



Czech Republic

Global Forum on Fighting Corruption
Washington, D.C., February 24-26, 1999

**Information Presented by the Delegation led by
Jaroslav Fenyk, Deputy Supreme Prosecutor of the Czech Republic**

**Embassy of the Czech Republic
3900 Spring of Freedom Street N.W.
Washington, D.C. 20008
Tel: (202) 274-9100, Fax: (202) 966-8540
e-mail: washington@embassy.mzv.cz
Homepage: <http://www.czech.cz/washington>**

Acts Fighting Corruption

The Czech legislation till now was based on the philosophy that the corruption should be fought in particular by the criminal law means in spite of the alternative it could be subject to the administrative law as well.

The Czech Penal Code settles in the Third Chapter special sections including criminal offences "Against the Public Interest" in its third paragraph the bribery. There are the crimes provisions as well as a special provision concerning the plea of effective regret.

The object of the merit of the bribery consist in the interest in a proper, impartial and legal attendance to matters of the public interest. The expression "attendance to matters of the public interest", such an activity should be understand which is connected with duty commissions of the public interest, it means not only the decision-making performed by authorities of the legislative, executive powers and jurisdiction, but also other activities referred to meeting the needs of legal and natural entities in the cultural, social and similar spheres.

Let me in the following tell you an information about our penal law provisions including sanctions and make brief commentary to each of them :

§ 158 Abuse of the public official authority

1) A public official who with an intent of inflicting a damage on somebody or of providing an unjustified benefit for itself or for an other person

- a) is executing its authority in a way contrary to the law**
- b) is exceeding its authority or**
- c) is defaulting in fulfilment of its duties following from its authority**

will be punished by a deprivation of liberty for 6 months up to 3 years or by service prohibition.

2) The offender shall be punished by a deprivation of liberty for 3 to 10 years in the case

- a) that he would provide for himself or for an other person a significant benefit by the act under par. 1)**
- b) that he would cause by such an act a serious trouble to the company or organisation performance or**
- c) that he would cause by such an act a serious damage or an other especially heavy consequence.**

Such a criminal act has be to comitted only by a special subject - **Public Official**. The expression of public official means an elected official or an other responsible official of a state administration or of any governmental body as a manager, prosecutor, judge, policeman etc. or a member of army force provided, they participate in fulfilling tasks for and on behalf of the society and the state and exercise authorities that have been conferred upon them within the

framework of their responsibility for to accomplish such tasks. The offence would be committed in connection with the public figure's authority.

In the period of penal proceedings provisional suspension of the public official is applied. In the case that the official was exculpated, its service would be restored. It will be not in the way of penal law, but administrative law.

§ 160 Passive bribery

- 1) Any person who accepts a bribe or a bribe promise in connection with attendance to matters of the public interest, will be punished by deprivation of liberty for up to 2 years or by service prohibition.**
- 2) Any person who asks for a bribe under circumstances described in the clause 1 above, will be punished by deprivation of liberty for 6 months up to 3 years.**
- 3) By a deprivation of liberty for 1 up to 5 years will be punished an offender who has committed the act described under the clause 1 or 2 above as a public official.**

The bribe acceptance assumes that offender as indeed granted an unjustified benefit. The offer acceptance can occur even without a previous offer or promise made. The time of such a bribe acceptance is not decisive either, whether it happened before, in the course or after having performed an act or activity including attendance to public interest matters.

The feature of a bribe promise acceptance represents a preparatory form, advanced in this very case by the law to an accomplished criminal offence, namely with respect to the highly dangerous standard nature of such a criminal action for the society.

The feature of asking for a bribe shall be held for given in such a case when the offender himself has suggested the bribe provision or the bribe promise.

§ 161 Active bribery

- 1) Any person who provides, offer or promise a bribe to an other person in connection with attendance to matters of the public interest, will be punished by deprivation of liberty for up to 1 year or a fine.**
- 2) By a deprivation of liberty for up to three years or by a fine will be punished an offender who was committed the offence described in the clause 1 above with respect to a public official.**

Providing a bribe means its direct physical handing-over of money but also an indirect providing a material or other advantage or that of reciprocal service.

Offering a bribe means acting by means of which the offender manifests his willing to provide a bribe with the aim of achieving that is requirements concerning attendance to public interest matters would be met. It can be any, even a conclusively made offer for providing a bribe.

Promising a bribe means to express an obligation for to provide a bribe provided that the person involved in the attendance to public interest matters would meet requirements of the offender. The promise of a bribe is aimed at the future and as a rule, it should be accomplished only after fulfilling an other condition or conditions.

There has to be a connection between a bribe provision, offer or promise and an attendance to public interest matter here.

§ 162 Indirect bribery

1) Any person who asks for accept a bribe for the fact that they would influence the authority execution of a public official do to their influence or for the fact that they have already done this, will be punished by a deprivation of liberty for up to 2 years.

2) Any person who provides, offer or promise a bribe because of the above mentioned reason will be punished by a deprivation of liberty up to 1 year.

The merit above refers to the intentional corrupt intervention - affecting the execution of a public official authority. Therefore, a corrupt intervention is not punishable provided that the person, even thought attending to public interest matters, are not a public official.

Such a criminal act is held for completed already due to the fact that the offender asks for or accepts a bribe for to affect the execution of the public official authority by the influence of his own. It is not even required that he intervenes with the public official, indeed. Provided that the offender has indeed affected the execution of the public official authority, the danger level of such an act with respect to the society will increase. On the other hand, provided that the offender has mislead the briber by pretending him circumstances mendaciously that he could affect the execution of the public official authority within the said scope, even thought he has not made any effort for to do it at all, it could be qualified as the criminal offence of deceit.

§ 163 Plea of effective regret

The offender of the crime of the active bribery (§ 161) and/or indirect bribery(§ 162) will not be prosecuted and punished in the case than the offender has provided or promised a bribe only because of having been asked for to do so and provided that he had informed a prosecutor or a police body of it without any delay himself and voluntarily.

The purpose of this special provision relating of the plea of effective regret consists in compassing the penalties for the corruption in the public life. The relation of a bribery or corruption represents a two- parties relationship within the scope of which none of the parties involved is interested in detecting the criminal activity.

Two concrete typical cases of the Czech criminal scene

The first case (case of judge's corruption):

In the course of September 1995, the Police service for the corruption and serious economic criminal activities detection received an information on a "potential" bribe provision as suggested to the district prosecutor B. Based on the data provided by him, the judge of the District court Mrs. K. apparently offered him a bribe amounting 100.000,- Czech crowns for his influencing the prosecution of the accused Mr. S. and comp. According to the information obtained, it was obvious that the judge, Mrs. K., was acting in the capacity of an intermediary of the accused Mr. S. The justifiable suspicion of the preparation for committing the criminal offence of corruption and bribery.

The course of further investigation showed that on September 28, 1995 at about 5 p.m. in town P., Mrs. S., employed in the capacity of editor in the company Cable Television, handed over to the presiding judge of the District court Mrs. K. a sum of 100.000,- Czech crowns assigned for corrupting the District prosecutor Mr. B. with the aim of stopping the prosecution of the accused Mr. S. with the aid of the named prosecutor. The accused was prosecuted because of an acquisitive offence. Mrs. K. was detained on September 29, 1995 at about 10,00 a.m. at the very moment of handing over the amount mentioned in the office of Mr. S. in the building of the District Prosecution. Against Mrs. S. and after having received the approval of the President of the Czech Republic also against Mrs. K. a charge of committing the criminal offence of bribery was raised.

Judge Mrs. K. was convicted of the bribery and was imposed her conditional imprisonment two years with trial period three years. This condemnation has not been valid.

The second case (the case of privatization's corruption):

In the course of October 1994, an information was received in an operative way on the negative course of the privatization process of the company the Dairy in town K. Based on results of the primary investigation, it was obvious that in the course of 1993, a decision was made on increasing the basic capital of the joint stock company the Dairy in town K., comp. by 34 %. For this purpose, the State Property Fund of the Czech Republic invited public tenders, where, among others, also the Investment Bank and the company Trans World International, Ltd. contested in in the capacity of tenders. The executive manager of the company Trans World International was represented by the person of Mr. S. It was the company Trans World International that won the competition of tenders, because it was able to offer the highest financial sum of 220 mio Czech crowns. The Investment Bank offered a sum by approx. 75 mio lower. Nevertheless, later on, this very public competition of tenders was annulled, but the company Trans World International was not informed on its cancellation in writing at all. In connection with checking-up the privatization of the joint-stock company the Dairy in town K., comp. was also found out that the president of its Board of directors had "his special plans" and that he discussed them

with an employee of the State Property Fund of the Czech Republic, Mr. C. After the public competition of tenders was annulled, the representatives of Trans World International started to consider and later also speak about the possibility of entering a suit against the State Property Fund of the Czech Republic because of this "unjustified annulment of the public competition results." On such a possibility reacted Mr.C. with entering the contact with employees of the company Trans World International offering them that he was able to arrange the acquisition of the Dairy in town K., comp. "by means of shares." In this connection, Mr.C. arranged contacts between employees of the company Trans World International and Mr. P., owner of companies Meat Works and Freezing Plant in town P. and D.

Later, some appointments held by employees of the company Trans World International, Mr.C. and Mr.P. took place in the hotel Union in Prague, where the "acquisition of the decisive bundle of shares of the Dairy in town K., comp. was agreed upon. Mr.P. mediated discussions between representatives of the company Trans World International and the director of Securities and Coupon Privatization Centre, Mr. L. This very person was in accordance with information available sleeping partner of the joint-stock company the CS - fund (Privatization Fund) which achieved 5 % shares of the Dairy in town K., comp. in the course of the so called first wave of the privatization process. During the second privatization wave and then until the actual fifth one, this very fund was said to acquire further 38 % of shares of the Dairy in town K., comp. According to information pieces established, Mr. L. had the possibility of influencing the share prices for individual rounds of the coupon privatization so that the shares might be bought by a certain, agreed in advance person interested. At the same time, due to his competence and by the official reason of his position, Mr. L. had the free access to results of individual privatization rounds so that he could let them know, still before making them public, to persons interested in shares of special economic subjects and these could, being really interested in acquiring such shares, contact the new shareholders in advance, overreaching eventual competitors.

On the occasion of the appointments mentioned above, the representative of the company Trans World International made acquaintance with Mr. S., the corporate director of the joint stock company CS Fund. In the conclusion of the discussions, the representative of the company Trans World International was offered by the following possibility of how to acquire the decisive amount of shares of the Dairy in town K., comp., namely: the CS Fund, would sell to the company Trans World International a certain number of shares of the Dairy in town K., comp. on the condition that the company Trans World International would hand over a bribe amounting approx. 7 mil. Czech crowns to Mr.L. and this very sum would be used for influencing other persons in the Board of directors of the company CS Fund.

When calculated and multiplied by the respective number of coupon booklets, the said value should be obtained. In this connection Mr.L. also mentioned that it was possible to settle this amount in DM, too.

On the occasion of the next meeting held in the house of Mr.L., the named informed that handing-over the financial sum (the bribe) should take place in the Chinese restaurant Asia, because they "had here already a well-grooved system in this respect." On this occasion, Mr.L. also asked whether the representative of the company Trans World International would not be interested in buying 400.000,-DM.

During evening hours on October 25, 1994, meeting between the representative of the company Trans World International and Mr. L. took place in a restaurant in Prague. In the course of the discussion Mr. L. let the other party know that CS Funds held 40 % shares of the Dairy in town K., comp. and expressed his conviction that it was a bundle large enough for to provide the decisive lot for the

Trans World International in the joint-stock company mentioned. For the mediation and enabling such a control bundle of shares, Mr.S. should pass on Mr.L. a financial sum of 8.334,500,-Kč. It was the amount calculated by Mr. L. in the course of the meeting on his pocket calculator. At the same time it was agreed upon the fact that Mr. S. should sign an agreement on October 27, 1994 at 10,00 a.m. in headquarters of the CS Fund in Prague 1, Perlová 1, saying that as soon as the State Property Fund of the Czech Republic transfers the shares of the Dairy in town K., comp. to the CS Fund, the agreed upon amount of shares (approx. 40%) would be transferred to the account of the company Trans World International. For and on behalf of the CS Fund, the agreement should be signed by Mr. S. Besides, they agreed that handing-over the financial sum, i.e. 8.334.500,- Czech crowns to Mr. L., would take place on the same day (Oct. 27, 1994), at 8,00 p.m. in the restaurant ASIA in Prague. Apart from Mr. S. and Mr. L., it would be also Mr. P. and Mr. S. who should participate in this evening appointment. On October 27, 1994 at 9,40 a.m. Mr. S. - the representative of the company Trans World International, disclosed all the facts above to the Police body of the Czech Republic - The Police service for the corruption and serious economic crimes detection. The beforehand agreed meeting took place, but handing-over the financial sum did not come about, because the agreement concerning the securities transfer had not been prepared and ready for signing. Followingly, the next meeting was appointed for October 31, 1994.

In October 31, 1994, after 8.00 p.m., another meeting was held in the restaurant ASIA, where the gentlemen S., L., P., an other employee of the CS Fund - Mr. K. and an empowered member of the Police of the Czech Republic participated in. In the course of the meeting, the final approval of the agreement and its signing came about. Afterwards, Mr.L. received from Mr.S. the financial sum in cash (the bribe) amounting 8.334,500,- Czech crowns.

Mr. L. was sentenced by the District court of for Prague 7 and punished by an unconditional confinement for 7 and half years. In the course of the judicial proceedings, the prosecutor extended the prosecution of Mr. L. also by comitting an offence qualified as abuse of the public figure authority. The Municipal court in Prague which decided upon the appeal of the accused, affirmed the legal qualification of the merit from the penal law point of view, but in its final judgement, it reduced the amount of Mr.L.'s punishment to 6 and half years of the unconditional confinement.

Statistic data of bribe crimes in the Czech Republic

(The Annual Report of Ministry of Justice of Criminality in the Czech Republic)

1. Passive bribery

	1997	1995	1993
The total number of crimes	41	24	11
Sentenced	34	23	6
Women	7		
<u>Age</u>			
18-19	1		
20-24	3		
25-29	11		
30-39	8		
40-49	9		
50 and more	2		
<u>Penalties</u>			
Deprivation of liberty	0		
Conditional DL	32		
Fine	13		
Service prohibition	10		
Other kind of penalty	1		

2. Active bribery

	1997	1995	1993
Total number of crimes	138	147	64
Sentenced	98	111	47
Women	5		
<u>Age</u>			
18-19	6		
20-24	28		
25-29	18		
30-39	24		
40-49	16		
50 and more	6		
<u>Penalties</u>			
Deprivation of liberty	15		
Conditional DL	44		
Service prohibition	6		
Fine	42		
Other kind of penalty	17		