

Additional contribution of the Ministry of the Interior of the Czech Republic to the 2021 Rule of Law Report

- In line with the Commission's question concerning **eLegislation and eCollection**, CZ adds to previous answer further details in written listed below:
 - The eLegislation project brings new drafting tools and procedures into the process of drafting, discussing and promulgating primary and secondary legislation.
 - The core of the solution consists in drafting tools based on work with consolidated version of the legislation, which incorporates all current and future time versions of consolidated text of a legislative document. Amendments to a legislative document are semi-automatically created by the system and corrected by drafting specialists.
 - The project also promotes transparency of the drafting process by clearly stating who has proposed individual changes as well as what is their substance, while making this information available to the general public.
 - The system of eLegislation together with system of eCollection are part of one project and are closely interconnected. eCollection provides verified data concerning Czech legislation and its consolidated time versions along the public portal. eLegislation provides drafting and promulgation tools which, in the end of the drafting process, update the database of eCollection by including new documents and its time versions.
 - The major step forward, apart from providing modern access to legislative documents and sophisticated drafting tools, is the fact that the consolidated version is an official part of the drafting process and of the text being consulted with and approved by particular legislative bodies. In the end of the drafting process, the consolidated version is published as a legally binding source of information.
 - The legal basis of the project is the Act No. 222/2016 Coll. in connection with Act No. 277/2019 Coll.
 - Implementation of the project started in 2018 and it is still ongoing. The system is completed and is undergoing testing and optimization. eCollection is mostly completed, eLegislation is almost developed. Finalisation of the project is planned for October 2021. From November 2021 to December 2022, we will provide time for pilot testing of the system and for training of users of eLegislation. The system will be ready for live operations on January 1st 2023.

- Regarding the **Act on Civil Service**, we add the link to its English version <https://www.mvcr.cz/sluzba/clanek/zakon-o-statni-sluzbe-v-aj.aspx> (non-competition clause is mentioned in Articles 17 and 83, in particular). You can also find the Act enclosed to this contribution.

- In line with the Commission's question concerning an **overview of the NOCA's cooperation with other bodies in the fight against corruption**, CZ adds to its previous answer further details listed below.

The cooperation of National Organised Crime Agency (NOCA) of the Police of the Czech Republic with financial and customs administration is determined by relevant legal acts such as the Criminal Procedure Code (No. 141/1961 Coll.) and the Act on the Police of Czech Republic (No. 273/2008 Coll.).

Enhanced information exchange takes place if legal conditions are met (i. e. during investigation of corruption, terrorism, organized crime, tax crime, financial crime, serious economic crime, and laundering of proceeds of crime). In such cases, NOCA receives required tax information directly even without authorization by public prosecutor or court.

NOCA cooperates also with Financial Analytical Office of the Ministry of Finance of the Czech Republic (FAO), particularly in cases where FAO submits notification indicating that a criminal offence has been committed under the Act on certain measures against money laundering and the financing of terrorism (No. 253/2008 Coll.).

Key pre-condition for successful fight against corruption and tax crime, including damage to EU financial interests, includes identification of offences, their detection, examination and investigation as well as efficient performance of administration of individual taxes . This pre-condition is being met in close cooperation between financial, customs and police bodies within the joint team of "Tax Cobra" (www.danovakobra.cz). Tax Cobra has prevented financial loss in the amount of CZK 11.7 billion so far.

As regards the object of an attack, most often it concerns fiscal VAT evasion in connection with import and export of goods and services, illegal fiscal evasion by means of false invoices as well as carousel fraud.

Regarding the cooperation between the Police of the Czech Republic and authorities responsible for the Land Registry, there is a direct on-line access to the Land Registry database. The Czech Police have also access to other registries such as Civil Registry, Vehicle Register, etc.).

The cooperation with the Public Prosecutor's Office is also set by the Criminal Procedure Code No.141/1961 Coll. and further by the Public Prosecutor's Office Act No. 283/1993 Coll.

- In line with the Commission’s question concerning **corruption**, CZ adds to its previous answer further details listed below.

Police Integrity:

Two basic avenues to address integrity violations of police officers exist:

GIBS action:

Criminal investigation:

Conducted by GIBS¹ under the supervision of public prosecutors. GIBS is competent to investigate criminal offences of Police, Customs and Prison Service officers² and criminal offences of employees of those agencies when committed in relation to their employment.

In 2019, GIBS conducted inquiries into 454 cases and started criminal prosecution³ in 106 cases. In 2020, there were inquiries into 436 cases resulting in 124 criminal prosecutions.

Integrity Tests:

GIBS is authorized by law to conduct integrity tests. When doing so, GIBS cannot engage in “provocation” to commit crime, but it can create or simulate a situation which the officer or employee in question are duty-bound to address in order to test whether their conduct will be lawful. Such situation cannot result in danger to dignity, health or freedom of any person or danger to property. There must be audio-visual recording of the test and official conclusion. If the person fails the integrity test, they must be informed without unnecessary delay. Their law enforcement agency is also informed and must include records on failed test in the personal file of the officer or employee. Each 6 months, the GIBS also informs law enforcement agencies on names of tested persons who have addressed the situation lawfully. These tests are intended as a preventive measure. 13 such tests were made in 2019 and 26 in 2020. However, no unlawful conduct was detected.

Disciplinary action:

The Police has the power to impose disciplinary sanctions on police officers both for their conduct while on duty and for their administrative misdemeanours committed while off duty. This enables Police to maintain high integrity of officers. In 2020, there were 2218 disciplinary sanctions imposed, including a cut in basic salary (906 cases), fines (806) and written reprimands (476). Other sanctions (degradation, driving ban etc.) are much less frequent.

While traffic offences (1834) represent the majority of all misdemeanours, most ethical violations would be included in category of breaches of service duties (199), which is in second place. Other categories, like being on duty

¹ GIBS(General Inspectorate of Security Corps) is a special law enforcement agency created in 2012; it is independent of all Ministries responsible for law enforcement agencies.

² There are about 40.000, 6.000 and 8.000 officers in those agencies respectively.

³ meaning that a particular person was reasonably suspected of committing particular offence

under the influence of narcotic substances, coming late, or petty theft are much less frequent.

Statistics

When compared to the UN Convention against Corruption, the offences of **bribe giving, bribe taking and indirect bribery** (Sections 331-333 Criminal Code) are most relevant. If one considers Articles 17 and 19 of UNCAC, the embezzlement (S. 206) and the abuse of authority (S. 329) would be relevant as well. Other UNCAC offences (e.g. Art. 22 – Art. 25) either relate only to private sector or are only vaguely related (money laundering, concealment and obstruction of justice) to “core” corruption and are not reported.

However, the crimes related to manipulation of bankruptcy, public tender, competition and auction (Sections 226, 256-8) **are normally** (within Czech Republic) considered as targeted corrupt behaviour.

Unfortunately, Police statistics do not permit meaningful reporting of serious cases based on damage or position of the offender that would correspond to the purposes of the Report⁴.

Therefore, **if the aim is simply to ensure continuity** with the 2020 Rule of Law Report⁵, the offences under S. 256-8, 331-3 should be again taken into account. Based on our numbers of “registered criminal offences”, the 2020 Rule of Law Report reported “opening of investigations” into 115, 319 and 152 corruption offences in the years 2017-19 respectively. Continuing this methodology, **180** open investigations for corruption should be reported in **2020**. In addition, it should be noted that GIBS inquiries (for all crimes, including corruption, of law enforcement officers and staff) are reported above and are not included in these numbers. As regards the third sentence⁶ in the same paragraph of the 2020 Rule of Law Report, it is based on the statistics of the Ministry of Justice, which will send its update separately.

Statistical methodology

As regards already transmitted police figures on corruption and related offences:

“Registered” criminal offences are offences, no matter how detected (reported by victim, by anonymous informant, by witness, by any public authority, by law enforcement from other country, reported by press or uncovered by the activity of the Police) for which the police started criminal proceedings in a given year⁷. Starting criminal proceedings is a very broad notion; this step requires

⁴ For example, damage may not arise in swiftly uncovered corruption cases, illicit benefits are not reported; owners of small businesses are in the same category as directors of large hospitals, offenders’ position is reported irrespective of whether the offence was committed in relation to the position (physician causing serious injury may have committed malpractice or assaulted someone in a bar).

⁵ Country chapter on Czechia, page 7, last paragraph, second sentence.

⁶ „148 persons were prosecuted for corruption offences or suspected⁵² thereof in 2017, compared to 268 in 2018 and 190 in 2019⁵³.“

⁷ Suspicion of crime may be reported at the end of one year but criminal proceedings are started in the next year.

only suspicion. Only thereafter, the facts indicating specific crime and specific offender are gathered and reviewed.

“Clarified” criminal offences are clear outcomes of criminal proceedings from the police point of view, if they happen in the year of registration⁸. When considering that, at least **general picture of Czech criminal proceedings** should be taken into account:

Suspected criminal behaviour is uncovered or reported (to police, court or public prosecutor). Police starts inquiries, supervised by relevant public prosecutor, who can order particular steps to be taken and allocate the case to different police unit. Police may take certain steps on its own (e.g. body search of person caught in the act or which cannot be delayed), in other cases it asks the public prosecutor for permission (e.g. retention of post mail, audio or video surveillance in public, surveillance of delivery). If the public prosecutor has no power to authorize the step in question, he/she must ask a judge (e.g. opening of post mail, authorizing wire-tapping, surveillance in private etc.). If the police determines that there was no crime but administrative offence, the case will be transferred. If the suspect is not liable, or there is amnesty or other circumstance that prevents prosecution, the case may be closed. If it is not possible to find a suspect, the case may be adjourned until more information is found. These decisions must be reported to supervising public prosecutor in 48 hours. When the police determines that the behaviour is a crime that was likely committed by a particular person, criminal prosecution starts and the suspect is formally notified (charged) without delay. Since then, defence is entitled to be present when evidence is obtained, file objections, ask questions etc. After obtaining the evidence, the Police makes proposal to the public prosecutor that particular person should be indicted for committing particular crime, but the sole right to file indictment rests with the public prosecutor (*dominus litis*). Police then assists the prosecutor and the court during the trial. Both public prosecutor and the court may return the case to police asking for additional specific steps to be taken and evidence to be obtained.

Cases without known suspect cannot be considered “clarified”. Principal examples of “clarified” criminal offences are these outcomes:

- police proposes, based on results of investigation, that prosecutor indicts (brings to the court) particular suspect for particular offence
- police identifies particular suspect but the case is closed due to amnesty (death, loss of criminal liability etc.) of the suspect
- police⁹ or public prosecutor discover that the conduct in question did not in fact happen, or that it is not a crime

⁸ This represents the capacity of investigators. (Cases may be clarified in subsequent years, of course, but in such case the records do show only time of clarification without relation to year of registration and therefore are not reported. For example, in 2018, there were 5 cases of giving bribes clarified that were registered in some of the previous years, in addition to what is reported in the table.)

⁹ can be decided by police with subsequent report to public prosecutor within 48 hours

- police identifies particular suspect but the case is transferred abroad (e.g. if extradition of fugitive is not possible on the grounds of his/her nationality)
- police identifies particular suspect and the prosecutor closes the case by plea bargain or conditional stay of prosecution
- police identifies particular suspect but the public prosecutor¹⁰ decides that the punishment available would be completely insignificant in relation to punishment that was already imposed or is expected to be imposed
- police identifies particular suspect but the public prosecutor¹¹ decides that the punishment already imposed by other body (administrative fine¹², foreign judgment, international tribunal judgment) is satisfactory (sufficient)
- police or public prosecutor discover that particular suspect was already tried for this crime by Czech court or other court under the (Schengen acquis) ne bis in idem rules
- police, based on results of investigation, learns that the case is only part of ongoing and continuous criminal activity - i.e. the case is subsumed into larger case against the same person(s)

Simply said, the essential aim of police statistics is to report on capacity of Police to deal with all crimes that it is aware of in a given year.

Upon consideration, we do **not** suggest reporting “damage to EU financial interests” until we can separate these offences in statistics from “issuance of untrue financial/audit statement” **next** year.

- Taking into account the request from the Commission to update the current development before the Report 2021 is finalized, comparing to the 2020 Report and the Czech input to Rule of Law 2021 from March 2021, we would like to inform the Commission about recent development concerning **Register of contracts and “Transposing amendment” to Act No. 106/1999 Coll. on free access to information.**
- The Ministry of the Interior will add to the methodology to the **register of contracts** the procedure according to which the metadata of published contracts will contain information that the contract was concluded in a crisis situation. This marking will differentiate these contracts from others and make it easier to identify possible corrupt practices or inefficiencies.
- Regarding the **“Transposing Amendment” to Act No. 106/1999 Coll. on free access to information**, there has been a certain development since the 2019 Report. The draft was approved by the Government of the Czech Republic on 29 March 2021. On 31 March 2021, it was submitted to the

¹⁰ can be decided by police with subsequent report to public prosecutor within 48 hours

¹¹ can be decided by police with subsequent report to public prosecutor within 48 hours

¹² not available for corruption, as all cases of corruption are criminal offences

Chamber of Deputies of the Parliament of the Czech Republic as a print no. 1194 (more information can be found on <https://www.psp.cz/sqw/historie.sqw?o=8&T=1194>).