

# Legal cases from Czech environment. Can evidence from statistical data help?

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Conference ANTIcorruption&fraud:DETECTION & MEASUREMENT  
Prague, April 7 2017

# REGIONAL OVERVIEW

## WORLD RANKING OF CORRUPTION PERCEPTION

- TRANSPARENCY INTERNATIONAL INDEX 2016

Rank	Country	2015 Score*
47	Czech Republic	55
54	Slovakia	51
57	Hungary	48
57	Romania	48
72	Serbia	42
75	Bulgaria	41
75	Turkey	41
131	Kazakhstan	29
131	Ukraine	29

Global average score 43/100

EU average score 66/100

\* A country's score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean).

# ANTI-CORRUPTION ENFORCEMENT IN CEE

## CZECH REPUBLIC

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- **Effects of the Act on Corporate Criminal Liability**
  - In 2012, Act No. 418/2011 Coll. on the criminal liability of legal entities and on proceedings against them came into effect
  - Prosecution of companies is on the constant rise since then:
    - While only 9 companies were being prosecuted in 2012, this number increased to 61 in 2013, 139 in 2014 and 200 in 2015 (statistics for 2016 not yet available)
    - So far, 106 companies have been convicted
      - Mainly for fraud and tax evasion
    - Prosecution of several large companies
    - Compliance defence – methodology of the Supreme State Prosecution Office published in November 2016
  - **Problematic aspects**
  - Large portion of corruption related offences remain unpunished (criminal proceedings often discontinued due to lack of evidence)
  - Missing comprehensive whistleblowing regulation
    - OECD's working group on bribery held at the Ministry of Justice on 8 February 2017
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# GOVERNMENTAL INVESTIGATIONS



- **Who „pulls the trigger“ most often?**

- Private individuals (e.g. competitors)
- Police and prosecution authorities (investigating measures, e.g. wiretapping)
- Press
- Regulatory bodies (in CZ e.g.: NKÚ, FAU)
- Tax authorities
- Various NGOs
- Whistleblowers

- **Sectors most exposed to governmental investigations**

According to the EU Anti-Corruption Report from 2014, the most vulnerable sectors are:

- Healthcare
- Construction

- **Other sectors exposed:**

- IT, consultancy services
- Energy industry
- In general, sectors involved in public procurement procedures or using EU funds are the most “watched”

# USE OF STATISTICAL DATA SHOWING RISK OF BRIBERY

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1. By companies in order to exercise the duty of care which includes also implementation of processes which effectively prevent corruption & bribery (compliance difference, corporate criminal liability)
  2. In civil and criminal proceedings: What is evidence and missible in civil criminal proceedings
  3. By NGOs
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# STATISTICAL DATA USED IN CRIMINAL PROCEEDINGS

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- Statistical data can have considerable significance in the investigation of a crime, i.e. stages preceding a criminal proceedings
- If the outputs of statistical data suggest the occurrence of crime, they can be grounds to initiate criminal proceedings
- In such a case, statistical data help trigger a further evidence enquiry, and data may also serve as evidence
- In such a case, the authors need to testify either as witnesses or as experts (university experts can also be invited in order to make an expert assessment)

# BASIC PRINCIPLES OF CRIMINAL PROCEEDINGS IN RELATION TO PROVING A CRIME

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## **Principle of Establishing Facts Beyond a Reasonable Doubt**

- So-called practical certainty
- The procedural authority determines what evidence is admissible, so that the ascertained facts allow a ruling without any doubt
- Circumstances that may be to the benefit or detriment of the accused (defendant) are treated with equal consideration

# BASIC PRINCIPLES OF CRIMINAL PROCEEDINGS IN RELATION TO PROVING A CRIME

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## Principle of Free Assessment of Evidence

- Evidence assessed without legally defined consideration
- The law does not give a priori particular importance to any evidence, yet it does not take into account evidence obtained illegally
- The court assesses whether the contents of the evidence, individually and along with other evidence, is true – assessment of credibility and truthfulness of the evidence
- An internal conviction is not a manifestation of arbitrariness; rather, it is based on strict logic, it relies on legal consciousness of a versatile, in depth and logical assessment of the evidence and its interrelationships
- Analytic and synthetic methods in connection with deduction and induction
- Court has to explain what facts are considered to be proven, what evidence is the fact finding based on, and what consideration is used in assessing the evidence, namely in the event of a contradiction; how defence is dealt with, and why requests for additional evidence provision have been rejected.



# EXPERT APPOINTMENT

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If the clarification of facts in criminal proceedings requires expertise, the criminal authority in the proceeding will request an expert opinion. If this procedure is insufficient due to the complexity of the issue, the authority will appoint an expert.

Act 110 para. 1 section

Act on Criminal proceedings

In exceptional, especially complicated cases requiring special scientific assessment, the police authority or the prosecutor (in court trials the presiding judge) can appoint a state authority, a scientific institute, a university or an institution specialised in expert services to provide an expert opinion, or to examine an expert opinion provided by another expert.

- An expert opinion is a special, separate kind of evidence
- An expert opinion can be submitted by the parties involved; it has the same value as an expert opinion requested by the prosecuting authority

# CONTACT US

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