4
Army	0	4
Education	2	2
Hotel and restaurant trade	2	1
Don't know	15	16

**Source:** GfK-Praha.

A survey by the Centre for Public Opinion Research carried out in April 2001 found that respondents ranked political parties as the most corrupt institutions in the Czech Republic (with an average score of 4.02 on a scale where five is most corrupt), followed by central State administration (3.7), banks (3.7) and the police (3.6). According to the newest survey by SC&C mentioned earlier, 47 percent of respondents believed corruption is most widespread in the State administration, followed by the police (14 percent), healthcare (nine percent), national politics (four percent) and local politics (three percent).<sup>7</sup>

The evidence and testimony collected for this report tends to confirm the worrying perceptions of corruption in the judiciary, particularly at the commercial courts. In addition, other areas seriously affected by corruption are public contracts and the legislative process in Parliament. Party finance appears to have ceased to be a hot spot of corruption as a result of changes in regulations that have made State subsidies the main source of funds.

### 1.3 Government anti-corruption policy

Anti-corruption policy has become, at least formally, one of the main priorities of Government policy since 1998. Since then, the Government formulated a comprehensive national anti-corruption strategy, a number of components of which have been fulfilled, for example changes in criminal law and procedure, increased

<sup>7</sup> *Lidové noviny*, daily, 25 April 2002.

specialisation of anti-corruption enforcement bodies, and changes to political party funding regulation. However, a number of the more important measures have not been fulfilled, such as changes to provisions on conflict of interest or parliamentary immunity, and the strategy has suffered from a lack of publicity. Moreover, the Government increasingly sets a bad example itself, particularly in public procurement. Until the June 2002 elections, the balance of political power favoured an unspoken agreement between the two main political parties to maintain silence on suspected corruption in each other's ranks, and there has been a lack of political consensus to create effective anti-corruption policy.

The first move towards active anti-corruption policy was a Government decision in October 1997 to develop a strategy of "offensive methods" for fighting corruption in the civil service.<sup>8</sup> This initiative provided the basis for what subsequently grew into the National Fight Against Corruption (see below).

### *"Clean Hands"*

The Social Democratic Party won the 1998 elections on a promise to implement a "Clean Hands" anti-corruption campaign. The new Government established an inter-ministerial Committee for the Protection of the Economic Interests of the Czech Republic in September 1998 to coordinate anti-corruption policy, supported by a Coordinative and Analytical Commission headed by a special Minister without Portfolio. The Commission was informed directly by the inspection bodies of individual ministries, re-examined old investigation files, and also took initiatives from the public.

Although the official objective of the campaign was to "create an environment acceptable for both foreign and domestic investors and recover the credibility of the State in the eyes of its own citizens,"<sup>9</sup> it suffered from suspicions that it was vulnerable to politically motivated decisions, and ended in May 2000. Until then it submitted 107 initiatives for investigation to bureaus of investigation. At the end of 2000, 48 cases were being investigated, with specific bribery charges filed in 17 cases.<sup>10</sup>

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<sup>8</sup> Czech Government Resolution no. 673, 29 October 1997.

<sup>9</sup> *Analysis of Activities Conducted by the Committee for the Protection of the Czech Republic's Economic Interests and Its Coordination and Analytical Group*, Report of Minister without Portfolio Jaroslav Bašta, approved by the Government on 15 March 2000.

<sup>10</sup> Czech Ministry of Interior, *Zpráva o korupci v ČR*, p. 7.

*The Government Programme for the Fight against Corruption*

In February 1999, the Czech Government took a key step in anti-corruption policy by approving the Government Programme for the Fight against Corruption,<sup>11</sup> a more-or-less comprehensive strategy embracing not only measures to make prosecution more effective, but also a wider set of measures to prevent corruption and raise public awareness. However, the Government made almost no effort to publicise the Programme. The contents of the Programme are summarised in Table 3.

**Table 3: Selected measures in the Government Programme for the Fight against Corruption**

<i>Type of measure</i>	<i>Description</i>	<i>Deadline for implementation</i>	<i>Implementation as of January 2001</i>
A. Legislative measures	1. Define police powers to combat corruption, provide institutional support for police.	30.6.1999	No
	2. Define independence of tax authorities, improve power to check accuracy of tax statements, authorise inspectors to acquire a statement on origin of income, introduce clear duty to notify and cooperate with police of suspected criminal acts, increase remuneration for "vulnerable" officials.	30.6.2000	No
	3. Allow legal entities acting in the interests of competitors and consumers to file suit against corrupt and unfair competition, allow prosecution of corruption and unfair competition that has an impact abroad.	31.12.1999	Partially
	4. Arrange accession to the OECD anti-bribery Convention.	31.12.1999	Partially
	5. Define failure to notify and act to prevent corruption as criminal acts, lengthen statute of limitations for bribery, and consider defining bribery in unfair competition as a criminal act.	31.12.1999	No/partially
	6. Reform criminal code to speed up and simplify pre-court proceedings, consider introduction of offensive anti-corruption methods (e.g. agent provocateur).	31.12.1999	No/partially
	7. Propose law on protection of witnesses and court experts.	31.12.1999	Partially
	8. Support an Act on Freedom of Information.	31.12.1999	Yes
	9. Reform law to make political party financing more transparent: increase sanctions for	31.12.1999	Yes

<sup>11</sup> *Vládní program boje proti korupci*, Czech Government Resolution no. 125, 17 February 1999.

	<p>violation of law, restrict contributions by foreign subjects, State maximum annual membership contribution.</p> <p>10. Support amendment to Czech Constitution to restrict immunity of MPs and Senators.</p> <p>11. Amend conflict of interest law to widen circle of persons regulated, provide for checking of asset declarations, and introduce real sanctions for violation of law.</p> <p>12. Consider widening powers of State prosecutors to supervise civil court and administrative proceedings, ensure that specialised teams of prosecutors at regional level have responsibility for supervising investigation of serious economic criminality and corruption and if necessary carrying out such investigations themselves.</p> <p>13. Reform of administrative proceedings and administrative disciplinary proceedings in such a way as to maximise transparency, State deadlines where possible, consider allowing faster proceedings for higher payments, prepare a register of disciplinary proceedings.</p> <p>14. Amend Act on State Audit to define State control system, its elements and responsibilities, define central institution responsible for unified audit system, increase sanctions for not acting on the basis of audit conclusions.</p>	<p>31.12.1999</p> <p>30.9.2000</p> <p>30.6.1999</p> <p>31.12.1999</p> <p>28.2.2000</p>	<p>No</p> <p>No</p> <p>No (except special teams)/partially</p> <p>No/partially</p> <p>Yes/partially</p>
B. Organisational measures	<p>1. Individual ministries to indicate sources and forms of corruption in their arena of responsibility, analyse and propose anti-corruption mechanisms. Provide conditions for citizens to be informed about rights and duties in dealing with the administration. Propose, implement and assess technical anti-corruption measures.</p> <p>2. Draft agreements between the police and auditing and control (especially tax) institutions to improve co-operation.</p> <p>3. Provide a report on every revealed or publicly presented case of corruption after completion of criminal proceedings.</p> <p>4. Establish a contact and consultation centre for victims of corruption.</p> <p>5. Set aside within individual State institutions an office to which the public can file complaints and initiatives, enable direct communication with employees of the office.</p>	<p>on-going/ annually</p> <p>30.9.1999</p> <p>on-going</p> <p>31.12.1999</p> <p>As soon as possible</p>	<p>Yes (?)</p> <p>Yes</p> <p>No (problematic legally)</p> <p>No</p> <p>Yes (?)</p>

	6. Carry out regular internal audits, hold directors responsible for violation of regulations.	on-going, control annually	Yes (?)
	7. Support all forms of corruption research.	on-going	Partially (police)
	8. Support activities of NGOs that are active in the fight against corruption; agree forms, methods and scope of co-operation.	on-going, control annually 30.6	Yes
	9. Audited institutions to inform the Government within 60 days of publication of Supreme Audit Office audit reports on corrective measures taken, corrective measures to be assessed within 6 months.	on-going	Yes
C. Other	Prepare a national training project on corruption prevention for civil servants.	30.6.1999	Partially (?)
	Support anti-corruption education in schools, produce civilian anti-corruption handbook.	30.6.1999	Yes (?)

**Notes:** Entries in the column on implementation are based on the *Report on Corruption and Fulfilment of Measures in the Government Programme for the Fight against Corruption*, issued in January 2001. Fulfilment of legislative measures is judged not only according to whether a proposal was submitted but whether it also became law. “No” indicates that a proposal either had not been submitted or had been rejected by Parliament; “Partially” indicates that a proposal was going through the legislative process at the time of evaluation. Question marks indicate either that not enough information is provided by the Report to evaluate whether a measure had been fulfilled, or that there are reasons for doubting fulfilment.

Up to early 2002, the Programme had only been fulfilled partially. Despite early setbacks, the Government succeeded in pushing through the planned laws for its justice reform programme, including fundamental changes to criminal procedure that were included in the anti-corruption strategy (see Section 5.1) and changes to political party funding regulation (see Section 6.1). However, a number of very important commitments, such as changes to parliamentary immunities and conflict of interest regulations, had been rejected.

More importantly, the Programme has suffered from a lack of cross-party consensus on anti-corruption policy and the failure of the Government to illustrate a commitment to integrity. Several ministers have been the subject of scandals, and the resignation in early 2001 of the Minister of Finance – who had been a force for transparency in the Government – was a warning sign. In addition, the Government’s increasing use of its power to allocate major contracts without public tenders (see Section 7.2) indicates scant respect for principles of transparency. The January 2001 assessment approved by the Government stated explicitly that,

One of the main reasons why anti-corruption policy appears unsuccessful is that the implementation of the programme by the State administration has not been accompanied by adequate changes in the political environment... whose leaders have not created a minimal common anti-corruption programme of an

integrating nature. The formulation of such a programme should form the basis of anti-corruption activities... in the immediate future, for the success of the fight against corruption is threatened in the absence of clearly declared political support.<sup>12</sup>

Further, in order to stay in office, the minority Social Democratic (ČSSD) Government relied on an “Opposition Agreement” with the main opposition party, the Civic Democratic Party (ODS) of former Prime Minister Václav Klaus. Under the Agreement, the ODS agreed not to initiate or participate in a vote of no confidence, in return for parliamentary positions and policy influence. An important consequence of the agreement was the near silence of the two parties on corruption in each other’s ranks. According to an opinion survey carried out by GfK in 1999, 62 percent of respondents believed that the Government did not have a real interest in fighting corruption.

Although a February 2001 Government Resolution charged the ministers of Interior and Justice with initiating a public discussion with representatives of political parties and civil society in order to formulate a minimal common anti-corruption programme, there is no evidence that the resolution was implemented and the Government made no effort to publicise it.<sup>13</sup> The only specific result of the new move was the establishment in March 2001 of a Senate Subcommittee for Corruption, which has been almost entirely inactive.

After the June 2002 elections, a more standard coalition Government has emerged, one of whose main programme components is the fight against corruption. As of July 2002, the details of this had not yet been published.

## 1.4 The impact of the EU Accession Process

The EU accession process has had a very important influence on Czech anti-corruption policy. In 1997, the Commission identified corruption as one of the country’s main institutional problems, and has consistently urged improvements in anti-corruption policy. This gave added momentum to the effort to formulate a national anti-corruption strategy. The Commission has provided significant direct assistance for reforms of institutions investigating and prosecuting corruption.

One of the most important motors of anti-corruption policy in the Czech Republic since 1997 has been pressure from the European Union. In its *1997 Opinion on the*

<sup>12</sup> Czech Ministry of Interior, *Zpráva o korupci v ČR*, p. 43.

<sup>13</sup> Information about the proposed Anti-corruption Agreement was only discovered in the course of conducting research for this report.

*Czech Application for Membership*, the Commission listed the impact of institutional corruption as one of three “main institutional problems,”<sup>14</sup> and noted that corruption may be increasing.<sup>15</sup> The *1998 Regular Report* criticised the Government for not mentioning corruption in its National Programme for the Adoption of the *Acquis*,<sup>16</sup> and the *1999 Regular Report*, while acknowledging that fighting corruption was a priority of the Government, noted that, “An effective policy has not yet been developed,”<sup>17</sup> and concluded that although the Czech Republic fulfils the Copenhagen political criteria, further efforts should be made in three main areas, one of which was an effective policy to combat economic crime and corruption.<sup>18</sup>

The *2000 Regular Report* judged that “little progress can be reported” in the fight against fraud and corruption,<sup>19</sup> and that Czech law is not yet aligned with the *acquis* on criminalisation of corruption in the private sector. Under its global assessment of progress in Justice and Home Affairs the Commission concludes that, “[T]wo years after the launch of the ‘Clean Hands’ campaign the results obtained in the fight against organised crime, corruption and economic crime remain inadequate. Greater enforcement capacity is required and there is still a lack of qualified staff and inter-institutional cooperation in the area... insufficient progress has been made in addressing this priority.”<sup>20</sup>

The *1999 Accession Partnership* between the EU and Czech Republic includes a number of policies of direct or indirect relevance to corruption that are listed as short-term priorities (for completion or substantial implementation by the end of 2000): implementation of policy on organised crime and corruption and ratification of the OECD Bribery Convention and the Council of Europe Criminal Law Convention; strengthening capacities to deal with money laundering, adoption and implementation of a programme for reform of the State administration, completion and implementation of the legislative framework for internal and external financial control; and beginning implementation of a programme to reform the judiciary.

Although it noted “some important steps,” the *2001 Regular Report* remained of the opinion that,

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<sup>14</sup> Commission of the European Union, *Agenda 2000 – Commission Opinion on the Czech Republic’s Application for Membership of the European Union*, DOC/97/17, July 1997, p. 96.

<sup>15</sup> Commission, *Agenda 2000*, p. 108.

<sup>16</sup> Commission, *1998 Regular Report from the Commission on the Czech Republic’s Progress towards Accession*, p. 45.

<sup>17</sup> Commission, *1999 Regular Report*, p. 13.

<sup>18</sup> Commission, *1999 Regular Report*, p. 76.

<sup>19</sup> Commission, *2000 Regular Report*, p. 88.

<sup>20</sup> Commission, *2000 Regular Report*, p. 106.



[C]orruption and economic crime (fraud, money laundering, institutional theft and the phenomenon of “tunnelling” or asset stripping) remain a serious cause for concern... surveys of public opinion show a consistent increase in the perception of corruption and economic crime. Concern is greatest as regards the State administration, the police and intelligence services, healthcare, banking and the political sphere.<sup>21</sup>

In terms of anti-corruption policy, many of the measures implemented by the Czech Government have been strongly influenced by EU pressure. For example, Czech Ministry of Justice officials believe the current Government’s justice reform programme would never have emerged at all without pressure from Brussels, and that without such assistance they would never have obtained sufficient funding in these areas.<sup>22</sup> The EU has provided crucial assistance for judicial reform, including the following PHARE assistance programmes:

- 1998–1999: €1.2m to finance investment in computers for courts.
- 2000: €300,000 on a twinning project to train State prosecutors.
- 2000: €800,000 on a twinning project (with France) to gain knowledge on how to establish a Judicial Academy; €1.2m on investment in equipment for the academy.
- 2001: €6m approved to help build an information system connecting courts and prosecutors.

In 1998, experts participating in the OCTOPUS project, a common project of the European Union and Council of Europe to exchange information with transition countries on methods to fight organised crime, recommended concentrating forces in the fight against corruption and building cooperation between various investigation units.

After the Government’s “Clean Hands” policy foundered largely on lack of cooperation between different institutions (see above), this philosophy became an important motor of reform. In April 2000, an order of the Attorney-General established special teams of prosecutors at the higher prosecution offices in Prague and Olomouc to supervise investigations of serious financial criminality. Following Government resolutions passed in the summer of 2000, a special Department for the Investigation of Corruption and Serious Economic Criminality was formed with a supporting analytical team, divided between the higher and Supreme Offices of Investigation in Prague, Brno and Ostrava. The job of the investigation team is to investigate cases submitted to it by the police Department for Revealing Corruption and Serious Economic Criminality (see Section 2.5).

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<sup>21</sup> Commission, *2001 Regular Report*, p. 20.

<sup>22</sup> Interview with Josef Baxa, Deputy Minister of Justice, Prague, 25 April 2001.

According to officers at the Department and to Ministry of Interior officials,<sup>23</sup> cooperation with ÚOK, the Ministry of Finance Financial Analytical Unit, the Attorney General's Office and the tax authorities has already yielded results. The team took over 45 cases left over from the "Clean Hands" effort (see above). Fifteen investigations had been completed by mid-May 2001, in which €410m in damages were identified. The Department was prosecuting 75 people and had recovered around €11.7m. Moreover, officials said that improved cooperation with the courts had yielded faster proceedings even in the absence of justice reform.

The Czech Republic became a member of GRECO in February 2002, and an evaluation visit was expected to be scheduled at some time in 2002.

## 2. INSTITUTIONS AND LEGISLATION

Czech bribery legislation is largely compliant with the requirements of international conventions. A general law on conflict of interest and asset and income declarations exists, but its content and implementation are both inadequate. The framework for State financial control and audit remains inadequate, although recent legislation has established the basis for an integrated system, and the findings of the Supreme Audit Office have been used with increasing efficiency. The main Czech anti-corruption agency – the Department for Revealing Corruption and Serious Economic Criminality – has played an important role in a number of investigations, although its independence from political interference is not secure. Since 1999 specialised police, prosecution and court departments have been created and appear to have improved the quality of investigation significantly. The Office of the Ombudsman was established in 2000, but has not dealt with any corruption cases.

### 2.1 Anti-corruption legislation

The Criminal Code criminalises the following acts if committed by any citizen:

- acceptance of a bribe (paragraph 160);
- active bribery (paragraph 161);

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<sup>23</sup> Interviews with Milan Šiška, Chief of the Department for the Investigation of Corruption and Serious Economic Criminality; Michal Mazel, Head of the Security Policy Department, Ministry of Interior.

- indirect bribery: requesting/accepting or offering a bribe as a reward for influencing a public official.

Bribery provisions apply to influences on any actions connected with matters that are of public interest. The above acts are punishable by two to eight years' imprisonment, and the punishments were increased in 1999. Sentences for bribery are higher for public officials than other citizens; the eight-year maximum sentence may be imposed on public officials who accept bribes with the intention of obtaining considerable benefits for themselves or another person.

Under an effective repentance provision (paragraph 163), criminal liability is cancelled if the perpetrator offers or promises a bribe only because it was demanded, and informs the police voluntarily and without delay.

Until 1999, the Criminal Code did not define the concept of a bribe, and it was often difficult to distinguish a bribe from a commission. Amendments to the Criminal Code passed in 1999<sup>24</sup> defined a bribe as “an unauthorised benefit consisting in direct material enrichment or other advantage which is obtained by the bribed person or another person with his/her agreement, and to which s/he has no right” – thereby widening the scope of bribery provisions beyond public officials alone. The same amendments also increased penalties for bribery and extended the bribery provisions to apply to foreign public officials. Although existing legislation allows prosecution of private sector bribery where this can be shown to be of clear damage to matters of general public interest, the Czech Criminal Code does not yet explicitly criminalise bribery in the private sector; however, this is expected to be included in amendments under preparation.

Other relevant paragraphs in the Criminal Code are Abuse of Information in Commercial Activity (paragraph 128),<sup>25</sup> Machinations in Public Tenders and Public Auctions (paragraphs 128a-c) (giving to one competitor or participant in a public tender or auction priority or more advantageous conditions at the expense of other competitors, with the intention of furnishing benefit to oneself or another), and in particular, Abuse of Power by a Public Official (paragraph 158). The latter paragraph is the most important apart from normal bribery provisions and is punishable by between six months and three years'

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<sup>24</sup> Act no. 69/1999.

<sup>25</sup> This paragraph prohibits the use by an individual of “hitherto non-publicly available information... gained by reason of his employment, profession, position or function, and the publication of which would considerably influence decision-making in a commercial relation, to deliberately furnish disadvantage to himself or another...,” or to use such information to instigate a contract between business entities that damages one or more of them. The penalty for violation ranges from a fine to 12 years' imprisonment.

imprisonment or a prohibition of certain activities, and by three to ten years' imprisonment if the perpetrator secures major benefit or it causes especially serious consequences.<sup>26</sup>

The Czech Republic has not yet ratified the Council of Europe Civil Law Convention on Corruption.

## 2.2 Conflict of interest and asset declaration

Both conflict of interest and the duty to declare interests and assets are regulated by the 1992 Act on Several Measures Connected with Protection of the Public Interest and Incompatibility of Functions (hereinafter Conflict of Interest Act).<sup>27</sup> The Act applies to "public functionaries:" MPs, Senators, members of the Government and heads of central administrative bodies. The law defines conflict of interest somewhat curiously as:

behaviour or neglect by a public functionary which threatens trust in his or her objectivity, or where a public functionary abuses his or her position to gain unauthorised benefit for self or another individual or legal entity.

This definition appears to confuse conflict of interest as such with its potential consequences.

The most important provisions of the Act are as follows:

- Public functionaries may not, *inter alia*, deal with the State in a commercial capacity for themselves or other entities.
- Members of the Government and heads of central administrative organs may not carry out any business activities, be members of the statutory organs of business entities (unless explicitly authorised by another law) or earn money from employment or in a service capacity apart from their official function.
- Where public functionaries participate in the proceedings of a State or constitutional organ, they must declare their relationship or the relationship of their partner or husband/wife, children, brothers and sister to the matter if the outcome of the proceedings could lead to personal benefit for any of these persons.

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<sup>26</sup> Article 89, paragraph 9, of the Criminal Code defines a public official as "[A]n elected functionary or other responsible employee of an organ of State administration and self-administration, of a court or other State organ, or a member of the Armed Forces or armed unit, as far as s/he shares in the fulfilment of the tasks of society and at the same time uses authority which was entrusted to him in the framework of responsibility for the fulfilment of these tasks. The criminal responsibility and protection of a public official require that the criminal act was committed in connection with his authority and responsibility."

<sup>27</sup> Act no. 238/1992, as amended by Acts nos. 287/1995 and 228/1997.

- MPs, Senators, ministers and heads of central administrative bodies must declare, *inter alia*, if they or their husbands/wives carry on any business activities apart from administration of their own property, if they are members of the statutory organs of any business entity or are employed in any capacity apart from their official function.

All public functionaries must submit a declaration of:

- any income and other material benefits received during the calendar year by the end of June of the following year;
- any immovable property that they or their wife/husband acquired in the previous year.

MPs submit declarations to the Chairman of the Senate and Senators and ministers to the Chairman of the Chamber of Deputies; the declaration is held by the Mandate and Immunity Committee of the respective chamber. Any citizen may examine the declarations on written request.

On the initiative of at least ten MPs or five senators, the relevant Mandate and Immunity Committee checks the authenticity of the functionary's income and asset declaration. If a three-fifths majority of the Committee so decides, the Committee issues a statement to the effect that the functionary violated his or her duty and why. The statement is read publicly by the chairman of the same chamber as the Committee.

The law contains no other sanctions for violation of the law, relying on the effects of publicity, and in practice has proved to be entirely ineffective. No requests have ever been filed to either parliamentary chamber to check the declarations submitted by public functionaries.<sup>28</sup> A summary of declarations sent to the Senate by MPs, members of the Government and heads of central administrative organs is shown in Table 4. Given that some form of declaration is compulsory for all these categories of functionary, and that the Chamber of Deputies alone has 200 MPs, compliance with even formal requirements of the law is very poor.

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<sup>28</sup> Answers from Chamber of Deputies, April 2001, and Senate, July 2001.

**Table 4: Declarations submitted to the Senate by MPs, ministers and heads of central administrative bodies, 1997–2000**

Year	Total number of declarations filed	Types of declaration			
		Negative*	Declaration of activities	Declaration of income and gifts	Declarations of assets
1997	105	28	50	32	5
1998	120	34	32	67	14
1999	120	37	36	61	20
2000	135	45	35	65	26

**Note:** “Negative” means that the functionary submitted a blank form or a letter declaring that s/he had nothing to declare

**Source:** Mandate and Immunity Committee, Senate of the Czech Republic.

That said, the media has used the law to put pressure on officials. Minister of Regional Development in the ČSSD Government Petr Lachnit came under considerable media pressure for not ceasing his business activities after joining the Government in March 2000 and subsequently took actions to comply with the law.<sup>29</sup>

A limited amendment to the Act forbidding MPs and Senators from receiving payments as members of the statutory organs of companies where the State owns a stake was passed in 2001. However, the Act’s greatest problem is the fact that it does not explicitly forbid MPs and Senators from participating in any business activities.

## 2.3 Control and audit

### *Supreme Audit Office*

Auditing of public expenditure is carried out by the Supreme Audit Office (hereinafter SAO), which was established in 1993. The President and Vice-President are proposed by the President of the Republic and confirmed by Parliament for a nine-year term, while the other 13 members are elected for life and by the opposite process. Members may only be removed by Parliament on grounds of criminal conviction, gross misconduct or following disciplinary proceedings.

Disciplinary proceedings are carried out against an individual member on the proposal of a Senator or MP by a disciplinary senate composed of the SAO President and two

<sup>29</sup> J. Kubík and S. Slonková, “Ministr Lachnit stále podniká” [Minister Lachnit is still in business], *Mladá fronta Dnes*, 29 July 2000.

Supreme Court judges. Disciplinary proceedings appear to be the only potential threat to the SAO's independence (see Section 4.5).

The SAO<sup>30</sup> is responsible for monitoring all the main State budget accounts, submitting a report on the Government's quarterly budget report and an opinion on the final budgetary statement. The SAO selects subjects to audit on the basis of proposals from the Parliament, Government or on the basis of its own previous findings. However, neither Parliament nor Government may mandate audits, and in practice the Office chooses the vast majority of its audits. According to the International Monetary Fund, the standard of auditing is high.<sup>31</sup> Reports are published in a quarterly bulletin and are also available on the Internet.

Until 1998, Governments "took note of" SAO audit findings without imposing any sanctions or measures. However, since 1998, the Government has improved follow-up on audits: it produces a resolution on the basis of every audit report, requires specific corrective measures and checks fulfilment after six months. According to SAO officials, cooperation with the Government has improved greatly. Officials would like to see the Government apply the most effective method of sanctioning violations – the withdrawal of State subsidies from the organisation in question.

In 2000, an SAO auditor was prosecuted for accepting a €100,000 bribe to alter an audit report. Court proceedings had not been completed in March 2002. The proceedings were actively supported by the SAO leadership.

### *Internal control*

A major problem for the Czech State administration remains its inadequate system of internal control. The biggest problem faced by the SAO in its audits of State bodies is the lack of effective internal control mechanisms. As the *1999 Regular Report* notes, internal control departments lack functional independence and unified instructions and methodology from the Ministry of Finance.<sup>32</sup> The passage of a legislative framework in this area was a priority of the *1999 Accession Partnership*,<sup>33</sup> and in July 2001 Parliament passed

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<sup>30</sup> The following information on the SAO audit of the State budget was obtained from Václav Peřich, Vice-President of the SAO.

<sup>31</sup> IMF, *Report on the Observance of Standards*, Chapter IV.

<sup>32</sup> Commission, *1999 Regular Report*, p. 57.

<sup>33</sup> Commission, *2000 Regular Report*, p. 97.

an Act on Financial Control in the Public Administration. The law is one of the conditions for EU entry and for the allocation of structural funds.<sup>34</sup>

## 2.4 Anti-corruption agencies

In addition to the specialised anti-corruption bodies mentioned in Section 1.4, the following units deal directly or indirectly with corruption.

### *The Department for Revealing Corruption and Serious Economic Criminality (ÚOK)*

This Department was established in 1991 (its name has changed twice), and is responsible for carrying out preliminary investigation and surveillance activities to furnish other investigation bodies with information. It employs about 130 people in the whole of the Czech Republic and has the same powers as the criminal police. Although ÚOK played an important role in the conviction of the head of the Centre for Voucher Privatisation in 1994, it has historically suffered from inter-agency rivalry. Moreover, its independence came into question when Prime Minister Miloš Zeman publicly attacked the unit at the same time as it was allegedly examining the ruling ČSSD party's financing activities. The Department may not possess sufficient autonomy to pursue corruption cases involving high-level politicians.

In addition, according to press reports the police established a special department ("Department 15") in 2001 with the task of investigating possible crimes committed by influential Czech public personalities. The Department investigates possible illegal conduct by cabinet members, parliamentary deputies, judges and members of the Czech National Bank board.<sup>35</sup>

### *The Financial Analytical Unit*

In 1996, an Act on Several Measures against the Legalisation of Proceeds from Criminal Activity<sup>36</sup> was passed, and in July 1996, a Financial Analytical Unit was formed at the Ministry of Finance to monitor suspicious transactions on the basis of

<sup>34</sup> "Sněmovna přijala zákon o finanční kontrole ve veřejné správě" [Parliament approves Act on Financial Control in the Public Administration], ČTK [Czech Press Agency], 12 July 2001. The effect of the Act in practice will depend on the necessary accompanying rules that must be issued by the Ministry of Finance, and on the effectiveness of provisions in the Act stating that employees carrying out control activities in public institutions must not be influenced by any factors other than the Act.

<sup>35</sup> "Czech police set up special department on VIP crime," RFE/RL Newline, 30 July 2002.

<sup>36</sup> Act no. 61/1996.



notification by financial institutions. The Act was amended in 1998 and 2000<sup>37</sup> to increase the Department's access to information (most notable in the May 2000 amendment, which gives tax authorities the duty to provide information to the FAU) and State more clearly the duty of institutions to report suspicious transactions. According to officials at the Unit, the Act is now fully compatible with the European Convention. In 2000, the Unit filed 104 notifications of suspected criminal activity to the police on the basis of 1910 notifications from institutions (mostly banks).

However, the *2000 Regular Report* was sharply critical of enforcement capacity and particularly the continuing existence of anonymous bank accounts.<sup>38</sup> In February 2002, the Chamber of Deputies passed an act that would phase out anonymous bank accounts, a subject of long-running disputes with the European Union.

## 2.5 Ombudsman

The Czech ombudsman was established by law in 1999,<sup>39</sup> and the first ombudsman was elected in December 2000. According to the law, the ombudsman function is to "protect people against behaviour by State institutions that violates the law, principles of a democratic legal State and good administration, and against their inactivity."

The ombudsman and deputy ombudsman are elected for a six-year period by the Chamber of Deputies from candidates proposed by the Senate and President of the Republic. The ombudsman accepts complaints from citizens concerning the following institutions:

- ministries and other national administrative organs and their subordinate organs;
- the Czech National Bank;
- the Council for Radio and Television Broadcasting;
- district offices and municipalities in the exercise of tasks of the State administration;
- the Czech Police (with the exception of investigative organs);
- the Army;
- the Prison Service;

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<sup>37</sup> Acts nos. 15/1998 and 159/2000.

<sup>38</sup> Commission, *2000 Regular Report*, p. 49.

<sup>39</sup> Act no. 349/1999.

- any institution where people are held against their will, including special institutions for young people and medical treatment;
- public health insurance companies;
- judicial organs in their exercise of functions of State administration.

Anonymous complaints are not admissible to the ombudsman.

The ombudsman may enter any institution it investigates without warning, demand documents, written answers to questions and proof in a deadline it states. Institutions must reply to the ombudsman explaining what corrective measures were taken within 30 days of the ombudsman's report. If the institution fails to do so, or the ombudsman believes the measures are insufficient, or the institution failed to provide information according to the law, the ombudsman informs the superior institution or the Government, and may inform the public.

As of March 2002, the ombudsman had 85 employees. The Office received 5,996 complaints in 2001, and dealt with 3,139 in the same year. In 32 cases, the Office found fundamental mistakes, not one of which concerned corruption; however, according to ombudsman officials, several initiatives of the Office concerning organisations falling under the competence of the Ministry of Interior have resulted in measures that make corruption more difficult.

### **3. EXECUTIVE BRANCH AND CIVIL SERVICE**

Evidence of corruption in the Czech public administration is limited, with virtually no convictions or employees of the State administration for bribery. There have been a number of scandals concerning ministers, but almost no criminal cases and no convictions. The legal framework for public administration is largely inadequate, failing to regulate conflict of interest or discourage patronage and nepotism. However, a new Civil Service Act will improve the legal framework significantly in both these areas. Procedures for appealing against administrative decisions do not provide citizens with effective redress. A Code of Ethics came into effect in 2001, but is vague and largely repeats provisions already stated elsewhere.

#### **3.1 Structure and legislative framework**

Employment relations between public officials and the organisations that employ them are based entirely on the Czech Labour Code and there are no legal instruments to

guarantee the stability or independence of the civil service. Employees of State organs can be hired and fired like any other employee, competitive procedures are not mandatory, and there are no rules to prevent nepotism or any other criteria in recruitment. Politicisation has long been regarded as a problem, as changes of minister or department heads are often accompanied by widespread changes of subordinates.

A short-term priority of the *1999 Accession Partnership* was the passage of a Civil Service Act. The *2001 Regular Report* criticises the failure of Parliament to achieve the necessary consensus on civil service reform, noting that, “The adoption of the Civil Service Act remains a precondition for establishing an independent, professional, stable and accountable public administration.”<sup>40</sup>

In April 2002, Parliament finally passed a Civil Service Act. Under its provisions, most of which will take effect from January 2004, the Act defines public service as a special employment relation, and lays down a clear career structure. However, Parliament deleted from the original proposal security of tenure for civil servants, although officials will have the right to five months severance pay if they are dismissed. In accompanying documents to the original proposal the Government intended to raise salaries by around 40 percent on average after the law goes into effect.

### 3.2 Administrative procedure and redress

Under the 1967 Code of Administrative Procedure,<sup>41</sup> administrative decisions must be carried out within 30 days, or 60 days in more complicated cases. The deadline can be renewed at official discretion. Citizens may appeal administrative decisions to the same organ that issued the original decision within 15 days, although the appeal deadline is in practice 30 days and can be extended if there is good reason. If the appeal is fully or partially rejected, it is then dealt with by the superior administrative organ, generally the minister.

#### *Administrative judiciary*

Appeal decisions of administrative bodies may be appealed to a court under the rules of administrative judicial proceedings. At the time of writing, administrative courts had not yet been created; appeals are handled by special departments of ordinary courts. However, a new Code of Administrative Procedure passed in early 2002 lays down the structure and rules of the administrative judiciary, and in January 2003, the Supreme Administrative Court will begin functioning.

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<sup>40</sup> Commission, *2001 Regular Report*, p. 17.

<sup>41</sup> Act no. 71/1967.

Courts can only judge the formal legality of an administrative decision, not its substance, and may only cancel the decision or return it to the same administrative organ to be decided again.

### *Complaints*

Under the Czech Constitution, any citizen has the right to file a complaint, organs of the State administration have the duty to reply and no citizen may be sanctioned in any way for filing a complaint. Parliament passed a new Act on Complaints in July 2001, which lays down procedures and deadlines for dealing with complaints. However, the Act contains no sanctions for violations and was not submitted as part of a broader reform of administrative proceedings. The Ministry of Interior proposed a new Code of Administrative Procedure in 2001, which was rejected by the Chamber of Deputies in early 2002.

As a result, the main mechanism for administrative redress remains the ombudsman (see Section 2.6).

## **3.3 Conflict of interest and asset monitoring**

The Czech Conflict of Interest Act (see Section 3.2.2) does not apply to officials below the rank of minister or head of a central administrative body. Under the Labour Code, employees of organs of the State administration have a general duty to act and decide objectively, avoid behaviour that could lead to a conflict between public and personal interests and not accept gifts in connection with performance of duties. In addition, officials may not be members of the managerial or controlling organs of business entities, unless they are delegated there by the employer and receive no payment; and may not engage in business activities only with the prior written agreement of the employer. Officials who do not engage in business activities or secondary employment are entitled to a 25 percent salary premium, although this provision does not appear to be used at all.<sup>42</sup>

The Labour Code allows employers to include in employment contracts clauses forbidding employees for a maximum of one year after leaving the employment from carrying out any activity that was the subject of the original employer's business or could be in competition with it. The clause is virtually useless as there are very few cases where the activities of a private firm fulfil these conditions.

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<sup>42</sup> When the author of this report worked at the SAO for a year, this provision was never mentioned.

The effectiveness of the Labour Code in regulating conflict of interest appears to be minimal. According to the Ministry of Industry and Trade, which has no rules regulating conflict of interest apart from the Labour Code, in the whole history of the ministry, only four officials have been terminated as a result of conflicts of interest.

Some State institutions include conflict of interest provisions in internal employment rules, although these do not go beyond other existing provisions. The Ministry of Finance refused to provide a copy of its employment rules on the basis that is not a public document and stated that the rules impose the same duties as the Labour Code. According to the Ministry (the largest ministry) no employee has ever been removed for reasons of conflict of interest or abuse of power.<sup>43</sup>

Under the Civil Service Act, civil servants will be prohibited from earning any income apart from their official salary, and senior officials will be prohibited for two years from doing business or working in a sphere in which they held responsibilities as an official.

### 3.4 Internal control mechanisms

There is no legal protection for whistleblowers in the Czech Republic, and disclosure is strongly discouraged by the absence of protection from dismissal.

### 3.5 Interaction with the public

#### *The Code of Ethics*

In March 2001, the Czech Government approved a Code of Ethics for Employees of the State Administration, which is vague and largely repeats the provisions of the Labour Code.<sup>44</sup> Every ministry and District Office must acquaint its employees with

<sup>43</sup> Information from Press Department, Ministry of Finance, 17 May 2001.

<sup>44</sup> Czech Government Resolution no. 270/2001, 21 March 2001. Under the Code, officials should:

- decide objectively on the basis of facts and without unnecessary delays;
- avoid any occurrence of conflict of interest, where private interests include any advantage for his/her family, relatives or close persons, or individuals or legal entities with which s/he has or has had commercial or political relations;
- carry on any political or public activities that could undermine trust in his/her objectivity;
- not accept any gifts or advantages that could even be seen to undermine trust in objectivity or be payment for work that is his/her duty.

the Code, and the Ministry of Interior was to produce a guide to the Code for citizens. The Ministry of Interior has its own Code of Ethics.

Until very recently there existed no specific mechanisms in the State administration for citizens to register complaints about corruption. However, the Government's anti-corruption strategy includes a commitment to establish a Contact and Advisory Centre for Victims of Corruption and for every ministry to establish an organ where citizens can register complaints and initiatives. The Ministry of Interior established an Anti-corruption Commission in September 1999, including telephone and e-mail links where citizens can register complaints (including anonymously). The Ministry allocated €150,000 for a non-governmental organisation to establish a Contact and Advisory Centre, but withdrew the money due to lack of interest.

### 3.6 Corruption

Under the 1998-2002 Government no explicit cases of criminal corruption emerged in the executive. Minister of Finance Ivo Svoboda was sacked in 1999 after the police began investigating him for suspected fraud. In May 2002, he was charged with fraud together with his former business partner and subordinate at the Ministry.<sup>45</sup> A number of other scandals uncovered by the media have cast doubt on the integrity of high-ranking officials, although not necessarily indicating corruption *per se*. The most famous of these was the "Lead Affair," in which Government employees prepared compromising materials on a political ČSSD party rival of Prime Minister Miloš Zeman (see Section 9).<sup>46</sup>

The other most important affair was a contract between the Ministry of Foreign Affairs and a private company to rent a Ministry building ("Český dům Moskva") in Moscow on terms disadvantageous to the State. In November 2001, the Senate Foreign Affairs Committee condemned the agreement and chastised Minister Jan Kavan for not providing information on the role of a prominent lawyer who represented parties on both sides of the transaction.<sup>47</sup>

<sup>45</sup> S. Slonková, "Policisté zatkli bývalého ministra financí Svobodu" [Police arrest former finance minister Svoboda], *Mladá fronta Dnes*, 24 November 1999; "Former Czech finance minister charged," RFE/RL Newline, vol. 6, no. 96, part II, 23 May 2002.

<sup>46</sup> The affair was named "Lead" because the document in question was code-named "Olovo" (*lead* in Czech) – since the initials of the target politician, then-Vice Chairwoman of the Social Democratic Party, Petra Buzková, correspond to the letters for lead in the Periodic Table (pb).

<sup>47</sup> J. Kubík and S. Slonková, "Český dům: svou roli má i Kavanova náměstkyně" [The Czech House: Also Kavan's Deputy has a part], *Mladá fronta Dnes*, 24 April 2001; Resolution no. 95 of the Committee for Foreign Affairs, Defence and Security, 21 November 2001.

The State's reaction to these cases was to attempt to sweep them under the carpet or even punish the journalists who uncovered them, most notably in the case of the "Lead Affair" (see Section 9).<sup>48</sup> However, in July 2002 the Český dům affair took on a new dimension when one of the General Secretaries of the Ministry of Foreign Affairs, who had left the Ministry as a result of the affair, was arrested and charged with planning the murder of the main journalist who had investigated the affair. The initial stages of the investigation appeared to indicate widespread corruption in the allocation of public contracts by the Ministry.<sup>49</sup>

The public's assessment of the Zeman Government with respect to corruption worsened steadily through its term of office. According to research conducted by GfK, the proportion of respondents believing that the Zeman Government had spread the greatest share of corruption of all Czech Governments rose from three percent in 1999 to 39 percent in May 2001, making it the Government with the worst rating.<sup>50</sup>

As Table 5 shows, the number of employees of the State administration convicted for the most important corruption-related paragraphs of the Criminal Code is extremely low, with zero convictions for bribery in recent years. This is in spite of the fact that in surveys the State is ranked as the most corrupt sphere of public life (see Section 1.1).

**Table 5: Convictions of employees of the State administration for selected criminal acts, 1998–2000**

<i>Criminal act</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>
Abuse of power by a public official	9	29	22
Acceptance of a bribe	0	2	0
Bribery	1	0	0
Indirect bribery	1	0	0

**Source:** Czech Ministry of Interior, Zpráva o korupci v ČR a o plnění harmonogramu opatření Vládního programu boje proti korupci, January 2001, p. 3.

### *"Consultancy" services*

The relative ineffectiveness of justice organs in detecting and prosecuting bribery in the Czech State administration may reflect the relative sophistication of corruption

<sup>48</sup> See, e.g., "Aféry sociální demokracie a jejich aktéři" [Affairs of the Social Democracy and their actors], *Mladá fronta Dnes*, 5 November 1999.

<sup>49</sup> J. Grohová, "Policie zkoumá korupci z doby ministra Kavana" [Police investigate corruption from the period of Minister Kavan], *Mladá fronta Dnes*, 25 July 2002.

<sup>50</sup> GfK-Praha, "Žijeme v korupčním státě!, říká polovina obyvatel ČR" [We live in a corrupt State!, as claims half of the Czech Republic's inhabitants], press release, <[http://www.gfk.cz/download324\\_cj\\_int.doc](http://www.gfk.cz/download324_cj_int.doc)>, (last accessed 24 May 2002).

mechanisms. According to anonymous testimony from several firms that have gained subsidies from various ministries a common corruption channel is one whereby State officials refer applicants for subsidies to consultancy firms to which they have links.

## 4. LEGISLATURE

Until recently, a number of significant categories of public expenditure were excluded from the State budget, although recent reforms have ended this situation. Parliament has not functioned as an effective anti-corruption mechanism. Moreover, although there is almost no direct evidence of corruption among MPs, Parliament itself is highly vulnerable to corruption, especially through unregulated lobbying, while conflict of interest provisions are inadequate. Immunity provisions effectively protect deputies from prosecution for corruption, and Parliament recently rejected proposed reforms in this area.

### 4.1 Elections

According to all international organisations that have assessed the Czech Republic on democratic criteria, parliamentary elections are free and fair.<sup>51</sup> Elections are supervised by a permanent State Election Commission, and regional election commissions composed of citizens delegated by all subjects standing for election. The State Election Commission is chaired by the Minister of Interior, and its members are representatives of various ministries and State institutions appointed by the Government on the Minister's proposal

### 4.2 Budget and control mechanisms

The State budget is subject to approval by the Chamber of Deputies. However, in a number of respects, parliamentary scrutiny of public finances is (or until recently has been) inadequate:<sup>52</sup>

- There has been no statute preventing the Government from changing the budget after its approval by Parliament or missing targets. For example the Government

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<sup>51</sup> See, e.g., Commission, *Agenda 2000*, p. 14.

<sup>52</sup> This section draws heavily on World Bank, *Czech Republic – Toward EU Accession*, World Bank, October 1999, Chapter 3; International Monetary Fund, *Report on the Observance of Standards and Codes, Czech Republic*, July 2000, Chapter IV.



exceeded the approved deficit for 2000 by around one-quarter or €333m, and as of July 2002 was expected to exceed the planned deficit for 2002 by around 50 percent.

- State guarantees have been approved by the Government without any need for parliamentary approval, and have grown rapidly as hidden subsidies without democratic scrutiny. According to the World Bank, risk-adjusted guarantees outstanding grew from €200m in 1995 to €3.6b in 1998, and this figure has continued to grow at least at the same rate since then, as the Zeman Government has been faced with tasks such as cleaning up the banking sector. Although direct corruption has never been proven in the allocation of guarantees, former Minister of Finance Ivan Kočárník came under scrutiny for his approval of a €133m guarantee for Česká spořitelna, the largest Czech savings bank, and for allegedly approving a similar type of guarantee for Česká pojišťovna, the largest insurance company.<sup>53</sup> Parliament refused to lift Kočárník's immunity from prosecution in connection with the former case.
- Third, major items of public expenditure have remained outside the official budget, most importantly the funding of Konsolidační banka (Consolidation bank - the State hospital bank for administering non-performing assets), but also the Agricultural Guarantee Support Fund or National Property Fund. Parliament approves the accounts of such funds only *ex post*.

The result of these factors was a so-called "hidden deficit" in public finances, amounting to around five percent of GDP in 1997 and 1998. The current Government has made significant steps to make public finances more transparent. Since 1998, for example, the Ministry of Finance has published information on all outstanding State guarantees, while the accounts of Konsolidační banka have been included in the State budget since 2000. Nevertheless, the European Union urged fiscal reform in the *2000 Regular Report*, noting that:

A strong commitment to fiscal transparency is needed to stop the proliferation of off-budget deficits and contingent liabilities, which could endanger macroeconomic sustainability in the medium term... Most worryingly, this situation continues to deteriorate.<sup>54</sup>

In January 2001, a new Act on Budget Rules came into effect, under which the Chamber of Deputies must approve State guarantees, and the Government may exceed the approved spending by a maximum of six percent of total planned expenditure plus approved expenditure. In June 2001, the Chamber of Deputies took the unprecedented

<sup>53</sup> Q. Reed, "Shareholders say Pojišťovna fixed its books," *Prague Business Journal*, 8 November 1998.

<sup>54</sup> Commission, *2000 Regular Report*, p. 32.

step of voting not to accept the Government's final budgetary statement for 2000. However, the vote has no direct consequences for the Government.

### *Investigation committees*

The Chamber of Deputies may form an investigation committee for a specific purpose on the vote of a majority of MPs. This has rarely happened. The main case in recent years was a committee set up to investigate the role of the State in the collapse and takeover of the then third largest Czech bank, Investiční a poštovní banka (Investition and Post Bank; IPB), in 2000. In reality, the committee was used by a number of its members with close ties to the bank to pursue their own political agenda, and played no role in clarifying events objectively.

## **4.3 Conflict of interest and asset monitoring**

As Section 2.2 has shown, conflict of interest regulation for MPs and Senators is largely inadequate. Moreover, there is no regulation of parliamentary lobbying. Parliamentary procedure is highly vulnerable to lobbying pressure: MPs can submit proposed changes to laws individually after the first reading of legislation. There is no mechanism for filtering such proposals, which are then voted on by the Chamber as a whole during the second reading. According to experienced MPs, the effect of uncontrolled lobbying on the legislative process has become more serious over time.<sup>55</sup> Recent cases in which lobbying behind the scenes is regarded as the main influence on Parliament's decision on important laws include the passage of legislation to abolish duty-free shops in 2001, the passage of a Lotteries Act in 1998 and of a Hunting Act in 2001.

## **4.4 Immunity**

Czech MPs enjoy immunity from prosecution not only for actions carried out in connection with the exercise of their mandate, but also for ordinary transgressions of the law or criminal acts. If the police wish to prosecute an MP or Senator, they must request that the relevant chamber remove the Parliamentarian's immunity. If the chamber refuses, then immunity in relation to the matter in question will last for life.

Under the National Programme for the Fight Against Corruption, in 1999 the Government submitted a proposal to narrow parliamentary immunity only to prosecution for actions directly related to the exercise of an MP's mandate. The Chamber of Deputies rejected the proposal in September 1999.

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<sup>55</sup> OSI Roundtable Discussion, Prague, 25 March 2002.

## 4.5 Corruption

There have been no criminal cases of corruption of MPs or Senators in the past three years. However, a 1997 SAO audit of the Chamber of Deputies revealed serious violations of the law and poor management of public money,<sup>56</sup> involving, *inter alia*, repeated awarding of contracts for construction and maintenance of Parliament buildings to the same company without proper tender procedures. Another audit carried out in 1998 revealed similar (although less serious) problems in the Senate, which used the same firm for construction contracts. The audits received widespread media attention.

The consequences of the audit findings were diametrically different in the two cases. The Chamber of Deputies rejected the audit findings aggressively, and on the initiative of one MP disciplinary proceedings were conducted against the SAO College Member who was in charge of the audit. The proceedings found that he did not break any rules and no sanctions were imposed on him. The Chamber of Deputies carried out no other corrective action except for the issuance of an order by the Head of the Office of the Chamber of Deputies concerning the use of public money in the Chamber, from budget approval to internal audit of vulnerable areas. In the case of the Senate, the Head of the Office of the Senate and several other staff were removed, and the Senate made radical improvements in its system for managing public tenders, outsourcing its tenders to a professional consulting firm.

## 5. JUDICIARY<sup>57</sup>

The Czech judiciary has undergone major reforms since 1999, when the Zeman Government began an ambitious programme of judicial reform. However, although parts of the reform programme can be expected to reduce corruption in the judiciary, there is a strong resistance among Czech judges to admitting the existence of corruption problems, although the taboo has been increasingly broken recently. Further, reforms have not yet gone far enough in dealing with corruption in commercial court proceedings and business registration.

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<sup>56</sup> Nejvyšší kontrolní úřad [SAO], Kontrolní závěr 97/1997 [Audition Control], approved October 1998.

<sup>57</sup> Information for this section was gathered with the help of interviews with Josef Baxa, Deputy Minister of Justice (25 April 2001), and Pavel Šamal, Supreme Court judge (9 May 2001).

## 5.1 Legislative framework

The legislative framework for the Czech judiciary is largely described in the OSI *2001 Report on Judicial Independence*, which criticised the relative lack of independence of Czech judges and the lack of self-administration.<sup>58</sup>

Regarding corruption, the Act on Courts and Judges,<sup>59</sup> in force as of March 2002, prohibits judges from behaviour that threatens to undermine their objectivity or independence. According to the Criminal Code, a judge is disqualified from participating in criminal proceedings if there are no reasons to the contrary stemming from conflict of interest or other reasons for bias, specifically if the judge's relationship to the matter of the proceedings, the participants or to another organ active in criminal proceedings makes it impossible to decide objectively.<sup>60</sup>

Judges may not perform any other work or business activity. The Union of Judges also publishes a Code of Ethics, which reflects the same considerations, and the new Act on Judges and Courts provides for a binding Code of Ethics.

Judges enjoy similar immunity from prosecution as Parliamentarians. However, the Minister of Justice, the chairman of any court or the police may submit an initiative for disciplinary proceedings against any judge. Disciplinary proceedings, which are not public, are carried out by a Disciplinary Senate of the High Court, which can propose various disciplinary measures depending on the seriousness of the offence. The Senate may propose that a judge be removed from office, although this is subject to the approval of the Supreme Court. Statistics indicate that disciplinary proceedings are on the increase (see Table 6 below).

**Table 6: Disciplinary proceedings against Czech judges, 1999–2001**

<i>Year</i>	<i>1999</i>	<i>2000</i>	<i>2001 Jan-May</i>
Number of disciplinary proceedings	29	31	17
Number of proposals by Minister of Justice for removal or transfer of judge	6	11	3

<sup>58</sup> EU Accession Monitoring Program, *Monitoring the EU Accession Process: Judicial Independence*, Open Society Institute, Budapest, 2001, pp. 109–146, available at <www.eumap.org>.

<sup>59</sup> Act no. 335/1991.

<sup>60</sup> Act no. 141/1961, paragraph 30.

**Disciplinary proceedings according to initiator**

<i>Year</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
Minister of Justice	2	2	12
Chairman of court	22	20	5
Police	5	9	0

**Source:** Mladá fronta Dnes, 7 June 2001.

*Judicial reform*

A new Act on Courts and Judges that is due to come into effect shortly contains a number of provisions that are, *inter alia*, designed to prevent corruption. The Act states strict standards of behaviour, including for example the duty of a judge not to behave in such a way as to cast doubt on objectivity or independence, even in private life. Second, the Act establishes three councils (for civil, criminal and administrative law) to assess judges' expert suitability to carry out their functions, and in particular a 60-month probation period after which judges receive appointment for life on the basis of a council assessment. The latter in particular provoked bitter opposition among many judges.

In addition to the new Act, fundamental changes to the Criminal Procedure Code (2001) and amendments to the Act on State Representatives [prosecutors] (2000) have been passed which should make criminal proceedings more efficient. In particular, they have abolished the office of "investigator" and concentrated proceedings under the control of prosecutors – thereby ending time-consuming dual collections of evidence in the preliminary investigation and prosecution stages.

**5.2 Corruption**

There has only been one conviction of a Czech judge for bribery, in which a local judge offered a bribe to a State prosecutor to propose a lower sentence in a criminal case. The judge was convicted and given a suspended sentence. The Chairman of the Senate of the Regional Court in Ostrava was charged with bribery and abuse of power in 1997 but committed suicide.

Corruption has been a serious problem at the Commercial Register, with bribes to speed up company registration and changes in capital widely regarded as common practice. Although judges and Ministry of Justice officials complain that there is no specific evidence to prove the existence of such practices, the testimony of a number of business people and commercial lawyers suggests that commercial registers are seriously affected by corruption. For instance, according to one commercial lawyer with

extensive experience of company registration, bribes for court officials and judges are mediated by a number of middlemen, normally hired by lawyers on behalf of clients.

In addition, the vulnerability of commercial court proceedings to corruption has been highlighted by the increasing importance of bankruptcy proceedings in recent years, which have grown rapidly in importance since 1998 as a number of large Czech companies have gone into bankruptcy. Suspicions of corruption have emerged in several large bankruptcy cases.<sup>61</sup> Circumstantial evidence and the testimony of senior Western consultants involved in bankruptcy proceedings indicate that such proceedings are highly vulnerable to corrupt alliances between bankruptcy administrators (receivers) and commercial court judges. In particular, the qualification requirements for receivers are lax and courts themselves suffer from a lack of judges sufficiently qualified in commercial matters.

In 2000, the Prague Commercial Court launched its own anti-corruption programme with the aim of preventing speed payments being made to judges. The programme is based on abolishing personal contact between the two sides, for example allocating judges to particular cases randomly, and allowing face-to-face meetings of judges and applicants for company registration only in the presence of a court guard. In addition, the new Commercial Code that came into effect in January 2001 introduced 15-day deadlines for registering companies and changes in the register. Although investors have the impression that the situation with registration has improved, the same is not clear for securing changes in registration. Moreover, the new deadlines are not effective; there are no sanctions for failing to meet the deadlines and appeals concerning delays are subject to a two-month deadline.

## **6. POLITICAL PARTY FINANCE**

Following a series of major scandals in the late 1990's, the funding of Czech political parties has undergone important changes, notably major increases in State subsidies. These changes appear to have lessened parties' dependence on illicit sources of income, and there is now little evidence of covert funding or corruption.

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<sup>61</sup> In particular, a decision in 2000 by a judge of the Brno Regional Commercial Court to declare bankruptcy on Kralovopolska, a large engineering company, came under scrutiny due to alleged interests of the bankruptcy receiver in real estate owned by the company, and the lack of grounds for the decision. The decision was later reversed and the judge dismissed.

## 6.1 Legislative framework

Under the Act on Political Parties, parties are allowed four main sources of income: membership contributions (a tiny proportion of total income), donations, loans and State subsidies. Party finance has undergone significant development since 1997, when a scandal involving disguised donations from a company that bought the country's second-largest steel works led to the collapse of the Government. A number of previous scandals involved both loans to parties<sup>62</sup> and suspicious donations. Since that period, parties have withdrawn from borrowing money from banks, and State contributions to parties have become the most important source of income for parties.

Until recently, Czech law allowed virtually unlimited donations to political parties, not only from private entities but even from those in which the State itself holds an interest, although donations from the latter were prohibited by a Government directive in 1998. The only limitation on donations was a duty to state the source of every donation exceeding €3,333.

Under the Act on Political Parties, since amendments passed in July 2000:<sup>63</sup>

- donations exceeding €1,667 may only be provided via a written donation voucher, which must be submitted to the tax authorities before the money is transferred;
- parties may not receive donations from the State or entities where the State owns more than a ten percent stake, municipalities, regional governments, foreign legal entities with the exception of political parties and foundations or foreign individuals (with the exception of permanent residents in the Czech Republic);
- a party may receive a maximum of €1.3m in total donations annually;
- the identities of all donors must be published irrespective of the size of the donation;
- parties must submit detailed annual reports, including a breakdown of spending;
- if a party violates rules on donations, it must return the relevant donation to the donor, or to the State if the donor cannot be identified. Moreover, the party must also pay a fine equal to double the relevant donation;

<sup>62</sup> For example the Civic Democratic Alliance borrowed €1.7m from a bank that was subject to criminal investigation (and as of May 2002 had still not paid it back), while the Civic Democratic Party borrowed a similar amount from State-controlled Investiční a poštovní banka (Investition and Post Bank; IPB). See Q. Reed, *Political Corruption, Privatisation and Control*, Chapter 6.

<sup>63</sup> P. Černý and B. Clough, *Innovation and Transparency in Political Party Financing in the Czech Republic*, forthcoming paper, Transparency International Czech Republic; Czech Ministry of Interior, *Zpráva o korupci v ČR*, p. 21.

- annual party membership contributions may not exceed €1,667.

Under the 1991 Act on Political Parties and Movements, as amended in 1995,<sup>64</sup> parties winning three percent of the vote in elections to the Chamber of Deputies received a “regular contribution” of €100,000 per year, plus €3.333 for every further 0.1 percent of the vote up to a maximum of €166,667. In addition, parties received a €16,667 annual “mandate contribution” for every Deputy and Senator elected.

The 1995 Electoral Act<sup>65</sup> contains a third contribution for election costs: parties that gain at least three percent of votes in elections to the Chamber of Deputies receive €3 per vote.

The Act passed in 2000 doubled the regular contribution: parties winning three percent of the vote receive €200,000, rising to a maximum of €333,330 for parties that win five percent. The same passage, however, withdrew the regular contribution from parties that exceed the three percent threshold but not the five percent threshold necessary to enter the Chamber of Deputies. At the same time, the amendment raised the mandate contribution to €33,330 per Deputy and Senator. However, in February 2001, the Constitutional Court ruled the latter provision as unconstitutional,<sup>66</sup> mainly on the grounds that the Czech Constitution dictates that parties be “separated from the State.” In May 2001, the Chamber of Deputies approved a mandate contribution of €30,000.

Finally, in addition to these contributions, under the 2000 amendment parties also receive a €8,333 annual mandate contribution for every deputy elected to regional assemblies and the Prague City Assembly.

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<sup>64</sup> Act no. 424/1991, as amended by Act no. 296/1995, paragraph 20.

<sup>65</sup> Act no. 247/1995, paragraph 85.

<sup>66</sup> Constitutional Court proceedings 53/2000, decision 27 February 2001.



**Table 7: State contributions to political parties (€m), 1998–2001**

<i>Party</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001 (Jan-June)</i>
Czech Social Democratic Party	7.5	1.8	1.8	1.45
Civic Democratic Party	6.8	1.7	1.7	1.7
Christian Democratic Union-Czechoslovak People's Party	2.3	0.7	0.7	0.8
Communist Party of Bohemia and Moravia	2.9	0.6	0.6	1
Freedom Union	1.8	0.5	0.5	0.6
Civic Democratic Alliance	0.31	0.1	0.1	0.15
Democratic Union <sup>1</sup>	0.02	0.02	0.3	0.07
TOTAL STATE CONTRIBUTIONS <sup>2</sup>	21.63	5.42	5.7	5.77

**Notes:**

<sup>1</sup> On the basis of a Constitutional Court decision, the Democratic Union received €260.000 in State contributions for the 1998 elections in 2000.

<sup>2</sup> Total contributions exceed the individual party contributions due to contributions to the Republican Party, which have not been listed due to complicated legal disputes that distort the State contribution, and the Pensioner's Party, which won enough votes in the 1998 elections to receive funding but not enough to be represented in either chamber.

**Source:** Ministry of Finance of the Czech Republic.

## 6.2 Control and supervision

Supervision of party accounts and financing is generally inadequate. Under the 1994 version of the Act on Political Parties, parties had to submit annual financial reports to Parliament and the SAO. However, in 1995 the Supreme Court ruled supervision by the SAO to be unconstitutional, which left only publicity as the sanction for violation of the law or other problems in financing. Any citizen may visit the Parliamentary Budget Committee and read parties' annual reports.

The amendments to financing rules passed in 2000 did not introduce any changes to the system of scrutiny of party accounts, and continued to rely on the existing system of public access. According to a recent paper by Transparency International Czech Republic on Czech party financing, "The Act... still leave[s] ample room for parties to elaborate tales on the transparency of their finances. This is mainly due to limited auditing functions and controlling mechanisms of party financial reports."<sup>67</sup>

<sup>67</sup> P. Černý and B. Clough, *Innovation and Transparency*, [page ref. not yet available].

### 6.3 Party finance in practice

From the mid-to-late 1990's, all parties in the right-wing coalition that ruled from 1992 to 1997 were hit by financing scandals (see Section 6.1). After the collapse of the Klaus Government and victory of the Social Democrats (ČSSD) in the 1998 elections, the ČSSD itself was subject to a few revelations: for example, in 1999 it emerged that one of the figures associated with the largest investment fund fraud in Czech history was also one of the party's biggest donors in 1998.<sup>68</sup>

The only corruption case with major implications for important political elites or parties that ended in court in the last three years was the prosecution of former vice-chairman of the ODS Libor Novák for the party's failure to pay taxes on donations, which the party split into smaller amounts and declared as donations from non-existent donors. The case ended in an acquittal.<sup>69</sup> One of the results of the ODS financing scandal was the departure of a number of party politicians and the formation of the Freedom Union, one of whose main claims is to be the most transparent party in the country in terms of finance.<sup>70</sup>

The scandals of the 1990's appear to have left their mark on public perceptions of parties. According to research by the Centre for Public Opinion Research carried out in April 2001, political parties were evaluated as the most corrupt institutions in the country (see Section 1.2).

## 7. PUBLIC PROCUREMENT

Czech public procurement legislation is relatively advanced, with the major exception of provisions allowing the Government to allocate contracts without a tender. However, the absence of effective monitoring and supervision has allowed a situation in which corruption continues to be widespread.

### 7.1 Legislative framework

Public procurement in the Czech Republic is regulated by the Act on Public Contracts.<sup>71</sup> The Act applies to all State organisations and legal entities established by

<sup>68</sup> Q. Reed, *Corruption in Czech privatization*, p. 19.

<sup>69</sup> S. Slonková, J. Kubík, "ODS nedostala trest za podvod," *Mladá fronta Dnes*, 29 November 2000.

<sup>70</sup> The party publishes its accounts and a register of donors on the Internet, and introduced the written donor agreement system before it became law.

<sup>71</sup> Act no. 199/1994 on Public Contracts, as amended by Acts nos. 148/1996, 93/1998 and 28/2000.

the State that receive funds from the State budget, utilities, companies that carry out exploration for oil or other fuels, airport and harbour administrators, health insurance companies and any contract wholly or partly financed from public funds.

The Act states the following duties with respect to public contracts of different sizes:

- Contracts with a value over €166,670 must be allocated on the basis of an open public tender.
- For contracts whose value is between €33,330 and €166,665, the organ may carry out the competition by selecting at least five entities to compete. This method may also be used for larger contracts under certain special conditions, for example if the Government decides the contract is fulfilling urgent needs.
- For contracts between €16,670 and €33,330, the winner may be chosen from offers submitted by at least three selected participants.
- Contracts with a value lower than €16,670 may be closed without a tender.
- Contracts can be closed on the basis of an invitation to one party if the Government so decides or under certain special conditions.

Public contracts are carried out by a commission appointed by the head of the contracting authority. Commission members may not have any relationship to a bidder. However, there is no mechanism for supervising this provision, nor any system for monitoring assets, incomes or lifestyles of members of tender commissions. For most State organisations, the tender commission usually consists of the same group of people for all tenders. If a contract exceeds €6.7m in value, then the commission is appointed by the minister or head of organ, and must include representatives of the Ministry of Finance and two other ministries; if the size of the contract exceeds €30m, the Government appoints the commission.

All calls for public tenders must be published in the *Commercial Bulletin*, and, since amendments to the Act passed in 2000, on a central Government website.<sup>72</sup> The results of tenders must be communicated to all participants in the final bidding, although there is no duty to publish the results in any universally available media.

Tender documents must state the criteria for choosing the winner, with weights attached to each criterion. However, the law still does not state exactly what is meant by weighting criteria, which leaves considerable discretion in the hands of officials picking the winner. Moreover, the law does not clearly prevent public institutions from setting tender criteria

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<sup>72</sup> See <<http://www.centralni-adresa.cz/cadr/index.htm>>, (last accessed 23 August 2002).

that effectively exclude all but one possible winner, which is a common mechanism of corruption in procurement.<sup>73</sup>

A major problem in regulation of public tenders is that there is no restriction on subsequent increases in price or changes in the work being carried out. Rather, these are matters for agreement between supplier and investor. The SAO regularly finds large and in most cases unjustifiable price increases for contracts.<sup>74</sup>

According to the Tender Act, a public contract allocated in violation of this Act is invalid, as are changes in the contract that violate the conditions of a public tender. However, this provision is virtually impossible to apply as contracts are only audited *ex post*.

A potentially important provision included in the most recent amendment to the Act on Public Contracts states that any company, one of whose employees, owners or members of statutory organs has been convicted of a criminal offence in connection with a public contract, is to be disqualified from participation in public tenders by the Office for the Protection of Economic Competition (the organ that supervises public tenders) for a maximum of five years.

However, given the minimal number of such convictions (See Table 1), the effect of this provision is questionable. There is no formal system for blacklisting companies who have carried out public tenders poorly.

## 7.2 Review and audit

Any participant in tender proceedings may appeal any part of a tender proceeding, first to the same organ that issued the tender, and then to its superior. If this is unsuccessful the participant may appeal to a court. Participants may also submit an initiative to the Office for the Protection of Economic Competition (Competition Office), which is responsible for supervising adherence to the Act on Public Contracts. The Office may on its own initiative be present in tender proceedings or investigate the public tender proceedings before the contract is awarded. In practice, the Office is not sufficiently equipped to handle the workload of supervision (it had a staff of around 20 dealing with procurement issues in 2001); moreover, where it intervenes, it tends to deal with the form rather than substance of tenders.<sup>75</sup>

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<sup>73</sup> A glaring example of this was a recent tender issued by a regional governor to purchase cars, in which the tender conditions were specified so as to make only one car qualify. See also J. Ciglerová, "Hejtman vypsál svéráznou soutěž na své auto" [Regional governor runs curious tender for car], *Lidové noviny*, daily, 23 April 2001.

<sup>74</sup> Interview with Josef Pohl, Member of SAO College, 17 May 2001.

<sup>75</sup> Interview with Josef Pohl, Member of SAO College, 17 May 2001.

An unfortunate aspect of the public tender framework is that the regulatory framework is as likely to harm both honest bidders and honest tender issuers as it is to reveal corruption. When appeals take place, they typically delay tenders for 6-12 months.

The SAO plays the most important role in auditing public tenders, and has consistently produced serious findings in this area. A large percentage of audit findings relate to problems involved in the preparation of tenders (see below), and according to the SAO are very often the result of insufficiently qualified personnel. The result of this is that in many cases vague tenders are issued, without a clear description of the work that is required; this alone may result from corruption, and itself facilitates corruption during the rest of the tender.

### 7.3 Corruption

Again, there is virtually no evidence of wrongdoing in Czech public tenders in terms of criminal proceedings, with only two convictions since 1996 for machinations in public tenders. However, this underlines only the ineffectiveness of the monitoring framework, and there are a number of reasons for serious concern with the framework for public contracts in general.

According to SAO officials, the loopholes in the law, absence of qualification requirements to issue a public tender and lack of qualified personnel allow widespread corruption.

Second, the 1998-2002 Government directly set a bad example in public tenders by making excessive use of its power to grant exemptions from the duty to hold a tender. In 2001, these included a contract to build a highway to Northern Moravia, a contract awarded to Český Telecom to build a telecommunications network for the State administration and a contract for the advisors on privatisation of the energy industry.<sup>76</sup> The *2001 Regular Report* explicitly stated the need to tighten the law to limit fast-track procedures and exclude the possibility of “arbitrary government decisions.”<sup>77</sup>

According to an SAO analysis of its own audit findings, between 1995 and 2000 the most important problems in public procurement were:

- Failure to issue tenders properly (36 percent of all audit findings). Failure to define tender requirements exactly resulted in subsequent increases in costs of up to 300 percent, while the division of contracts into smaller parts in order to avoid tender requirements was also common.

<sup>76</sup> M. Pražák, “Vláda obchází výběrová řízení” [Government avoids tenders], *Mladá fronta Dnes*, 23 March 2001.

<sup>77</sup> Commission, *2001 Regular Report*, p. 45.

- Abuse of the exceptions in the law allowing public institutions to carry out tenders by inviting a limited number of parties (33 percent of audit findings).
- Failure to maintain sufficient evidence on tender proceedings and to issue and publish tender results.
- Using sole sourcing on the basis of provisions in the law that allow follow-up contracts to be allocated without a tender (eight percent of all findings).<sup>78</sup>
- Not awarding contracts to the party submitting the best bid (four percent).
- Conceptual problems (four percent).
- Mutual relations between organisations issuing a tender and participants in the tender (two percent).

With regard to criteria, as already mentioned, the law leaves wide space for tender issuers to choose criteria they like, and there is little scope for restricting maximum use of this provision. In addition to all of the problems mentioned, the practice of fixing tenders through collusion is generally felt to be widespread in the absence of effective control mechanisms.

The Ministry of Defence has been the subject of more scandals relating to procurement than any other State institution. In 1996-1997, a major scandal broke over a tender for an army information system, including allegations of a €1.7m bribe to the Christian Democratic Union-Czechoslovak People's Party,<sup>79</sup> and there have been a series of army contracts in which the army purchased faulty parts or parts it did not need.<sup>80</sup>

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<sup>78</sup> For example, the company that carried out reconstruction of the Czech Chamber of Deputies building was also hired without a tender to carry out future maintenance and repair (see Section 2.4).

<sup>79</sup> Q. Reed, "IT tender still raises hackles," *Prague Business Journal*, 19 December 1997. Other major tenders surrounded by suspicion include a project to modernize the country's T-72 tanks, see "Slova o zmanipulování a korupci padala již na začátku projektu" [Words on manipulation and corruption were heard already at upon launching of the project], *Mladá fronta Dnes*, 9 March 1999.

<sup>80</sup> J. Gazdík and M. Mocek, "Vetchý přiznal své chyby" [Vetchy admits mistakes], *Mladá fronta Dnes*, 5 April 2001. One of the most serious cases was when the Ministry of Defence signed a €16.7m contract without a public tender to purchase parachutes from a firm that did not legally exist; according to the Register of Industrial Ownership the inventor of the parachute was also an employee of the Ministry department responsible for the purchase. The parachutes turned out to be unsafe (resulting in the death of one soldier), and, at the time of writing, the Ministry was attempting to withdraw from the contract and get its money back. See J. Gazdík, "Ministr Tvrdík: Došly nám padáky, pomozte" [Minister Tvrdík: Help, we're out of parachutes], *Mladá fronta Dnes*, 29 May 2001.

Another major contract that led to widespread speculation was a tender held by the Government to select a supplier of Western supersonic fighter aircraft, which raised serious doubts of the Government's commitment to fighting corruption. In January 2001, the Government issued a tender for the purchase of between 24 and 36 Western fighter aircrafts, despite clear signals from NATO that such a purchase should not be a priority. In May 2001, shortly before the deadline for submission of bids, four of the five bidders withdrew from the tender, leaving only a consortium of BAE Systems and Saab in the tender. The other contenders left partly on the grounds that the tender was not transparent and was rigged in favour of the consortium.<sup>81</sup> In early 2002, the Government awarded the contract to the consortium.

The most recent scandal concerning public contracts broke after the arrest of the former General Secretary of the Ministry of Foreign Affairs for the alleged attempted contract murder of an investigative journalist that wrote extensively about him (see Section 9.1). The investigation of the scandal led to revelations of widespread corruption in the allocation of contracts by the Ministry between 1998 and 2002.<sup>82</sup>

## 8. PUBLIC SERVICES

There are significant problems of corruption in a number of Czech public services, in particular the healthcare system, allocation of permits and business registration. Although corruption in the police and customs administration have been long regarded as important problems, improvements in anti-corruption mechanisms and other reforms provide room for optimism in both areas.

### 8.1 Police

As the statistics in Table 8 show, convictions for corruption in the police are minimal. Statistics on police criminal activity are only available up to mid-1999.

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<sup>81</sup> Economist Intelligence Unit, *Business Operations Report Czech Republic*, 2<sup>nd</sup> quarter 2001, p. 22. For example, one of the tender conditions was that bids be submitted in Czech and denominated in the Czech Crown, against US rules for foreign military sales.

<sup>82</sup> See for example "Černínský palác se otrásl v základech" [Cernin palace (Ministry of Foreign Affairs building) shaken to the foundations], *Mladá fronta Dnes*, 27 July 2002.

**Table 8: Criminal convictions of police, 1996–1999**

<i>Criminal act</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999 (Jan-June)</i>
Abuse of power by a public official	140	86	109	84
Bribery (all forms)	10	11	10	3
Fraud	25	36	12	16
Other	199	154	242	90
Total	374	287	373	193

**Source:** Ministry of Interior, *Problematika nezákonného jednání policistů* [The Problematics of the Unlawful Behaviour of Policemen], p. 5.

The figures for convictions for corruption are, again, small and do not reflect public perceptions of police corruption. According to research carried out by GfK for a research project on corruption in the police in 1999, 24 percent of the public believed that corruption is more widespread in the police than in any other group institution, exceeding even the State administration.<sup>83</sup> The police surveyed in the research believed that most opportunities for corruption are in the foreign police and traffic police, the latter being regarded as the most financially lucrative.<sup>84</sup>

### *Control mechanisms*

The police organisation includes internal control and complaints departments at central, regional and local police units, which are responsible for investigating evidence of criminal activity among the police and processing complaints from the public. The decentralised nature of this control system results in a situation where individual police essentially supervise their own colleagues. In 1999, these departments received 2,597 public complaints, of which 21 percent were found to be justified. Thirty-eight cases were submitted to the investigation organs and 127 to the Ministry of Interior Inspectorate.<sup>85</sup>

In addition, the Inspectorate of the Ministry of Interior exercises external control over the police. The Inspectorate is staffed by police and is responsible directly to the Minister of Interior. It relies largely on information supplied by police control departments and its employees' networks of contacts. According to a 1999 Ministry of

<sup>83</sup> GfK-Praha and Transparency International Czech Republic, "Korupce v Policii ČR" [Corruption in the Czech police], March 2000.

<sup>84</sup> Cited in: Ministry of Interior of the Czech Republic, *Zpráva o korupci v ČR*, p. 12.

<sup>85</sup> Ministry of Interior, *Problematika nezákonného jednání policistů, analýza a návrh řešení* [The Problematics of the Unlawful Acts of Members of the Police Force – Analysis and Suggested Solution], 1999, p. 9.



Interior report on police criminality, the Inspectorate was significantly understaffed, and co-ordination between the Inspectorate, local police departments and investigatory organs was “absolutely unsatisfactory.”<sup>86</sup> However, since that time the staff of the Inspectorate has roughly doubled according to Ministry officials, and the Ministry is considering increasing independence of supervision by staffing the Inspectorate with employees who are not police.<sup>87</sup>

## 8.2 Customs

The Customs Inspectorate regards corruption as a significant problem within the customs administration. In 2000, the Inspectorate submitted to the police 56 cases of suspected abuse of power and a number of cases of bribery. For example, in 1999 a lawyer from the Brno Customs Office was charged with allegedly accepting a bribe of €13,333 in return for allowing a company to pay lower duties on imported goods.

Czech customs legislation has been simplified considerably, partly in an effort to reduce the opportunities for corruption. According to officials from the Customs Service Inspectorate, customs legislation is harmonised with EU directives, and in 2001 proposed amendments were under discussion to achieve full compatibility. The Customs Service was in 2001 the only customs authority in EU candidate countries to be a signatory on EU agreements on adopting a common transit regime (New Computerised Transit System), which will simplify customs procedures considerably and reduce the scope for corruption.

The employment conditions of customs officers are regulated by the same law as the police.<sup>88</sup> The Customs Inspectorate is subordinate to the Director General of the Customs Service. Unlike the Inspectorate of the Ministry of Interior, the Inspectorate does not have the status of an organ of criminal investigation, and can only file criminal notifications to the police in order to initiate criminal proceedings.

In December 1998, the Inspectorate approved a comprehensive Integrity Action Plan divided into 12 areas: minimisation of administrative regulations, transparency, automation of customs procedures, personnel policy (including rotation of staff), management responsibility, control mechanisms, morality and organisational culture, recruitment procedures to minimise the likelihood of recruiting corruptible staff, a Code of Ethics and Behaviour, expert training, increased pay and communication with

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<sup>86</sup> Ministry of Interior, *Problematika nezákonného jednání policistů*, p. 12–13.

<sup>87</sup> Interview with Michal Mazel, Head of the Security Department, Ministry of Interior, 6 April 2001.

<sup>88</sup> Police Act no. 186/1992.

exporters and importers. The Code of Ethics was approved in 2001, and an anonymous phone link was established to facilitate complaints. One of the major obstacles to effective anti-corruption policy in the customs service is that it is very difficult to implement staff rotation due to very high geographical immobility.

The Customs Administration participated in early 2002 in an EU anti-corruption project entitled “Ensuring Integrity,” in partnership with the German and Dutch customs authorities.

### 8.3 Tax collection

Corruption in tax assessment does not appear to be a major problem area for companies. According to the SAO, much more serious problems exist in the area of control by the tax authorities of value-added tax, where fraudulent schemes organised by complicated chains of companies (and sometimes aided by corrupt local tax officials) cause massive losses to the State budget.<sup>89</sup>

### 8.4 Health

Since 1989, not one case of corruption has been proven in the Czech healthcare system.<sup>90</sup> However, surveys show that around 15 percent of the population believe corruption is most widespread in healthcare (see Section 1.2), ranking the sector better only than the State administration and police (and judiciary in one year according to GfK).

A major problem facing efforts to analyse or deal with corruption in the healthcare system is a pure lack of detailed research on what is in practice a highly complicated issue. For example, informal payments are often the result of underfunding, and although illegal in many cases are used to fund the activities of hospitals and not channelled into private pockets. The rights of patients are inadequate in the health service, as are complaint mechanisms, which have no guarantee of recourse.<sup>91</sup>

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<sup>89</sup> SAO officials estimate that non-payments of VAT total approximately € 2b annually, an amount equal to approximately ten percent of total tax revenues.

<sup>90</sup> Only one case was dealt with in court, where the head nurse of a medical centre for the permanently ill was charged with accepting bribes to place patients in the centre. The case ended in acquittal.

<sup>91</sup> P. Háva, “Je naše zdravotnictví transparentní?” [Is Our Healthcare Transparent?], unpublished summary of a seminar organised by Transparency International Czech Republic, 5 October 2000.

## 8.5 Education

According to surveys, between two and six percent of survey respondents believe corruption is most widespread in the education system (8.5 percent in a most recent but smaller telephone survey by SC&C).<sup>92</sup> There is almost no evidence on corruption, with the important and worrying exception of a major scandal that broke in June 1999 surrounding admission procedures for the prestigious Legal Faculty of Prague's Charles University. The scandal began with anonymous notifications to the press that the exam papers were widely available for money before the exams, and the allegations were subsequently confirmed by other witnesses. A police investigation was halted for lack of evidence. However, former students at the Faculty confirm that bribery to gain admission has been widespread.

## 8.6 Licensing and regulation

In the area of trade licenses and business registration, criteria are generally clear. Business registration is widely regarded as an area troubled by corruption (see Section 5.2).

Trade licenses, which are issued by the Trade License Department of the relevant local council, appear to be a relatively unproblematic area. However, amendments to the Trade License Act, passed in 1999, introduced more stringent conditions for many occupations, which has increased incentives for applicants to circumvent the law.<sup>93</sup>

Construction permits are more problematic. Permits are issued by the Building Department of the local municipal authority. The planning process is extraordinarily complicated and usually takes 8-14 months for a business development permit; for example, investors must secure written approval from around 60 different local authorities ranging from hygiene and sanitation to air traffic authorities.<sup>94</sup> There is wide room for discretion in the process.

### *The Office for the Protection of Economic Competition*

Although not explicitly an anti-corruption agency, the Czech Office for the Protection of Economic Competition (ÚOHS) is the most important State institution of market regulation and a potentially major source of corrupt pressure. The *2000 Regular Report*

<sup>92</sup> *Lidové noviny*, daily, 25 April 2002.

<sup>93</sup> For example, to operate a riding stable the holder of the trade license must hold a certificate of higher education, a requirement that in theory would put most stables out of business.

<sup>94</sup> Economist Intelligence Unit, *Business Operations Report Czech Republic*, 2<sup>nd</sup> quarter 1999, pp. 50–51.

identified “effective application and enforcement of anti-trust rules” as the “main challenge” facing the Czech Republic in competition regulation.<sup>95</sup>

There have been reasons for concern over the ÚOHS’s competence in the past. The staffing of the upper positions of the Office on a political party basis was standard practice, at least until an amendment to the Act approved in September 2000 banned the Chairman of the Office from being a member of a political party.<sup>96</sup> The Office’s real separation from political institutions was called into question somewhat by its approval in June 2000 of State aid to cover losses at Investiční a poštovní banka (Investition and Post Bank) on the same day as the aid itself was approved by the Government. In the private sector, the Office found itself in the spotlight over a long-running merger battle in the brewing industry between 1997 and 1999, in which it issued several conflicting decisions under alternating lobbying pressures. However, in the past year the Office has made decisions that indicate a more independent approach, for example ruling that State aid provided to the country’s largest steel works was illegal.

## 9. ROLE OF THE MEDIA

The Czech press is free, although there have been isolated cases of the State using legal provisions to attempt to deter journalists. A Freedom of Information Act came into effect in 2000, although its impact on access to information in practice may have been limited. Broadcasting regulation has suffered from some problems of political interference in the activities of public media, although an improved legal framework was adopted in 2001. Licensing policy for private broadcasters has been subject to major problems, and the activities of the Broadcasting Council have resulted in a foreign investor winning an arbitration case against the Czech State. The Czech media has been active in uncovering corruption, and initiated the downfall of the Government in 1997.

### 9.1 Freedom of speech

Freedom of speech is guaranteed according to the Czech Constitution, and reiterated in the 2000 Press Act.<sup>97</sup> The right to publish may be restricted only under circumstances

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<sup>95</sup> Commission, *2000 Regular Report*, p. 52.

<sup>96</sup> Economist Intelligence Unit, *Business Operations Report Czech Republic*, 2<sup>nd</sup> quarter 1999, Chapter 3.

<sup>97</sup> 2000 Press Act, paragraph 5.

stated by law and if doing so is necessary to protect the rights and freedoms of others, State security, public safety or public health and morality.

The Press Act also contains provisions under which individuals have a right to the correction of untrue information published about them.<sup>98</sup> More controversially, publications have a duty to publish a reply by individuals and legal entities to statements published in the press that, even if true, impinge on their honour, dignity or privacy. However, despite the fears of some publishers, this has not proved to be a stick that the Government uses to weaken the media.

There are no legal restrictions on coverage of corruption cases. Moreover, libel law is weak and does not deter journalists from seeking out corruption. Journalists have been put under pressure through different laws, however. A key case was the exposure by daily *Mladá fronta Dnes* of a plan organised in the Office of Prime Minister to discredit a political rival. Although the case resulted in the prosecution of one of Zeman's advisors, the police also decided to prosecute the journalists who broke the story for not revealing their source at the Office of the Government, on grounds that the person who gave them the document committed slander and should therefore be prosecuted. In March 2001, the Prague City Prosecution Office set a welcome precedent by halting criminal proceedings.

In another case, a former TV reporter was charged in 2000 for revealing State secrets after filming a documentary alleging that the former Chief of the Military Intelligence Service (now Director of the Security Information Service, the Czech intelligence service) helped a friend avoid prosecution for drunk driving by informing the police in a letter (untruthfully) that the man was an intelligence officer. The director had classified the letter as "Strictly Secret." The journalist faced a sentence of up to eight years if found guilty. Although the court dismissed the case in June 2001, it did not do so on grounds of press freedom. Moreover, the State Prosecutor appealed the decision.<sup>99</sup>

In July 2002, a much more worrying case emerged when the police arrested and charged the former General Secretary of the Ministry of Foreign Affairs with renting a contract killer to murder an investigative journalist who has covered, *inter alia*, the case of Czech House (see Section 3.6).<sup>100</sup> Ironically, the former official (who resigned as a result of the Czech House scandal) was originally hired by Minister Jan Kavan to

<sup>98</sup> Act no. 46/2000, Article 12.

<sup>99</sup> J. Unger, "Soud osvobodil novináře Smrčka" [The Court dismissed journalist Smrček], *Mladá fronta Dnes*, 16 June 2001; J. Unger, "Smrček půjde opět k soudu" [Smrček to face the Court again], *Mladá fronta Dnes*, 20 July 2001.

<sup>100</sup> "Vrah měl zabít novinářku" [A killer was to assassinate an investigative woman-journalist], *Mladá fronta Dnes*, 23 July 2002.

implement the “Clean Hands” campaign at the Ministry. If confirmed, the case would be unique among EU candidate countries.

## 9.2 Access to information

The Czech Act on Free Access to Information<sup>101</sup> (Freedom of Information Act), which came into force on 1 January 2000 has established citizen rights to public information that were previously stated only in general terms in the Constitution. The Act applies to all State organs (such as the Government, Parliament and ministries), organs of regional and local government and self-administration, and public institutions that manage public money. The only information excepted from the law are State secrets, information that is protected under the Act on Protection of Personal Data and commercial secrets. However, the Act prohibits information concerning the use of public funds from being classified as a commercial secret.

Since the Act came into force, the Government has issued an instruction to organs falling under the law in September 2000 to harmonise procedures for provision of information.

At the time of writing it is still too early to judge accurately whether the Act has made a radical difference to access to information. All ministries have established procedures for fulfilling their duties under the law, and it appears that the more flagrant cases of withholding information that used to occur before the law came into effect<sup>102</sup> are no longer possible. Although there have been isolated cases of institutions charging excessive amounts for information, this does not appear to be common.<sup>103</sup>

On the other hand, State institutions also appear to have learned to obey the letter of the law without providing information requested, for example by using every possible mistake in the information request to avoid replying. Moreover, it is unclear whether the government instruction is effective: for example, despite an explicit provision in the instruction stating that internal employment rules of State organisations cannot be withheld, the Ministry of Finance refused to supply a copy of its rules for the purposes of this report.

Finally, the definition of “commercial secrecy” remains ambiguous, and a number of institutions have attempted to define themselves as being outside the scope of the law, for example the National Property Fund.<sup>104</sup> In 2000 the Government refused to

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<sup>101</sup> Act no. 106/1999.

<sup>102</sup> For example, the withholding by ministries of recipients of State subsidies.

<sup>103</sup> The Government instruction states that charges may not exceed the real costs of obtaining the information.

<sup>104</sup> This was confirmed by a decision of the Prague City Court in September 2000.

provide information on subsidies to companies such as a major steelworks by setting up special mechanisms for allocating funds.

### 9.3 Broadcasting regulation

Broadcasting media are licensed and regulated by the Broadcasting Council, elected by the Chamber of Deputies. Two main private stations exist (plus one new station established recently), but inadequate regulation by the Broadcasting Council (also elected by Parliament) has resulted in opaque ownership structures and suspicions that both stations are controlled by the same entity. A battle has been raging since 1999 over the larger of the two, TV Nova, after the company owning the broadcasting license (CET 21) broke off ties with the service company (CNTS) operating the station and took full control of the station. CNTS was controlled by a foreign investor (Central Media Enterprises). CME sued the Czech Government for failing to protect its investment, *inter alia*, on the basis that CET 21s withdrawal from the agreement was allegedly facilitated by a change in the wording of the broadcasting license in 1997. At the end of 2001 a Stockholm arbitration court decided that the Czech State did indeed violate its duty, and as of July 2002 negotiations on compensation were continuing. As of May 2002, the General Director of Nova and main protagonist against CME, Vladimír Železný, was under investigation for allegedly damaging creditors. Former Prime Minister and Chairman of the Civic Democratic Party Václav Klaus openly expressed support for Železný.<sup>105</sup>

Czech Television and Czech Radio are regulated by councils also elected by the Chamber of Deputies. A major crisis broke at Czech Television in December 2000 after employees reacted to what they perceived as political interference culminating in the appointment of a new director. The appointment, carried out by a Council dominated by the ODS and ČSSD, led to a revolt by TV staff and mass public protests. The eventual result was an amendment to the Act on Czech Television. In response to a situation where the Council of Czech Television was elected on a party basis – facilitating political influence on the public media – the law was amended to create a council elected by the Chamber of Deputies from representatives proposed by civic organisations.

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<sup>105</sup> Klaus stated in response to questions about his support for Železný that, “When someone is good to me, I am good to him.” V. Žák, “Drahá televize Nova” [Good old TV Nova], *Listy* 1, 2002, p. 18.

## 9.4 Corruption in the media

There is little evidence of direct corruption of journalists in the Czech Republic, although article buying by PR agencies was much discussed in 1997–1998. The Czech PR industry is one of the best regulated in the region, with an association and a Code of Ethics.

## 9.5 Media and corruption

The Czech media has played a key role in exposing corruption and related issues since the mid-1990's, in cases ranging from its exposure of party sponsors as false (see Section 6) to exposing the failure of a minister in the current Government to adhere to the provisions of the Conflict of Interest Act. The media played a dominant role in the collapse of the Klaus Government in 1997, and has uncovered numerous scandals under the Zeman Government. The poor relationship between the media and Zeman himself bears witness to the success of the media in putting the Government under pressure. In the run-up to the 2002 elections, for example, *Mladá fronta Dnes* has published an extensive series of articles examining the property and lifestyle of prominent party politicians.<sup>106</sup>

## 10. RECOMMENDATIONS

The following recommendations have been highlighted as particularly important to the Czech Republic. For additional recommendations applicable to candidate States generally, please see Part 5 of the Overview report.

1. Carry out an analysis of the risk of corruption in the legislative process, particularly in Parliament, and carry out reforms based on the findings.
2. Pay special attention to the risks of corruption stemming from post-privatisation processes of bankruptcy and debt management.

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<sup>106</sup> See, e.g., *Mladá fronta Dnes*, “Zbohatli v politice?” [Grown rich in politics?], 3 April 2002.