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## Some Corruption and Economic Crime Related Terms in the Law Enforcement Environment of the Czech Republic

### Introduction

The fight against corruption is one of the “evergreens” of social, political and media discourse – not only in the Czech Republic. However, some of the concepts related to this area are necessarily not identically understood by the general public or even professionals. In the paper terms such as “**insider trading**”, “**whistleblowing**”, “**trading in influence**” or “**integrity**” (especially in the sense of “**integrity testing**”, often misinterpreted as “**agent provocateur**”) will be discussed, with emphasis on their reflection in law enforcement theory and practice in the Czech Republic. The team of authors will provide overview of the presence of the respective terms in current legislative framework of the Czech Republic, as well as regarding the point of view of individual relevant non-governmental organizations etc. It will be also mentioned the occurrence of individual terms, its possible nuances, or the development of the use of terms in time. The authors' will also exploit some experience from the drafting of the United Nations Convention against Corruption (from 2001 to 2003). In particular, terminological debates were one of the major leitmotifs of the completely international negotiation.

### Theoretical background

#### International legal instruments adopted under the United Nations

The most severe forms of corruption are the ones, which have international or even supranational reach and effect. In this day, there is a pressing need to deal with corruption concerning multinational corporations or entire governments.<sup>1</sup> The most basic division of anti-corruption regulations in the international field is to the so-called “hard law” and “soft law”. Hard law means international law in the narrower sense – it is immediately binding. As regards combating corruption, this concerns international contracts which are analogous to law on the national scale, but where the so called

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<sup>1</sup> Compare with: *Corruption Perceptions Index 2016* [online]. Berlin: Transparency International; The Global Coalition against Corruption, 2017. [online]. [cit. 2017-08-14]. Available from: [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016](https://www.transparency.org/news/feature/corruption_perceptions_index_2016)

“application priority principle” is applicable – if an international contract contradicts domestic legal regulations, provisions of the international contract shall apply.<sup>1</sup>

Soft law means various recommendations, action plans, declarations, guidelines, etc. Their breach shall not strictly establish direct legal liability.

Regarding the United Nations, it is possible to mention the key anti-corruption tool, the United Nations Convention against Corruption [hereinafter the “Convention”], adopted in 2003.<sup>2</sup> Article II of the United Nations Convention against Corruption defines terms, used as the content base of the Convention. This regards especially the following terms: **public official, foreign public official, official of a public international organization, property, proceeds of crime, freezing or seizure, confiscation, predicate offence and controlled delivery**. The terminology used in the legal system of the Czech Republic will be outlined in the following sub-chapters hereof.

The treaty came into effect on 14th December 2005, when ratified by a sufficient number of countries. The Czech Republic became the 169<sup>th</sup> country, acceding to the Convention (on 29<sup>th</sup> November 2013 as the last but one European Union Member State). The official reason for the postponement of the ratification process in the Czech Republic was the refusal of the requirement to introduce criminal liability of legal persons for corruption offences. **This reason was no longer applicable in 2011 after the adoption of the Act<sup>3</sup> on criminal liability of legal persons and proceedings against them.**<sup>4</sup>

Although the completion of the ratification process in the Czech Republic is understood as success, the worldwide network of Transparency International branches **criticizes the low level of enforceability of the measures implemented under the Convention**. Other international anti-corruption instruments, e.g. those by the Organisation for Economic Co-operation and Development or the Council of Europe, include stronger instruments to monitor compliance.<sup>5</sup>

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<sup>1</sup> Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic, Article No. 10. *Parliament of the Czech Republic*. [online]. [cit. 2017-11-04]. Available from: <http://www.psp.cz/en/docs/laws/constitution.html>

<sup>2</sup> Ad Hoc Committee for the Negotiation of a Convention against Corruption. *United Nations Office on Drugs and Crime*. [online]. [cit. 2017-11-04]. Available from: <https://www.unodc.org/unodc/en/treaties/CAC/background/adhoc-committee.html>  
VIDRNA, Jan; KRULÍK, Oldřich. Zasedání Ad hoc výboru pro přípravu Konvence Organizace spojených národů pro prevenci, potírání a trestání korupce. *Kriminalistika*. 2003, No 1, ISSN 1210-9150. p. 42–51.

<sup>3</sup> Act No. 418/2011 Coll., on Criminal Liability of Legal Entities and their Prosecution. *Portál veřejné správy*. [online]. [cit. 2017-11-04]. Available from: <https://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=75794&nr=418~2F2011&rpp=15>

<sup>4</sup> Czech Republic got connected with Convention of United Nations Convention against Corruption: Czech Republic. *Transparency International Czech Republic*. [online]. [cit. 2017-08-14]. Available from:

<https://www.transparency.cz/ceska-republika-pripojila-k-umluve-osn-proti-korupci/>

<sup>5</sup> United Nations Convention against Corruption. *United Nations Office on Drugs and Crime*. [online]. [cit. 2017-08-14]. Available from: <https://www.unodc.org/unodc/en/treaties/CAC/>

## Corruption related offences as seen through a prism of the legal system of the Czech Republic

The Criminal Code, as amended, as well as the now ineffective criminal law, do not directly use the term “corruption”. Corruption offences shall a priori mean accepting bribes, bribery and indirect bribery. **A wide range of other offences closely connected with corruption can be included as well.** An analysis of Act No. 40/2009 Coll., Criminal Code, shows that this regards especially the following: Sec. 331: Accepting bribes; Sec. 332: Bribery; Sec. 333: Indirect bribery; Sec. 226: Machinations in insolvency proceedings; Sec. 248, par. 1 (e): Breach of regulations on rules of economic competition; Sec. 256, par. 1 and 3: Arranging [undue] advantage in the award of public contracts, in public tenders and public auctions; Sec. 257, par. 1 (b) and (c): Machinations in commission of public contracts and in public tenders; Sec. 258, par. 1 (b) and (c): Machinations in public auctions; and Sec. 351: Obstruction of preparation and course of elections and referendum.

The issue of corruption in the Czech Republic is very often connected with the public procurement (public contracts). Successfully conducted criminal proceedings and operative investigation in this area require extensive know-how and skills on the part of the police body, regarding not just penal law, but also private law regulations.

So called **large-scale contracts** include all contracts not classified as small-scale contracts. **Small-scale contract** shall mean a public contract whose expected value will not exceed CZK 2,000,000 [EUR 78,400], exclusive of value added tax, in case of public contracts concerning deliveries or services – or CZK 6,000,000 [EUR 235,200], exclusive of value added tax, in case of public contracts concerning construction works.

**Large-scale contracts** include both over-limit and under-limit contracts. It is not so easy to distinguish between over-limit and under-limit contract categories. The limit values set vary depending not only on the kind of the contract, but also on the type of the contracting authority. The limits change usually every two years following a transposition of a European directive in the legal system of the Czech Republic.<sup>1</sup>

During the public procurement contracts, more and more public finances are being re-allocated (in 2016 about CZK 600 billion [EUR 235,200,000]).<sup>2</sup> Therefore it is possible to label public contracts as an attractive place for various corruption activities.

The various ways of commission of offences connected with the public procurements contracts are very diverse. Commission of such offences is largely connected with Criminal Code, namely with the provisions of Sec. 248: Breach of regulations on rules of economic competition; Sec. 256: Arranging advantage in the

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<sup>1</sup> Government Regulation No. 172/2016 Coll., on Determination of Thresholds and Amounts for the Purposes of the Act on Public Procurement.

<sup>2</sup> HRUŠKA, Lubor et al. *Kriminalisticko-taktické metody při odhalování, prověřování a vyšetřování problematiky veřejných zakázek*. Ostrava: ACCENDO, 2016. ISBN 978-80-87955-07-9. [online]. [cit. 2017-08-14]. Available from: <http://accendo.cz/krimi-vz/Publikace.pdf>

award of public contracts, in public tenders and public auctions and Sec. 257: Machinations in the award of public contracts and in public tenders).<sup>1</sup>

## Individual terms

### Trading in Influence

The term “trading in influence“ is in the Convention present at the article No. 18:<sup>2</sup>

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

During the drafting of the Convention, the term itself was defined as a process usually involving at least three persons: the bribe-giver, the decision maker and the assistant to the decision maker. The assistant is bribed to “adjust” the documents in such a manner that the politician or other person in authority is guided to make the required decision.

From the beginning, the subject is perceived as difficult to tackle and criminalize; to a large extent it is understood as the “tax on democracy”. Counter proposals seeking to revoke this article pointed out that the whole subject may be divided into other punishable acts. Translation difficulties were apparent in most delegations; terms that were used included, for example, „influence peddling“, “non mandatory acting, exploitation of influence”, „hidden lobbying“ etc.<sup>3</sup>

The notion of “influence” is, in this article, the key one: nobody bribes persons who lack influence; what else than influence can an ordinary clerk offer? The influence is not entailed with the person, but with their function within the system.

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<sup>1</sup> Act No. 40/2009 Coll., Criminal Code of the Czech Republic, as amended.

<sup>2</sup> United Nations Convention against Corruption. *United Nations Office on Drugs and Crime*. [online]. [cit. 2017-08-14]. Available from:

<https://www.unodc.org/unodc/en/treaties/CAC/>

*Dokumenty Organizace spojených národů ke korupci a organizovanému zločinu*. Institut pro kriminologii a sociální prevenci, Miroslav SCHEINOST ed., Praha 2008. [online]. [cit. 2017-08-14]. Available from: <http://www.ok.cz/iksp/docs/341.pdf>

*Criminal Law Convention on Corruption of the Council of Europe*. Act No. 70/2002 Coll. of the International Treaties. *United Nations Convention against Corruption*, Act No. 105/2013 Coll. of the international treaties.

<sup>3</sup> Corruption Dictionary. *Business Anti-Corruption Portal*. [online]. [cit. 2017-11-04]. Available from: <http://www.business-anti-corruption.com/about-corruption/vocabulary/>

There are cases in which somebody promises to do/not to do something, s/he accepts a bribe without being able to fulfil the promise or without possessing the influence that would allow it, later apologizing to the bribe-giver for the failed intent, but s/he does not return the accepted money or other benefit. In such case, the person does not misuse his/her influence, but merely the fact of being in a particular position.

Possible translation of the respective term into Czech language can be as follows: “trading in influence” [obchodování s vlivem] (see the United Nations Convention against Corruption, Article 18 and Criminal Law Convention on Corruption of the Council of Europe, Article 12), or “undue influence regarding the decision-making process/competence” [nepatřičný vliv na rozhodovací proces/pravomoc], “intentionally undue advantage” [úmyslná nenáležitá výhoda] or a broader term “indirect participation (to crime)” [nepřímé účastenství].

Apart from the two international agreements mentioned above, there are in fact only three legal regulations and one judicature in the Czech Republic that use – though marginally – this terminology:

- Decree of the Czech National Bank of 6<sup>th</sup> November 2002, No. 501/2002 Coll., which implements certain provisions of Act No. 563/1991 Coll., On accounting, as amended.
- Notification of the Ministry of Finance No. 104/1972 and 536/1997, on conditions and terms for the the granting of a license to trade rights under the Securities Act.
- Decree of the Ministry of Finance of 17<sup>th</sup> December 2003, No. 473/2003 Coll., which amends Decree No. 501/2002 Coll., which implements some provisions of Act No. 563/1991 Coll., On accounting, as amended.

None of the documents, not even any comprehensive study in the framework of the Czech Republic deal with the topic in detail or literally. On the whole, the topic in the Czech Republic is scarcely monitored and is understood as difficult to prove.

More or less the same situation is related to the **”general public“ or media use of the term**. The term is only mentioned – usually along with other terms – in materials of civil anticorruption initiatives (“offering an undue advantage“ or “inciting to an undue advantage“<sup>1</sup>) or audit platforms (as a synonym of the term “indirect bribery“<sup>2</sup>).

## Insider Trading

Insider trading is implicitly defined as abuse of internal information from a certain environment to which others have no access. Some shares are traded by people who know about its future price development more than is publicly known (employees, shareholders, key people in its management and executive of the respective firm).

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<sup>1</sup> *Koalice pro transparentní podnikání*. [online]. [cit. 2017-08-14]. Available from: <http://www.transparentnipodnikani.cz/>

<sup>2</sup> *Boj proti korupci. Deloitte*. [online]. [cit. 2017-08-14]. Available from: <https://www2.deloitte.com/cz/cs/pages/risk/articles/prevence-rizik-korupce-podvody.html>

Regarding the **legal instruments in the Czech Republic**, such activities are illegal from the mid 90's of the 20<sup>th</sup> century. Official term used in Czech is "misuse of the information in business" [zneužití informací v obchodním styku]. The most relevant norm in this regard is the Act No. 256/2004 Coll., on capital market business, as amended. It is also mentioned in Section 255 of the Criminal Code of the Czech Republic.<sup>1</sup>

Only a few cases were investigated by the Czech National Bank or (till 2006) by the Commission for the Stock Market Regulation. However, the reason for this is probably not the ethics of respective managers, but rather the incompetence of control authorities to disrupt suspicious cases.<sup>2</sup>

However, **the meaning of the term is often shifted** among the public or in the media and the term such as insider trading is interpreted as a theft of information that may be misused on securities and stock market for a particular corporation.

## Whistleblowing

The term itself was mentioned several times in the United Nations Convention against Corruption. The best way to explain the meaning of the term "whistleblower" (literally "the one who blows a whistle")<sup>3</sup> is probably to unveil the discussion that took place during the Ad hoc Committee for the drafting of the Convention. The term "whistleblower" is referred to by the resolution, which stood at the birth of the Convention. The term itself was present in a number of articles of the text under discussion. Many delegates did not understand the meaning of the word at all, not to mention the confusion arising from the translation of the term into individual negotiating languages of the world organisation.

It was especially the delegation of Canada who took up the role of the "interpreter". The North-American term "whistleblower" means a boy who watches over the crop. When he finds out that there is a robber in the field of in the orchard whom he cannot defeat, he blows sharply and calls for help, meaning that he frightens the robber and makes him run away. He also blows the whistle preventively, not only when he is sure that the robber is already ravaging the crop, but even if something suspicious is happening (somebody is approaching the field with a sack at night). This boy is not here to fight the robber, let alone to initiate the criminal complaint or testify against the robber in court. However, he is at risk if he meets the unsuccessful robber some time in the future in a secluded spot.

In the figurative meaning of words, the term describes a person who encounters some behaviour he or she does not agree with, and begins to draw attention to the facts and seeks redress. This behaviour is very often connected to the corruption, but it can also be something else, like concealment of unpleasant facts, etc. An example of such activity may be an employee of a firm who reveals some malpractice but

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<sup>1</sup> BALOUN, Vladimír. Ekonomická kriminalita. *Kriminalistika*. Vol 1999, No. 2, p. 132nn.

<sup>2</sup> Ve světě jsou na insider trading citliví. *Hospodářské noviny*, 14<sup>th</sup> April 2006.

<sup>3</sup> The equivalent in Dutch is the term "klokkerluider" (i.e. „bell-ringer”) and in German "Alarmschläger" ("the one who sets the alarm bells ringing”).

**Ethymological note:** The same term might be used for football referee.

Čeština na skřipci: Proč dostal Cipro pokutu? *Týden*. 25<sup>th</sup> August 2003.

makes it known, raises public opinion and forces the law enforcement authorities to deal with the situation.

Whistleblowing can occur both within the public and private sectors. In both, employees can become aware of malpractices of superiors where the public, or the public interest, is put at risk. The first people to know of misconduct inside an organisation are usually those who work there, yet employees often fear the loss of their jobs or the friendships of colleagues.

If other people are involved in the process and want to contribute to its resolution, it is possible to talk about them as whistleblowers as well. For example, it may be a journalist who is not the person who discovered the wrongdoing, but who will make its circumstances more known by the public.

Regarding the **legal instruments in the Czech Republic**, there is not yet included a comprehensive regulation of whistleblowing, including the area of labour law.

The term whistleblowing itself is **only** directly mentioned in the Decree of the Czech National Bank No. 123/2007 Coll., On the rules on prudential undertakings of banks, credit cooperatives, and securities dealers. In this regulation this concept designates a mechanism of communication of major fears of employees regarding the functionality and effectiveness of the control system outside the normal flow of information. The concept of whistleblowing was supplemented into the mentioned Decree only with effect from 1 January 2011, and with no change in provisions laying down procedures in question. It was in fact a technical rather than substantive amendment of the relevant provision and this change was not directly legislatively justified.

In November 2012, the government approved the outline of a bill to protect notifiers of criminal offences (whistleblowing). The Proposal was submitted by the former Deputy Prime Minister, Chairman of the Legislative Council of the Government and the President of the Government Committee for the coordination of the fight against corruption Karolina Peak. Employees who encounter the offence in his work, particularly corruption, should in future be protected against dismissal. The articulated version will contain a list of offences to which notification will relate the protection and also possibilities to defence of those who have been wrongly accused.”

In the reality of everyday life, it is nevertheless possible to identify situations that can be subsumed under the general perception of whistleblowing, and in the Czech Republic these are seen through general regulations of the above-indicated areas of law.

The absence of whistleblowing related legislation in labour law partly replaces the decision-making practice of the courts. The Constitutional Court, for example, in its judgment of 13<sup>th</sup> December 2012 decided that validity of the immediate cancellation of employment relationship for a particularly serious violation of labour discipline must be assessed on a case-by-case basis while considering the public interest protected by the employee on the one hand, and the loyalty of the employee to the employer on the another.

In professional literature and other sources, however, has not been and is not in the Czech Republic paid adequate attention to whistleblowing. The exceptions are a few studies of non-profit organizations and the Parliamentary Institute, several articles in professional journals and currently this prepared collective monograph, which came from a conference on the subject, which took place at the Law Faculty of Charles University in Prague in September 2013.

Regarding the **“general public“ or media use of the term**, unless we exclude terms that can be affected by negative associations (“informant”, “denunciator”, “collaborator”) or complex phrases (“reporting person”, “reporter of the illegal behaviour”, “voluntary associate of justice”), the term “notifier” will remain to be used, though it is not an ideal one.

However, the concept certainly does not only meet the support. As an example of misunderstanding the concept, the case of Senator Jaromír Štětina can be used. During the hearing of the proposal of the Act on the protection of whistleblowers, he repeatedly stated that it is a tool protecting the “denunciator”. Whistleblowers are criticized because of the fact, they does not want to participate in the criminal procedure, often providing information anonymously. Efforts to preserve anonymity are not surprising, as many whistleblowers have been exposed to negative effects of all kinds.<sup>1</sup>

Among the public, the most illustrative stories of individual people who have become known as whistleblowers are the following ones:

**Mrs. Ludmila Havránková** (2004 to 2011) fighting for her rights during the D11 motorway construction around Hradec Králové.<sup>2</sup>

**Mrs. Marcela Urbanová** (2006 to 2014) accused her boss, Jiří Čunek, Mayor of district city Vsetín, of corruption (related to the privatisation of municipal residence flats) and sexual harassment. Her life was ruined, Mr. Čunek’s political career continues.<sup>3</sup>

**Mrs. Miloslava Pošvářová** (2011 to 2012) refused to elaborate a positive construction report regarding the D47 highway for the auditory firm Mott MacDonald. She was fired and subsequently hired by the national Directorate of Roads and Motorways. After some time she was fired again and now she works as a professional whistleblower for the Anti-Corruption Foundation, regarding the transport projects.

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<sup>1</sup> To some extent, the whistleblower’s protection is part of the activities of the Anti-Corruption Foundation that has been trying to help in detecting corruption since 2011, and that financially supports courageous people who highlight important cases and who often risk their jobs and a peaceful life.

PICHR, Jan (ed.). *Whistleblowing*. Praha: Wolters Kluwer Czech Republic, 2013, ISBN 978-80-7478-393-7.

<sup>2</sup> Stát je arogantní, tvrdí majitelka pozemků. *Mladá fronta Dnes*, 17<sup>th</sup> March 2004.

<sup>3</sup> **Ethymological note:** A specific aspect of this affair was the emergence of the term „to Čunek someone out“ [in Czech “vyčunkovat”], that means „getting someone in troubles on grounds of the person’s inability to explain the origin of his/her property“.

Dárek za pomoc Čunkovi. *Lidové noviny*, 9<sup>th</sup> March 2007.



## Integrity Testing

The **integrity test** in the Czech Republic means any measure by which the integrity of a particular person can be “evaluated”. The integrity test, associated with a status of respective person (police officer, a customs officer, a judge, etc.) can be understood as a measure to verify compliance with the statutory obligations attached to such status. The term “integrity of personality” is understood in general terms as the person’s value orientation and behaviour (integrity, honesty).

The effort to introduce integrity testing first appeared in the Czech Republic in 2003, in connection with the document “Analysis of the Possibility of Using the Integrity Test in the Conditions of the Czech Republic”, drafted on the basis of Government Resolution No. 391 of 17<sup>th</sup> April 2002 on the “Report on Corruption in the Czech Republic in 2001 and the Implementation of the Government Program for Combating Corruption”.

This Analysis distinguishes between the narrower and the broader form of the integrity test. The test in a **narrower form** was intended to allow using the tool called “feigned bribe offering”, regarding the precisely defined circle of people. The **broader version** of the integrity test included a check on asset ratios. Both institutes should apply to civil servants, members of the security forces, armed forces, judges, prosecutors and local government officials (persons whose income is paid out from the public budgets, and have competences, for example, to prepare background material for important decisions, etc.).

**However, the integrity test in the form of feigned bribe offer has never been adopted.** Yet, the Act No. 273/2008 Coll., on Police of the Czech Republic, brought a new concept into the domestic law order – the authorization of the Inspection of the Police of the Czech Republic to perform the so-called reliability tests. Introducing reliability tests was considered the first success in an effort to strengthen proactive tools in the hands of crime combating authorities, but which at the same time **did not constitute tools to provoke unlawful activity by the state.**<sup>1</sup>

The reason for strengthening proactive operational investigations against police officers was the fact that they are familiar with the criminal proceedings and the investigation in the case of a criminal offence, so they can be described as potential “professional criminals”, not mentioning their contacts inside the police force. The most appropriate body to first introduce (and test) the new institute into the legal order appeared the Inspection of the Police of the Czech Republic, as it has most experience in detecting such criminal activities.

At the same time, already during the adoption of the Act of the Police of the Czech Republic it was clear that the General Inspection of Security Forces was going to be established that would replace the Inspection of the Police of the Czech Republic and that would have powers extended to other members of the security forces.

Act No. 341/2011 Coll., On General Inspection of Security Forces, and on amendments to related acts, came into force on January 2012 and the present

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<sup>1</sup> VANGELI, Benedikt. *Zákon o Policii České republiky*. Praha: C. H. Beck, 2009, p. 340. ISBN 978-80-7400-142-0.

version of the reliability test is included in its Section 41. The most fundamental change related to this Act is the extension of the scope of potential tests to personnel of the Police of the Czech Republic, the Prison Service, the Customs Administration and the General Inspection of Security Forces itself, as well as the introduction of a substantive exemption for the person who carries out the test for the misdemeanour or another administrative offence (but not for a criminal offence, such as offering a bribe) if such conduct is necessary to achieve the purpose of the test (it means “to prevent and detect unlawful conduct” of the tested persons).

If we summarize the related terminology at this point, the **reliability test** is a version of the integrity test, an already existing administrative law institute introduced by the Act on Police of the Czech Republic<sup>1</sup> and currently used in the Act on General Inspection of Security Forces. The **integrity test** is then a general term, under which all possible forms of this tool including its analogical institutes can be included, including reliability test.

Regarding the **legal instruments in the Czech Republic**, the term **integrity test does not appear in any legal norm**. It only appears in the legislative material of 2003 mentioned above, and it is used as a synonym of reliability test. On the other hand, the **concept of reliability test** appeared in two legal norms specified above, i.e. the Act on Police of the Czech Republic and the Act on General Inspection of Security Forces.<sup>2</sup>

The concept of reliability testing is further reflected in other analytical and conceptual documents, derived from the Government's Strategy of the Fight against Corruption, most recently in the “Evaluation of the Use of the Reliability Test Tool with a Proposal for a Possible Extension to Other Persons in the Public Authorities” from 2016. The document, elaborated by the General Inspection of Security Forces, concluded that the seven-year experience of applying the tests cannot be considered sufficient. The analysis proposed to keep the current state unchanged and to support it by enhancing the financial limits for conducting the tests.

The Government of the Czech Republic took note of the heard material and ordered the Director of the General Inspection of Security Forces to continue to monitor reliability tests and to submit to Government in June 2021 the re-evaluation of the tests, including the analysis of their possible extension.

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<sup>1</sup> See Sec. 107 of the Act No. 273/2008 Coll., on Police of the Czech Republic, as amended.

<sup>2</sup> See Sec. 41 of the Act No. 341/2011 Coll., on General Inspection of Security Forces, and on amendments to related acts, as amended: (1) *A Member is allowed, to prevent, avoid and reveal illegal behaviour, to perform the Integrity test at a Member or an Employee (hereinafter „test person“).* (2) *Integrity test consist in induced situation, which has to be handled by the test person.* (3) *Performing the Integrity test mustn't immediately threaten or harm person's life or health, their property or restrict personal freedom. As well as the human honour has to be saved.* (4) *Upon the request of member of Inspection, the Integrity test may be performed by another person, with their consent. In that case, the person is obliged to follow the instructions of a Member; a Member is responsible for his activities.* (5) *A Member or another person performing Integrity test may provide false information during the test.* (6) *The process of Integrity test is audio-visually documented, an official record is taken about the Integrity test.*

It is possible to anticipate that in the future, there will be legislation regulating the specific employment relationships of the persons to be covered by such “tests” (e.g. the Act on the Employment Relationship of Members of the Security Forces, the Act on Civil Servants) or some separate Act on “reliability tests”.

In this political and conceptual context, the reliability test is perceived (mistakenly) as an anti-corruption tool, despite the fact that the purpose of the test is **to detect any unlawful conduct**, both administrative offences and criminal offences, as well as the potential unethical behaviour.

Regarding the “**general public**“ **use of the term**, it is no surprise that in the Czech Republic is the tool considerably simplified. A significant part of the public still believes that “provocation” in the narrow sense of the word is possible, and even claims to be “volunteers” to intrude the different environments.<sup>1</sup>

## Research methodology

For the range of the given article, the contribution is limited to a few interesting terms. It is uneasy to set some research framework in this regard. **Based on practical experience**, it is possible to sort the respective terms according two variables.

**Table 1.** “Variables” related to related terms.

	Number of legal instruments in the Czech Republic	Number of other documents in “ASPI” <sup>2</sup>	Presence of the term in national language corpus <sup>3</sup>	Presence of the term in Google Search (in Czech) <sup>4</sup>	Presence of the term in media monitoring database journals <sup>5</sup>	Ambiguity of the term
Public procurement	803	1,842	frequent	more than 25 searches a day	103,720	very clear term
Trading in influence	3	10	none	negligent	0	very unclear term
Insider trading	0	20	limited	up to 10 searches a day	638	very clear term
Whistleblowing	0	33	very limited	up to 15 searches a day	526	some ambiguities
Integrity testing	2	4	negligent	negligent	424	many ambiguities

<sup>1</sup> **Ethymological note:** The same term might be used regarding the construction industry (integrity test related to the concrete etc.).

<sup>2</sup> ASPI. *Wolters Kluver*. [online]. [cit. 2017-08-14]. Available from: <https://www.wolterskluwer.cz/cz/online-produkty/aspi.c-70.html>

<sup>3</sup> Český národní korpus. [online]. [cit. 2017-08-14]. Available from: <https://www.korpus.cz/>

<sup>4</sup> *Google Trends*. [online]. [cit. 2017-08-14]. Available from: <https://trends.google.cz/trends/>

<sup>5</sup> Monitoring. *Newton Media*. [online]. [cit. 2017-08-14]. Available from: <https://www.newtonmedia.cz/cs/sluzby/monitoring>

First variable is the **presence of the term** (some terms are more common in general discourse, like whistleblowing, public procurement and integrity testing; some are less common, or even almost unknown – like trading in influence). Second variable is the potential **ambiguity of the respective term**. This “variable” is not based primarily on any external coherent methodology, but on the authors' practical experience regarding the handling, interpretation, and potentially misinterpretation of individual terms. At the same time, it is an assessment of whether the term is in open sources interpreted more-less in one way (which is close to its "official" understanding: **very clear term**) or there is a concept in several "definitions", when some of them (**some ambiguities**) or many of them (**many ambiguities**) are speculative and misleading; and last but not least it is possible to come across with the concepts that are virtually non-existent in municipal discourse and are unclear even to the members of the expert community (**very unclear term**). The position of the terms in following „field of variables” is subject of further – even international – discussion.

## Results and findings

The practical effects of this contribution concern the teaching activities within the Police of the Academy of the Czech Republic in Prague. The same is applied regarding the permanent re-accreditation of terminological documents for the needs of public administration in the Czech Republic (“Crisis Management Vocabulary of the Ministry of Interior of the Czech Republic” etc.).

A key argument for introducing and extending the reliability tests in the Czech Republic is its potential contribution to preventing unwanted conduct regarding numerous public positions. This effect was also unambiguously confirmed by the research project of the Police Academy of the Czech Republic in Prague called “Reliability Test Examination, Exploration, Application and Effectiveness”.

## Conclusions and Suggestions

Only basic information can be used in the defined text space, without using the full range of possible backgrounds. The issue of relevant concepts and their steady interpretation remains a significant issue not only at national but also at international level.

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## RESUMÉ

VÍŠEK, Jiří; KRULÍK, Oldřich; KRULÍKOVÁ, Zuzana; HRUDKA Josef: NĚKTERÉ POJMY SOUVISEJÍCÍ S KORUPCÍ A HOSPODÁŘSKOU KRIMINALITOU V PROSTŘEDÍ PROSAZOVÁNÍ PRÁVA V ČESKÉ REPUBLICE

Boj proti korupci je jedním z „evergreenů“ sociálních, politických a mediálních diskursů – nejen v České republice. Široká veřejnost anebo dokonce i někteří odborníci však nerozumí některým pojmům souvisejícím s touto oblastí. Termíny, jako jsou „insider trading“, „whistleblowing“, „blacklisting“, „obchodování s vlivem“ nebo „integrita“ (zejména ve smyslu „testování integrity“, často nesprávně interpretované jako „agent provokatér“), jsou diskutovány s důrazem na jejich reflexi v teorii a praxi prosazování práva v České republice. Tým autorů uvádí přehled o přítomnosti příslušných termínů v současném právním prostředí České republiky. Rovněž je zmíněn výskyt jednotlivých termínů, jejich možné nuance nebo změny v používání termínů v čase. Autoři také využijí některé zkušenosti z přípravy Úmluvy Organizace spojených národů proti korupci (od roku 2002 do roku 2005). Zejména terminologické debaty byly jedním z hlavních leitmotivů celého mezinárodního vyjednávání.

**Klíčová slova:** Bezpečnostní a právní terminologie, ekonomická (hospodářská) kriminalita, korupce, zkušenosti.

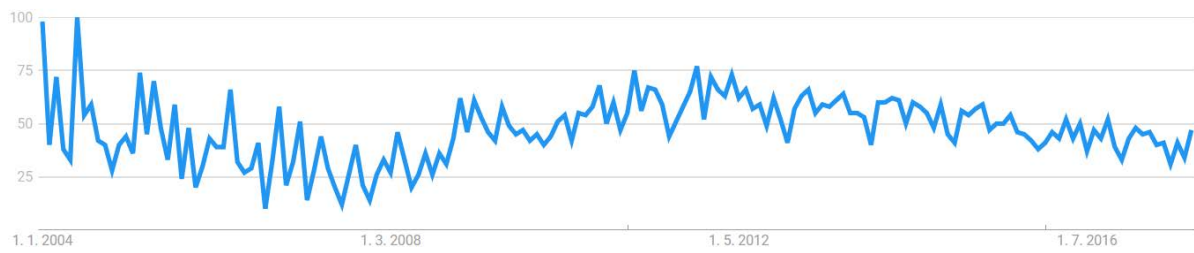
## SUMMARY

The fight against corruption is one of the “evergreens” of social, political and media discourse – not only in the Czech Republic. However, the general public or even professionals do not identically understand some of the concepts related to this area. In the paper terms such as “insider trading”, “whistleblowing”, “blacklisting”, “trading in influence” or “integrity” (especially in the sense of “integrity testing”, often misinterpreted as “agent provocateur”) will be discussed, with emphasis on their reflection in law enforcement theory and practice in the Czech Republic. The team of authors will provide an overview of the presence of the respective terms in the current Criminal Code of the Czech Republic and other relevant legislative norms. The occurrence of individual terms, their possible nuances, or the changes in the use of terms in time will also be mentioned. The authors will also exploit some experience from the drafting of the United Nations Convention against Corruption (from 2002 to 2005). Terminological debates, in particular, were one of the major leitmotifs of the whole international negotiation.

**Keywords:** Security-legal terminology, economic crime, corruption, experience.

**Annex: Number of searches with use of Google Trends (in Czech).**

**Public Procurement.**



**Insider Trading.**



**Whistleblowing.**

