

**PERCEPTIONS AND REALITY OF CORRUPTION
IN THE CZECH REPUBLIC:
NEW RESEARCH, METHODS AND APPROACHES**

Chapter 7

**Broadening the Scope of Anti-corruption Policy:
Policy Mainstreaming and the Importance of Indirect Policy Measures**

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Corruption is a society-wide phenomenon rooted deeply in the moral and social fabric. It can emerge almost anywhere – in health care provision, university admissions, customs, sports organizations, grant agencies, professional organizations and other public, semi-public or non-profit institutions. Related phenomena such as tunneling, fraud, tax evasion, and collusion in price setting can occur in virtually any segment of the economy, even in the presence of public oversight. The analyses contained in this book give support to the view that anti-corruption policy should take an equally broad society-wide scope to the problem. As this concluding chapter will argue, broadening Czech anti-corruption policy requires placing emphasis on three principles that are not a significant part of current policy documents: an emphasis on *policy mainstreaming*, an emphasis on addressing the *social sources* of corrupt behavior, and an emphasis on identifying and eliminating *economic incentives* leading to corrupt behavior.

The current *Strategy of the Government in the Fight Against Corruption 2006-2011* (hereafter only *Strategy*) emphasizes institutionalist anti-corruption measures, implicitly adopting Klitgaard's (2000) "equation" that corruption involves a monopoly of power plus discretion minus public oversight. While that formula makes sense, it cannot be tested or measured in a scientific manner, and it has been extensively criticized in the scholarly literature. The equation also explains corruption narrowly as a problem of the institutional arrangement of public administration, thus ignoring the cultural, economic and other factors that scholars have shown are important causes of corruption around the world.

To its credit, the *Strategy* does represent a new, positive direction in Czech anti-corruption policy, and some of its proposals have implicit support from the analyses in this book. The *Strategy* is among the first government anti-corruption documents with a clear set of realizable objectives that could play an important role in transforming the nature of public administration, and thus also the ways citizens and firms interact with the state as a whole. Therefore, before overviewing some of our main findings and policy recommendations, we will first highlight several of the key elements of the current *Strategy* of the Czech government.

Strategy of the Government in the Fight Against Corruption 2006–2011

The *Strategy* is based on three policy pillars: prevention, transparency, and punishment. The *Strategy*, as a relatively short and un-conceptual document, does not explain why specific objectives are included (or excluded) from those three pillars. Objectives are stated as a matter of

fact, without any references to academic literature that would demonstrate their effectiveness from an international point of view.

The *Strategy's preventive measures* focus on minimizing government regulations and the 'bureaucratic' nature of public administration, expanding the use of information technologies in public administration to enable greater public disclosure, and so on. The specific objectives include carrying out internal anti-corruption audits at all levels of the state administration, support for professional codes of ethics, and the requirement of establishing public consultation procedures (through the Internet) for drafted legislative documents. To be sure, the academic literature does support the notion that the simplification of government regulations and the reduction of contacts between the state and clients (procurers) can decrease opportunities for corrupt behavior. However, the *Strategy* sees the problem of corruption prevention narrowly as a problem of the organization of state administration, not at all a problem of firm behavior and expectations, the social environment or civil society.

The *Strategy's* measures aimed at improving *transparency* of decision-making include the proposing a transparency and unified system of drawing on funds from public budgets, developing a new law on public procurement that would emphasize the disclosure of information about the tender and how public funds have been spent, and the implementation of a special anti-corruption telephone hotline 199, which is already in operation. It is hard to imagine that the 199 line will have much of an impact, particularly since some public institutions already have similar hotlines. The policy also does not include any financial rewards for persons providing concrete evidence leading to the persecution of persons accused of corruption (the existence of such rewards could potentially encourage more investigative journalism by the media).

The *Strategy*'s specific measures on *punishment* include increasing the punishments for proven corruption through a new bill on the Criminal Code; establishing a special anti-corruption senate at the superior court;¹ the establishment of a possible "black list" of firms that have engaged in corrupt behavior, which will bar them from participating in future public tenders; and the creation of legal conditions for strengthening the responsibility of public functionaries in the administration of property. Many of these measures go in the right direction in terms of ensuring the fairness and public legitimacy of court rulings on corruption cases, as well as in increasing the negative sanctions for proven corrupt behavior. While the *Strategy* seeks to increase the sense of responsibility of public officials, it is not clear how a public official would be able "compensate for the damages that he or she caused," if such damages far exceed their financial capabilities.

The internal anti-corruption audit, which has already been carried out, identified a number of significant cases when regulations were broken during the provision of public services, during decision-making on public tenders, and in decision-making on licenses and permits (MVCR 2008b). The audit also discussed the problem of leakages of non-public information, but it did not discuss the equally important problem of when public officials refuse to disclose documents according to the *Law on the Free Access to Information*. While the audit did not provide details of specific cases, it seems that many of the risks for corrupt behavior emerge from a common set of problems: not maintaining binding laws and internal procedures;

¹ It is not yet clear whether such a body would be similar to the Special Court in Slovakia that deals exclusively with corruption and other serious criminal acts committed by all types of public officials. The court has received high confidence rankings by the Slovak public, in part because of the numerous convictions of corruption-related behavior it has carried out. Uniquely, only the High Court can overturn the verdict of the Special Court. Among other things, the judges in the Special Court have a personal bodyguard and receive several times higher pay than some other judges. They are however politically appointed, rather than being elected by the public, which would enhance their independence further.

not upholding the Code of Ethics of employees in the public administration; non-public procures, the non-existence of public oversight, and an insufficient or inaccessible documentation of the course and results of processes; and attempts by politicians and businesses to interfere in decision-making process who are not authorized to be involved in them. Similarly, the audit identified a number of practical solutions that could be applied to a wide range of decision-making processes, such as:

- *Digitization of agendas*, such as the provision of a sufficient amount of information to citizens so they can monitor the course of certain processes; making public applications for subsidies or other support, as well as the materials used in processing such applications; processing applications and related materials without direct contact with potential suppliers; continuation of the process of making it possible to submit tax returns online.
- *The implementation of independent oversight over decision-making processes*, such as an internal audit department within each ministry or institution;
- *The principle of at least four eyes*, such as replacing decision-making by individuals by multi-level or commission-based approvals;
- *The binding nature and enforceability of the ethical codex*. This, however, should also include the updating of the ethical codex in public administration, particularly by providing more specific guidelines (as opposed to general principles) and possible sanctions for not upholding the codex.

- *The formulation of precise criteria for decision-making on legal regulations and by-laws, such as making stricter the interpretation of conditions for conferment of licenses, grants, and forms of state support.*

It will be important to observe the degree to which the government will take its own recommendations seriously in terms of developing enforceable legislative measures. It is relatively easy to propose anti-corruption measures, but quite difficult to ensure they are implemented correctly and effectively. Anti-corruption should not be limited to buying computers and software for the digitization of agendas, but should involve sweeping changes in the procedures of decision-making and the mechanisms for public oversight, as the audit suggests.

In addition to the Strategy, *Law No. 159/2006 Coll. On the Conflict of Interest*, which went into force on January 1, 2007, could have a broad impact on anti-corruption policy. The law obliges public officials to disclose potential conflicts of interest, which will enable the public oversight of activities outside their roles as public officials. It in particular provides for the public control of their property, assets, incomes, gifts, and other considerations during the time that public officials hold public office. The law contains a number of positives and negatives. While the understanding of a “public official” is quite broad, including members of municipal councils, judges, state representatives and many other officials, those *officials do not need to declare the interests and assets of their spouses, which may become a key “loophole” undermining the law.* Public officials who have ‘something to hide’ could probably find ways to transfer assets and other financial interests in order to get around the law. Further, while the law enables public access to the Central Register of declarations of potential conflicts of interest, interested persons

must identify themselves (first and last name, permanent address, identification number) when they search the Register, either in person or through a user name and password on the Internet. It will be important to observe compliance with the law after the deadline for submitting the declaration for 2007, which is at the end of June 2008.

Broadening horizons: an outline of policy recommendations

The analyses contained in this book have been largely technical and seemingly removed from the realities of corruption on the street. Beyond mere appearances, however, these studies have analyzed some of the best international and domestic social surveys available on perceived corruption and tax evasion, and reached a number of conclusions that clearly challenge much of the conventional wisdom on corruption in the Czech Republic. The analyses also have led to a coherent set of general policy recommendations that both supplement and contest current policy proposals.

Responsibility for implementing anti-corruption policy needs to be more widely distributed across government

While it is well-known that corruption is a society-wide problem affecting all levels of government and all kinds of organizations, anti-corruption policy has remained largely the responsibility of the Security Policy Department of the Ministry of Interior and the Unit for Combating Corruption and Financial Crime of the Criminal Police and Investigation Service. The singular role of the Ministry of Interior in anti-corruption policy has traditionally (i.e. before the implementation of the *Strategy*) led to an emphasis on the investigation of corruption rather

than on the issues of prevention, government reform, education and research. The Law No. 2/1969 Coll. on the Establishment of Ministries and other Central Organs of the State Administration precludes the Ministry of Justice from being an administrator of legal amendments in the area of corruption and conflict of interest. It is hard to see how, for example, the Ministry of Education, Youth and Sports would have the full know-how and resources to tackle corruption if it were to be found in the area of admissions to secondary school, or whether the Ministry of Environment could tackle similar corrupt behavior relating to its resort. At the same time, the inter-ministry coordination group for the fight against corruption is basically an informal information-sharing body that lacks mechanisms and capacities for coordinating and bringing about policy change within individual ministries. It is hard to see how the administrative structure of current anti-corruption policy could be considered ideal.

While it may be the case that the Ministry of Interior should continue in its leadership role over anti-corruption policy, more responsibilities and resources need to be placed within a broader range of ministries to address the specific problems of their resorts. At the same time, the possibility of a Government Council for the Fight against Corruption, composed of high-level and expert personnel from relevant ministries and NGOs, should be considered as a more effective alternative to the coordination group. It is of course not desirable to simply create more and more government bodies without any real power of implementation. The major benefit of a government council would be its ability to focus on the problem of corruption prevention across resorts, to evaluate the effectiveness of anti-corruption policies more independently than is currently the case, to increase the capacity of the government to address the problems of corruption at the level of local and regional self-government, and to increase the profile of, and public confidence in, the fight against corruption.

The fight against corruption needs to be mainstreamed into the design of legislation, rather than taken as a separate policy issue

Anti-corruption policy should not be seen as an isolated or special topic requiring an entirely separate set of reforms. The current *Strategy* has made significant strides in this regard. Corruption tends to decline as countries become more economically developed, which indicates the importance of macro-variables for fighting corruption. Perceived corruption is strongly shaped by the lack of economic freedom – i.e. excessive and time-consuming government regulation and restrictions – and by unfair rules that provide exceptions and privileges to some groups over others. The longer decision-making processes take, the more likely natural and legal persons will want to evade them or offer bribes; the more exemptions there are in the tax code and other legislation, the more likely people will try to find illegal ways to qualify for those exemptions. (Alternatively, the existence of some exemptions may themselves be the product of “state capture,” i.e. the ability of large firms to influence legislation in their favor).

Many pieces of legislation should be designed with an eye towards their impact on reducing opportunities for corrupt behavior. The simplest way this can be done is by ensuring that anti-corruption is fully integrated into the Regulatory Impact Assessment process (both the ‘small’ and ‘large’ process), which should be required for substantively all legislative bills. In particular, the RIA should require a standardized evaluation of how proposed legislation impacts the administrative responsibilities of firms. However, the flaw with the currently proposed “Methodology for defining the size and origin of the administrative burden of businesses” (MVCR 2007) for RIA is that it does not evaluate whether *contacts between the firm and public*

officials would be typically or possibly involved when the firm abides by a piece of legislation, which would increase the opportunities for corruption regardless of the *time burden* regulations impose.

Foster social trust as a foundation for a society with minimal corruption

Over the last several years, it has become well-established in the scholarly literature that high social trust is a leading determinant of low perceived corruption. The reason why trust is so important for reducing corruption is that people who have faith in others are much more likely to endorse strong standards of legal and moral behavior. If you don't believe in the goodness of others, you are more likely to do them harm – such as cutting in lines, evading rules, and engaging in all sorts of unethical behavior that puts you in an advantage over others. If there is a public tender, businesspeople who cannot trust that others will behave fairly will be more willing to offer bribes themselves.

One obvious way to foster trust is to make decision-making processes more transparent, so that participants in a process would be more likely to trust that others are behaving fairly as well. Such beliefs can then shape the behavior of persons and firms. Nonetheless, even the best designed reforms may only make a small dent in the overall incidence of corruption. This is because smart, corrupt people will always find other ways to evade rules and to get what they want. If the soil of a society is morally rotten, we can easily pull out the weeds of corruption scandals, but other weeds may just grow in their place.

Anti-corruption policy must therefore broaden its perspective to include activities associated with social trust, above all civic engagement and the political participation of citizens. A government that genuinely cares about fighting corruption cannot at the same time try to reduce the ability of citizens and civic groups to participate in decision-making processes. In all of the four Visegrad states, many of the local referendums that have emerged over the last decade have focused on problems relating to the corruption of local officials. In Poland and Slovakia, citizens can recall their mayors and other local officials if they think he or she engaged in corrupt behavior (or any other negative act), a possibility that does not exist in the Czech Republic. Participation in decision-making processes is a primary mechanism how citizens can maintain external oversight over public servants and the behavior of corporations. The capacities and resources of civic associations and the media strongly shape the degree with which they can act as a watchdog over the public administration.

The robust findings on trust suggest that broader financial and *political* support for these kinds of activities can be a vital, though indirect, means of fighting corruption in the long-run. Anti-corruption policy should not simply deal with the problematic disclosure of classified information, but also the refusal of public officials to disclose information that citizens have the right to have. Problems with the access to information lead to distrust of government and to accusations of corruption; conversely, better oversight of refusals to disclose information (in full or in part) could be a way to identify more corruption cases.

The government could also play a more active role in promoting corporate social responsibility – such as corporate philanthropy, the voluntary upholding of social and environmental standards above legal requirements, and declarations to not engage in bribery of

any kind – since CSR has had a relatively weak development to date (EPS 2007). In other words, fostering corporate responsibility, protecting the right to information, and enhancing opportunities for political participation, could lead to more political trust, greater accountability, as well as more trust between citizens, business and the state.

Identify ways to eliminate potential contacts between government and clients

The potential for corrupt behavior increases with the importance and number of contacts people have with the public administration. Eliminating the need for personal contacts with public officials when doing business with the government is easier said than done. One possible line of reform would be to follow the Government Paperwork Elimination Act of the United States, which required that by 2003 the federal government use, when practicable, electronic forms, electronic filing, and electronic signatures to conduct business with the public. Importantly, the law gave electronic documents the same legal status as paper documents, which guaranteed that they would not be denied the same legal effect, validity and enforceability simply because they are in electronic form. As a result of the law, the Internal Revenue Service (IRS) successfully implemented personal identification numbers for electronic tax filings (the majority of Americans now file taxes this way), and the Securities and Exchange Commission (SEC) did the same for regulatory filings.

By eliminating the need for natural and physical persons to go from office to office in order to do many types of dealings with the state administration, such a proposal would reduce possible points where officials can ask for a bribe, reduce administrative burdens on business,

and improve the accessibility and efficiency of the state administration. However, policies aimed at the digitization of agendas should also be accompanied by improvements in the electronization of payments, such as by gradually reducing the need for *kolky* (stamps) and adopting modern forms of payments, such as credit and debit cards. A major part of the problem in adopting modern technologies is that many Czechs may not trust them or are not used to them, and thus informational campaigns and robust information security measures are needed as well. If the state administration were to adopt such methods at eliminating personal contacts between the state administration and citizens, it would also provide the means and know-how for local governments to do the same.

Make procedural fairness and openness a dimension of government reform

The current *Strategy* focuses a lot on minimizing regulation and improving government efficiency. We have also found, however, that the lack of governmental and judicial fairness is a key indicator of perceived corruption. Czechs broadly perceive that rich people are able to buy justice and have greater access to the public administration. Anti-corruption policy should take these perceptions seriously through internal audits and the remodeling of administrative buildings to be more community friendly. The civic association *Oziveni* has recommended the adoption of so-called “glass buildings” of the public administration where there are few closed doors and it is easy to see what officials are doing. Such spaces can increase confidence in the fairness of public employees, make it more difficult for people to give bribes due to the visibility, and overall transform public perceptions of ‘bureaucracy.’

Explore ways to enhance the meritocratic basis of state administration

Since 1989, merit-based principles have increasingly displaced egalitarian principles as the dominant set of distributive justice norms in society. At the same time, corruption undermines the ability of the state and economy to be governed by principles of merit since corruption provides an alternative means of getting what you want. Anti-corruption policy should take these issues seriously by identifying and addressing ways to enhance the merit system (over other systems, such as the importance of seniority) in public administration.

There is some evidence that corruption tends to be lower when public administrations are meritocratic. In a study of 35 developing countries, Rauch and Evans (2000) found that meritocratic principles in the hiring of public officials – measured in terms of whether or not potential employees must pass a formal civil service examination, and the percent of public sector employees that have university degrees – has a strong impact on reducing levels of administrative corruption. On the other hand, they also found that the pay differences between the public and private sectors – i.e. the idea that if public officials are paid poorly, they are more likely to request bribes – did not have a meaningful impact on corruption. That view was challenged by Van Rijckeghem and Weder (2001), who found that high *overall* public sector wage levels in a country (in compared to the average wage levels in the manufacturing sector) is correlated with lower levels of corruption, whereas *relative* differences in pay levels between public employees does not impact the willingness to accept a bribe.

Overall, research has generally produced mixed results in terms of the effects of pay structures, but robust findings in terms of the importance of the qualifications of public officials. A number of Western countries have rigorous civil service examinations that are required in order to apply for public sector jobs where corruption is likely. Such examinations often test not only technical expertise in a given field, but also the ethical standards of the applicant and other characteristics thought to be related to administrative corruption (e.g. excessive personal ambition). When exams are not used, *strict* merit-based criteria, such as university degrees, experience in the field, and knowledge of foreign languages, are used instead. Of course, developing a highly qualified public administration would require higher salaries overall (which, according to the above, may also contribute to lower incentives for corruption), which in turn may require a downsizing of the state administration in order to fund it. In any case, it is premature to make strong policy conclusions in the absence of extensive research in this area.

Take corruption perceptions as ‘causes’ or ‘justifications’ of real corruption

The *Strategy* aims at significantly increasing the fines and sentences for convictions of corruption-related behavior. But that is not all it should do. The analyses in this book have largely demonstrated how important people’s perceptions are. In terms of tax evasion, if the government can make people think their chances of being caught are high, or think that it is immoral, then evasion will also fall.

The fact of the matter is that perceived corruption matters in a number of ways. First, there is a strong correlation between people’s perceived corruption and their reported experience

of bribery. Scholars in other countries have also found that perceived corruption leads to more frequent bribery encounters. Some surveys ask firms about their perceptions of the business environment because it is well understood that the perception of a highly corrupt environment will lead firms to offer more bribes, since not offering bribes would place that firm in a perceived competitive disadvantage. If Czechs as a whole believe that bribery among the police is rampant, it will lead some people to think they can get away with offering a bribe the next time they get pulled over by a police officer. In sum, widespread perceptions of corruption can breed a vicious circle leading to more and more ‘real’ corruption.

This suggests that anti-corruption policy should also tackle public and firm perceptions. This does not mean media propaganda that the Czech Republic is corruption-free. Rather, it means that the government will need to publicize the seriousness of the sanctions for corruption-related behavior; explain why tax evasion, corruption and related phenomena are morally wrong and damaging to the economy; and what citizens should do to help reduce corruption in the country. It also means that greater resources are needed in terms of anti-corruption education – not only for public officials, but for students and the general public. These are not easy tasks, particularly since the public associates the fight against corruption with the police, which has low public trust.

Corruption research needs to be a cornerstone of anti-corruption policy

While the Czech government has an abundance of information on employment and other dimensions of the economy, it has relatively little reliable information on corruption, which is

itself an economic phenomenon. The short and (seemingly) hastily written *Strategy* also raises questions whether anti-corruption policy is rooted in scientific knowledge. Government support for anti-corruption research pales into comparison with the seriousness of the problem and its negative impact on the Czech economy, on foreign investment, and the effectiveness of the public administration. The space of serious research has instead become occupied by myths, rumors and hearsay. The paucity of economists, sociologists and political scientists doing corruption research has arguably led much of that research to be done by civic associations that may not have the proper analytical tools at their disposal.

While there are many ways to measure perceived corruption and corruption experience, Charles Kenney also outlined ways that corruption in infrastructure projects can be measured, such as through inferences about the consequences of corruption. If project costs fall within their budgets, if procurement processes select projects with a high economic return, and if maintenance is actually carried out in a way that preserves infrastructure quality, then we can infer that even if there might be corruption, its overall impact would be relatively small. The fact that infrastructure projects in the Czech Republic are known for being very expensive compared to neighboring countries lends support to the idea that empirical research in this area is desperately needed. Such analyses require government support, the disclosure of government documents and a team of trained economists. This is of course only one example in the wide spectrum of possibilities for future corruption research.

Overall, anti-corruption policy needs to have a long-term tone. Michal Štíčka of Transparency International remarked that there is little positive to expect from the year 2008

because the Czech Republic will not be ranked among the top 10 non-corrupt countries.² That's the wrong perspective to have. It would be a great success if the Czech Republic were to be ranked in the top 10 in a decade's time, or in two decades. The fact of the matter is that corruption evolves very slowly, no matter what kinds of reforms you throw at it. That doesn't mean we shouldn't do our best to fight it. A broader set of measures, as outlined here, could speed up that process, but no measure will eliminate corruption overnight, nor should we expect such an outcome. Again, this is because corruption is rooted in the moral fabric of society. And social norms change only slowly.

² Michal Štička, "Corruption 2008: Good and Bad News," *Czech Business Weekly* (January 8, 2008). Accessible from <http://www.cbw.cz/en/corruption-2008:-good-and-bad-news/6546.html?search=corruption>