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CORRUPTION AND ORGANISED CRIME IN STATES IN TRANSITION  
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## Final Recommendations and Guidelines for action addressed to the Government of the Czech Republic

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*The expert's comments do not necessarily reflect the views of the Council of Europe,  
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the expert works.*

### I. General Assessment

The following report is based on a number of important documents the Czech Government has submitted to the Council of Europe in relation to the 1996 questionnaire and during the conferences held in Sofia in December 1996 and in Strasbourg in December 1997, on the interviews that took place in the course of the expert mission to Prague in September 1997 and on comments made by the Czech authorities on the first draft of this document.

Those documents as well as the interviews clearly show that the Czech Government has, for several years already, recognised that organised crime and corruption are quite serious problems in the country. As far as organised crime is concerned the "Organised Crime in the Czech Republic Reports" 1996 and 1997 as well as the reports of the Institute of Criminology and Social Prevention describe the illegal activities that a broad range of (foreign) organised crime groups - mostly in close cooperation with Czech citizens, criminals and/or criminal groupings - perpetrate on the territory of the Czech Republic. The most important foreign groupings come from Western Europe, Russia, South-East Asia, Western Africa and the Balkans. Their activities relate partly to traditional forms of organised crime like for example drug trafficking, white slavery and prostitution, car theft and theft of art objects, and partly to racketeering - 100 cases in 1996, 300 cases in 1994-1995 - and serious financial crime (53 serious cases in 1996). With respect to corruption, the information is somewhat

confusing. It is in particular not clear how the figures of the special task force for the disclosure of corruption and economic crime are related to the figures in the reports on organised crime. These reports mention some 25 serious corruption cases - in 2 cases judges were involved - and 200 minor cases involving officers of traffic police departments, customs and the tax administration. Although the seriousness of the racketeering problem, e.g. in the vice sector and the construction industry, must not be underestimated, there are to date no indications that in Prague or other cities legitimate economic sectors are in fact controlled by organised crime groups. On the basis of available information on corruption, it must equally be stated that although organised crime groupings clearly make use of corruption strategies to confront the Czech Government, they have no control over (complete parts of) its central or local administration, including the police and the judiciary.

One must recognise that the Czech Government has not only prepared reports on organised crime and corruption. In April 1996 it published a comprehensive policy plan, "Organised Crime - The Application of Effective Measures against It", that has subsequently been updated several times in the framework of the general policy plans of the Ministry of the Interior in the area of internal order and security. These plans demonstrate the fact that the Czech Republic has already reformed the Code of Criminal Procedure, the Criminal Code and the Police Law in order to harmonise them as far as possible with the standards established in the European Convention of Human Rights as well as with the standards prevailing among member States of the European Union. In addition the Czech Government has carried out an important reorganisation of its policing system, particularly by establishing a special organised crime division. It also made a great effort to participate in all the initiatives which the Council of Europe as well as the European Union have taken over the years to build up a sound administration of criminal justice in Europe: it has signed and/or ratified the relevant conventions, it has participated in a number of international colloquia, etc. Moreover, a special committee - consisting of representatives from inter alia the police, the intelligence services, the Ministry of Finance and customs - has been established within the office of the Prime Minister, it is responsible for the coordination of the activities of the relevant ministries and services in the field of organised crime.

Although the Czech Republic has in this way achieved more than a number of European Union member States to contain corruption and organised crime, its Government is willing to admit that still more has to be done. In particular the policy plan against organised crime of April 1996 and its update of December 1997 are proof of this. Criminological research on these problems should be enhanced. The prevention of corruption and organised crime will receive more attention, including all sorts of measures to improve the protection of works of art. By means of bilateral agreements, cooperation between the police and regulatory agencies, and between the police and intelligence services, will be improved. Within the Prosecution Service special units will be established in order to enhance the investigation and prosecution of organised crime cases. The government also considers the introduction of regular integrity checks on higher ranking civil servants. Legislation with respect to public tenders and trade licenses will be revised. The use of proactive policing methods will be linked

more closely to the evidence gathering process. A more strict policy in the field of immigration (including asylum and visa policies) will be developed. In order to strengthen international cooperation, the number of bilateral agreements with other countries has to be increased.

Such initiatives are completely in line with the policies initially recommended. The recommendations that follow are intended to further the constructive and open-minded approach the Czech Government has developed in relation to the problems of corruption and organised crime.

## II. Recommendations

### II.1 Some Preliminary Remarks

In accordance with some of the remarks in the above-mentioned policy plans it may be underlined that in the long term a policy against corruption and organised crime can only be successful within the context of a prosperous and open society. In other words: the success of such a policy is largely dependent upon the general policies of a Government in the economic, political and social field.

Above all, this means that the Government not only has to strive for a reasonable level of economic prosperity but also has to guarantee an appropriate (re-) distribution of goods and services. Otherwise black markets will emerge and together with them organised criminal groups able to deliver in an illegal way the goods and services which are much in demand.

Parallel to this a government has to take measures to prevent part of the population from becoming economically, socially and culturally marginalized. Otherwise, elements within the stigmatised groupings will organise their survival in an illegal way.

With regard to these two points one can recommend that the Czech Government:

- **implement as far as possible the proposals laid down in its policy plans.**

The Czech Government is clearly aware of the role that white slavery and prostitution, illegal gambling, illegal drugs trade and illegal trade in weapons may play in the rise of corruption and organised crime. Nevertheless, consideration should be given to :

- **developing a pragmatic policy in matters of morality. Such a policy must be directed at the containment of the problems concerned and not at solving them in a radical way.**

If this is not done, one will either be confronted with mainly symbolic moral crusades or by moral crusades that end up in black markets, organised crime and corruption scandals.

The Czech Government is well aware of the enormous value of government complying with the standards of good governance, also as a prerequisite for an effective strategy against organised crime. Given the number of quite serious

corruption cases and the corruption problem within the police, it may be recommended, however, that:

- **priority be given to the containment of corruption in the public administration, and particularly in the police.**

One should not lose sight of the fact that a dishonest administration is not only an easy prey for organised crime groups, but will also actively facilitate organised crime for its own interest.

Finally, one can support the Government's endeavours:

- **to do its utmost to swiftly establish efficient cooperation with the governments of both neighbouring and other countries.**

Otherwise, it is almost impossible to realise effective mechanisms of mutual legal assistance and police cooperation, without which no policy against corruption and organised crime can be successful in view of the increasing internationalisation of these problems.

## II.2 The Assessment of Corruption and Organised Crime

The information provided shows that the Czech Government is aware of the quantitative and qualitative changes in corruption and organised crime that resulted from the peaceful revolution in 1989-1990. In particular one should support its intention:

- **to further in-depth criminological research into corruption and organised crime problems.**

Such research could lead not only to a better empirical basis for any policy the Government wants to implement, but could perhaps also bring about a more balanced view of the problems of corruption and organised crime and thus allow a more appropriate policy to contain these problems. In this perspective one may recall the example of the analysis of the Czech Government in its policy plans that organised crime is predominately committed by foreign groups. In view of this conclusion the policy plans clearly stipulate that the immigration laws should become stricter and should be enforced more severely. Although the important role of immigration in the field of organised crime can not be denied, one must bear in mind that most of the time no clear distinction can be made between foreign and domestic groups, nor that foreign groups usually need strong cooperation with domestic groups to achieve their aims. And the "Organized Crime Report 1996" clearly shows that this is also the case in the Czech Republic: many foreign organised crime groups are supported by Czech criminals and criminal groupings.

It is admitted that not only corruption but also racketeering exists in legitimate economic and financial sectors. This being the case, it is important to study in more detail the extent to which racketeering is spreading into vulnerable legitimate economic sectors like construction, the garment industry, transportation, catering and others, with a view to developing a balanced policy.

In order to carry out the research mentioned above to improve the strategic analysis of corruption and organised crime problems, the Czech Government might consider:

- **enhancing cooperation between the Prague Institute of Criminology and Social Prevention and qualified research institutes in Europe and the United States.**

### II.3 The Improvement of Public Awareness

According to the information provided the Czech Government is convinced of the important role of public support for any strategy against corruption and organised crime. To obtain this support - which is evidently lacking with regard to corruption, but not to the same extent in relation to organised crime - the Government intends to issue a declaration on the causes and the risks of both problems. It also envisages requesting more public attention to specific operations in these fields, and the regular publication of reports that provide a realistic picture of the named problems in general.

These initiatives have to be welcomed as part of a democratic approach to the problems in question. Nevertheless, one may recommend - in order to reduce the tolerance for and the amount of corruption - :

- **that more time and energy be invested to clear corruption cases, and that rumours of corruption and organised crime be taken seriously and investigated thoroughly.**

An additional advantage to this approach is that false rumours can easily be dismissed and where real problems exist, they can be solved.

In conjunction with this recommendation it should be recommended:

- **that the public be informed systematically of (the result of) all investigations in the field of corruption and organised crime.**

Only in this way will the relevant problems regularly receive the media attention they need in order to be solved. The use of special investigative powers and techniques may also need to be explained to the public at large, for which the media can be instrumental. The latter, by reporting on the investigation process itself in relevant cases is not only useful for demonstrating the complicated nature of corruption and organised crime, but in the long run may contribute to maintaining and reinforcing the legitimacy of the use of what are often intrusive methods.

Finally it must be underlined that it is not sufficient to conduct appropriate investigations and to develop an adequate public relations policy in relation to them. To reinforce public support for the policy that is developed, it is above all important:

- **to take appropriate criminal, administrative and disciplinary measures against persons involved in corruption and organised crime.**

The absence of a policy in this field will deteriorate the confidence in the integrity of a government and, consequently, will not generate support for the measures it wishes to take, especially if corrupt officials and organised criminals are not charged or convicted for their crimes, and thus appear to be above the law.

#### II.4 **The Prevention of Corruption and Organised Crime**

The Czech Republic has already taken several measures with a view to the prevention of corruption and organised crime. A legal framework with respect to the commissioning of public procurement contracts and the related duties of senior officials, lawyers, judges, notaries, auditors, etc has been established. In addition, it proposes to draw up ethical codes for such officials and practitioners. On the other hand, the Organised Crime Report of 1996 shows that the Czech Government is well aware of the fact that more has to be done.

A few years ago already, a special police service was established to combat corruption and conduct, among others, criminal investigations into corruption cases. Although the corruption problem seems to be quite serious, this service has not yet investigated many cases. Therefore, one may not expect such a service to have a great preventive impact, at this stage, on the corruption problem. To enhance the preventive impact of the investigation of corruption cases, the Government should give more resources to this service and should also consider:

- **establishing bureaus of internal investigation in among others, the police, customs service, local administration and national regulatory agencies.**

Such bureaus should not only undertake the investigation of cases up to a certain level of seriousness, but also have the duty to formulate - on the basis of their own experiences - recommendations for changing procedures in services and agencies, for reinforcing supervision and accountability, for selecting and promoting officers, etc. In order to guarantee the impartiality and effectiveness, and thus the legitimacy, of such bureaus they should be controlled by the heads of services and agencies in question, and by a member of the prosecution service. These bureaus could eventually be entrusted with the planned integrity checks on civil servants.

Referring to the general remarks of the Czech Government in its policy plan and the recommendations of the Institute of Criminology and Social Prevention, it could be particularly useful:

- **to involve in the policy-making process representatives of businesses and industries that are vulnerable to corruption and organised crime, e.g. those in the fields of construction, catering and transportation, in order to prepare risk analyses and to develop specific countermeasures.**

One should, indeed, never lose sight of the fact that corrupt officials and organised criminals usually aim only at the illegal exploitation of given

economic sectors and do not really care about their prosperity and future development. Consequently, suggestions from leading law abiding entrepreneurs to prevent the penetration of corrupt officials and organised criminals into their respective economic sectors should be taken into account by the Government. Additional measures in this field could be the tightening of controls by regulatory agencies and the appointment of police liaison officers for the associated entrepreneurs in a given sector.

Finally, one should think of the role local authorities should play in the prevention of corruption and organised crime. Much too often, indeed, one expects only central government to take action and, preferably, repressive action. Insofar as corruption and organised crime mainly involve the delivery of illegal goods and services, any effective strategy against these phenomena needs strong support from local authorities. The reason for this is quite simple: these authorities are usually entrusted with the delivery of all sorts of licenses and can influence the level to which the accessory businesses and industries are controlled by the police or other agencies. The Czech Government should take the initiative:

- **to invite local authorities, particularly those of the larger cities, for a debate on the measures they are able to take.**

## II.5 The Effectiveness of Crime Control Policies

All information given by the Czech Government shows that in recent years a significant number of changes have been introduced in the Criminal Code and other relevant laws in order to make them more suitable for the repressive containment of corruption and organised crime. Only some of the major changes need to be emphasised in this report:

- the introduction of the notions of “criminal conspiracy” and “criminal collusion”;
- the sharpening of sanctions;
- the introduction of “the plea of effective regret” for those who report organised crime;
- the penalisation of money laundering in compliance with the 1990 Council of Europe Convention and 1991 European Commission Directive;
- and the possibility to prosecute nationals for corruption in other countries.

The only remark one could make in this context is that the Czech Government should also consider whether it would be useful to introduce the criminal liability of corporations.

Still more important than making more changes in the legal framework is, however:

- **the rapid and detailed assessment, on the basis of concrete cases, of the more important changes that have been made in the recent past.**

Such a review would lead to a well-informed basis for additional legal reforms which would still be useful in the years ahead to investigate and prosecute corruption and organised crime cases. It would also reinforce the feeling in relevant social institutions - the press, the police, the judiciary - that those changes have not just been made as a result of political pressure, but in order to really counter corruption and organised crime.

## II.6 Towards Appropriate Regulatory Policies

The Czech Government is undoubtedly aware that the effective combat against corruption and organised crime can not be based only on criminal law and criminal justice. This is shown in particular by the detailed review it has made - in its policy plan - of the laws which regulate immigration. It is also the case regarding the revision of the rules governing business licences and the rules with respect to prostitution, gambling, drugs trade and sale and possession of firearms. One can only support these reforms and recommend that:

- **the existing regulatory laws in the field of prostitution, gambling and weaponry as well as in relation to vulnerable economic sectors like catering, construction, banking and transportation be reviewed.**

Apart from the substantive norms which are established in the relevant laws, the powers of officials to exercise control and the possible sanctions should be reviewed in order to assess whether they are still suitable for the containment of corruption and organised crime.

Although suitable regulatory laws are a necessary condition for effective control of corruption and organised crime, they are meaningless when they are not enforced adequately. In other words: such a legal review has to be complemented by another initiative:

- **the review of the internal organisation, the personnel, the equipment and the functioning of the regulatory agencies in question.**

In this review the primary question should be whether they are still appropriate to the task which they have to fulfil in the context of the containment of corruption and organised crime. If an assessment of the actual situation results in a negative conclusion, a great effort should be made - if necessary with the help of foreign countries - to adapt the regulatory system.

With respect to the previous recommendation, it must be underlined that close cooperation between regulatory agencies and the police is very important to contain corruption and organised crime. To this end one may recommend:



- **the establishment of a working group to define the conditions within which such cooperation could be achieved.**

Such a working group might possibly come to the conclusion that the exchange of liaison officers between the regulatory agencies and the police should be brought about.

## II.7 The Use of Special Powers in the Field of Investigation

In recent years the Czech Government has also introduced into the Code of Criminal Procedure a number of special powers that might be necessary for an effective investigation of corruption and organised crime cases: interception of telephone communications, controlled delivery, use of undercover agents and of anonymous witnesses, etc. From a legal point of view, it may even be said that the Czech Republic is far ahead of the large majority of European Union member States. The main questions that need to be addressed relate to the use of these powers: on what scale are they used? in what cases? with what result, but also with which problems? These questions are all relevant because the named powers are not used that much and the Czech Government itself states that it is still very difficult to collect sufficient evidence in particular cases, notably in cases of corruption. The Government should therefore consider:

- **assessing if these special investigative powers are adequately used.**

Given the alleged seriousness of the problems in the Czech Republic it must be stated that the Czech Government has introduced the possibility for corrupt officials and members of organised crime groups to cooperate with the criminal justice system. The application of the provision in question will of course enhance a complicated debate on very sensitive issues like the postponement of intervention, the rewards to

be given, the verification of statements by “pentiti” (cooperating witnesses from organised crime groups) and their physical protection, etc. Therefore the Czech Government might wish:

- **to make an inquiry into the effectiveness of the policy to encourage criminals to cooperate with the criminal justice authorities.**

In conjunction with the assessment of the use that is made of the special powers in the framework of the Code of Criminal Procedure it should be recommended that the Czech Government:

- **evaluate the appropriateness of the powers, enshrined in the Police Law, to gather criminal information.**

Indeed, on the basis of the interviews which were held during the expert mission, it became clear that at present those powers make up a really important legal framework for the investigation of corruption and organised crime cases. The Government is well aware of this situation and wants to launch, as already stated,

a discussion on the ways in which the collection of criminal information can be made part of the evidence gathering process. Such a discussion presupposes an evaluation as recommended.

## II.8 **The Improvement of the Efficiency and Effectiveness of Relevant Services and Agencies**

With regard to the improvement of the efficiency and effectiveness of relevant services and agencies, the Czech Republic is confronted with problems similar to those of European Union member States. The ways in which it tries to overcome these difficulties also appear similar.

In the first place it must be recalled that the Czech Government has also come to the conclusion that the establishment of special police services and the specialisation of the regular police force are to some extent necessary conditions for an effective repressive containment of organised crime. For this reason the special Organised Crime Division and the Corruption and Serious Economic Crime Division were established within the framework of the Czech police. Such measures are not sufficient in themselves, however. In this case, two crucial issues remain: 1) the establishment of an adequate police data-base on corruption and organised crime at national level, and 2) access to data held by the political intelligence service, regulatory agencies, national and local authorities. As appears from the experience of many other European countries these are problematic questions. In the case of the Czech Republic the first problem can perhaps be solved rather easily because its regular police consists mainly of one and the same police force. With respect to the second problem one may recommend that the Czech Government adopt the solution that has been chosen in several European Union member States:

- **the adoption, with the support of the national government, of agreements between the police and the other relevant authorities, services and agencies concerning the conditions under which certain data will be exchanged.**

In the longer term, however, it will be necessary to revise the existing laws in such a way as to create a firm legal basis for this form of cooperation. Such a revision should be a priority for the committee that coordinates the activities of the police, customs, intelligence services and tax authorities within the office of the Prime Minister. In the meantime one could consider the mutual exchange of liaison officers. In the longer run one should consider the secondment of members of regulatory agencies to special organised crime units of the police.

With reference to the foregoing the intention of the Czech Government:

- **to establish a multi-agency task force in the country**

should be supported.

Indeed, given the complex nature of serious corruption and organised crime problems and taking into account that only a multi-disciplinary approach to them can be successful in the end, it appears to be necessary to establish such a task

force in the Czech Republic with a view to the handling of the most complicated cases. The participants in such a task force should be: the regular police force, the customs service, the tax administration, the immigration service and the regulatory agency or agencies that are involved in economic affairs.

The two foregoing recommendations are interrelated. Agreements concerning the exchange of data will further the functioning of a multi-agency task force. The establishment of such a task force necessitates more or less the adoption of such agreements.

## II.9 The Enhancement of International Cooperation

To a far greater extent than many European Union member States, the Czech Government has made international cooperation a top priority within the framework of its criminal justice policy. The fact that the Czech Republic is a party to many international conventions and bilateral treaties and that it envisages the conclusion of further bilateral treaties with a large number of countries inside and outside Europe, underlines this statement. The draft convention on mutual assistance with Germany -which greatly resembles the Schengen Convention - shows the willingness of the Czech government to integrate the so-called "acquis communautaire" in its own system of international cooperation in the field of justice and home affairs.

The Czech Republic is nevertheless confronted with many problems in this field. These problems originate to a large extent from the way in which international cooperation is regulated. With a view to the conclusion of more detailed and/or more practical additional conventions, it would be very useful:

- **if a comprehensive inventory of all the technical problems with which it is confronted in practice were made on the basis of concrete examples .**

In this inventory, among other issues, attention could be paid to the lack of powers to exchange useful but sensitive data, the necessity for the formation of joint task forces, the sharing of advanced technology and research facilities, and the need for simplified extradition procedures. Furthermore, attention should be paid to the relationship between the Prosecution Service and the police. Also international criminal police cooperation should in one way or another take place under the governance of the Prosecution Service. This means that this service also has to adapt its internal organisation to this end.

Finally, concerning practical "internal" problems mentioned in the questionnaire (lack of personnel, lack of training, lack of information) a possible way to reduce these difficulties as much as possible would be:

- **the designation in every police district and in every prosecutor's office of one or two officials responsible for the smooth functioning of international cooperation.**

### III. Concluding Remarks

The Czech Republic has made a major effort in recent years to develop and to implement a multi-faceted strategy to contain problems of corruption and organised crime. Like many other countries it has nevertheless learned - exactly by doing so - that these problems are not only more unmanageable than is usually anticipated but that the criminals in question are also adapting themselves to the strategies that have been developed to contain them.

However, in order to improve the present situation, the Czech Government should consider implementing the recommendations made in this paper to the largest possible extent and, in particular, taking the following action at an institutional level: the promotion of in-depth criminological research by the Prague Institute of Criminology and Social Prevention, in particular with respect to corruption and racketeering in legitimate economic sectors; the establishment of bureaus of internal investigation in relevant organs such as the police and customs; the involvement of businesses and local authorities in the policy making process; the establishment of special organised crime units within the Prosecution Service; the conclusion of bilateral agreements between the police, customs and other regulatory agencies concerning *inter alia* the exchange of data and the secondment of liaison officers; the building of a multi-agency task force and an evaluation of international police cooperation, in particular with respect to the role of the Prosecution Service therein.

With respect to legislation in the field of organised crime the Czech government should concentrate its efforts on the evaluation of the use that is made of the special investigative powers and methods incorporated in the Code of Criminal Procedure and the Police Law on the one hand, and the review of regulatory law in relation to vulnerable economic sectors on the other hand. Further, the conclusion of the additional convention on mutual assistance with Germany would be an important step forward with respect to the integration of the Czech Republic into the new structures of international cooperation in the field of justice and home affairs.

The implementation of these recommendations would not only lead to the improvement of Czech legislation in several sensitive areas but would also strengthen the institutional framework needed to apply and to enforce this legislation. It goes without saying that such an ongoing reform of the criminal justice and regulatory system can only be successful in the long term if it is accompanied by training of the officers involved. The government makes already an effort to improve the understanding of police officers and members of the Prosecution Service in the field of financial crime. The Prime Minister's committee should, however, try to identify the most important gaps in the knowledge and skills available to officers of the most relevant services. Such an analysis should become the basis for a general training programme in order to compensate for such gaps.