



# Public Procurement in the Systemic Corruption Environment: Evidence from the Czech Republic

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## Abstract

The paper deals with the problem of systemic corruption in public procurement and, on the example of the Czech Republic, defines its risks, the role of informal structures and the way of failure of public institutions. The paper proposes the new methodological possibilities of exploration of systemic corruption and empirically verifies its signs on examples of bid rigging, illegal and non-standard ways of tendering by Czech ministries and in some court cases.

## Keywords:

public procurement, systemic corruption, failure of the public institution, new corrupt institution, bid rigging, illegal tendering

## Introduction

One of the most discussed public policy issues is the impact of corruption on public procurement. Literature has devoted itself to this topic for several decades, but it examines, in particular, individual corruption, i.e. personal misuse of rules for private profit (Nye 1967) and its risks in the public procurement process (EU 2013, OECD 2009, TI 2014, Ware et al. 2007). Other authors then investigate systemic corruption, a phenomenon qualitatively different from individual corruption, and its impact on essential spheres of society (Stefes 2004, Caiden and Caiden 1977, Caiden 2003, Langr 2014).

This paper also deals with the research of systemic corruption, concerning public procurement, where we still lack a study based on the empirical analysis of data from the Czech Republic. The aim of this article is, therefore, to empirically examine and clarify the phenomenon of systemic corruption in public procurement,

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to define its risks, to discuss the findings and to formulate some recommendations for theory and practice. It is clear that the findings can be provoked even in other countries of the post-communist region, regarding their similar history, concurrent social developments, and current issues in public policy.

As far as public procurement issues are concerned, the interest of private business is understandable. The EU market has grown year on year and, for example, in 2015 achieved EUR 2015 billion (13.7% of EU GDP), compared to EUR 1900 billion a year earlier. In the Czech Republic in 2015, the extent of procurement grew to EUR 24.2 billion (14.5% of CZ GDP), compared to EUR 21.3 billion a year earlier. It is not surprising if the private sector appreciates such an opportunity as very attractive and if the private interests of politicians and civil servants, whose primary duty is the fulfillment of the common good, meet with that, too.

The paper aims to uncover and identify mutual indications of the working of systemic corruption in individual cases of public procurement in the Czech Republic, the essential role of informal parallel structures and the way of public institutions' failure or their transformation into corrupt institutions. The findings will be used as a supporting model for generalizing the behavior of systemic corruption in public procurement. The research goal is framed by two main research questions:

- 1) How does failure of the public institution, or, respectively, its actors, manifest in the systemic corruption environment?
- 2) How do pre-agreed collusive deals and other signs of systemic corruption (e.g. in the form of bid rigging, illegal and non-standard procurement, state capture, business capture, etc.) affect public procurement?

On the first research question, we want to demonstrate that systemic corruption affects the public institution so much that on the basis of a corrupt social contract (Teorell 2007) it creates a functioning system within of corruption ties and relations for rent-seeking and distributing benefits to all involved participants. The second research question is to show the frequency of manifestations of systemic corruption in public procurement in the Czech Republic and also how they are implemented in practice.

The paper is structured as follows: In the first part, we approach the theoretical concept of public procurement in the context of systemic corruption and its risks, as we have already developed in several previous publications (Langr and Ochrana 2015a, 2015b, Langr 2017a, 2017b, 2017c). Then we show a methodological concept of systemic corruption research that goes beyond the current mainstream view. Our approach examines systemic corruption on the meso and macro level and oversees the transformations and behavior of structures, networks, groups, and institutions. The third part is empirical, in which we define the research questions and the way of data collection and analysis. The manifestations of systemic corruption are examined in the decisions of the Office for the Protection of Competition in 2013–2017

(bid rigging), the Supreme Audit Office conclusions in 2013–2017 (illegal and non-standard way of tendering by ministries and state administration bodies in the Czech Republic) and in some court cases. In the last part we offer the results and the discussion about them, we also formulate some recommendations.

## 1. Research of systemic corruption – state of affairs and theoretical framework

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Even though research into corrupt behavior reaches quite deep into the modern history of social sciences, and corruption itself is precisely named in antiquity, research patterns have so far changed marginally. Fazekas et al. (2013) report three recurrent approaches to corruption research:

- (a) Surveys of subjective perceptions, attitudes and personal experiences of corruption (commonly used by Transparency International and World Bank for the presentation of the CPI or World Governance Indicators),
- (b) Comparisons between strengths and weaknesses of public institutions and legislation (e.g. Beblavá and Pavel 2008),
- (c) Case studies of different types and focus (e.g. Ledeneva 2009, Vanucci 2009, Mikušová Meričková et al. 2017, Grega 2018).

Fazekas et al. (2013) concurrently name the limitations of the abovementioned approaches. It is a subjective perception of respondents which often do not even need to be up-to-date at the time of research (a), only the indirect measurement of corruption (b) and finally, there is the limited scope and the possibility of generalization (c). The pitfall of such an enumeration is not only that it is incomplete, as it goes beyond the crucial area of court cases and their analysis. But especially, such research is mostly oriented on individual corruption, based on traditional corruption theories (e.g. Heidenheimer et al. 1989, etc.) and omits the area of systemic corruption and its risks, while some of the research is simply not applicable to that. As we will see later, in a systemic corruption environment, we have to work with a different structure of actors and their interrelations, because systemic corruption is an institutional phenomenon.

The main theoretical backbone of our research is the theory of systemic corruption. But the situation is all the more complicated in this respect, because no comprehensive theory actually exists, let alone the theory of public procurement in a systemic corruption environment. In the first case, however, instead of synthesis, we can draw on the concepts of several authors who gradually contributed to the knowledge of systemic corruption relations. The introductory works can be found in the scholarship at the turn of the 70s and 80s of the last century (Caiden and Caiden 1977, Caiden 2003, Dobel 1978, Jowitt 1983, 1992), but it was more of a rare case of American provenance. It is only in recent years that partial contributions to systemic corruption have been added, so that the sum of knowledge is constantly

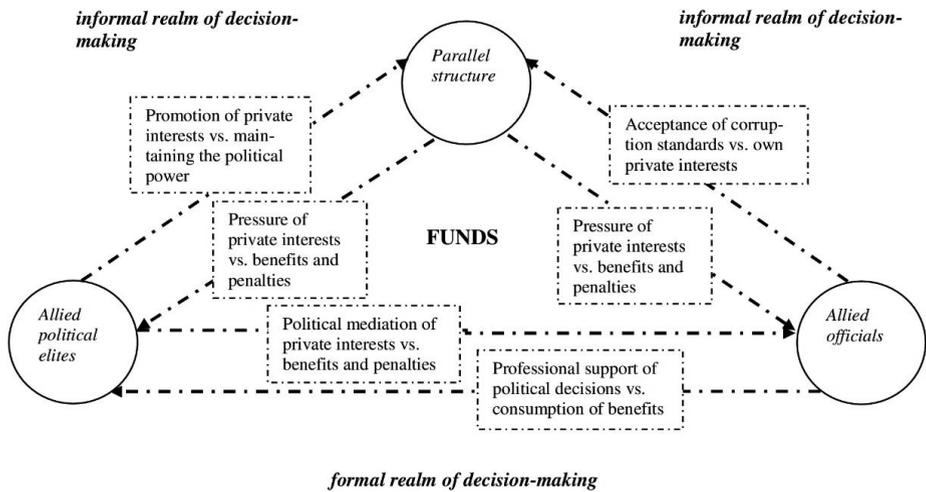
increasing (Frič et al. 1999, 2012, Caiden 2003, Stefes 2004, 2007, Wallis 2004, Yakovlev 2006, Teorell 2007, Vanucci 2009, Rothstein 2011, Persson et al. 2013, Plaček et al. 2018). Systemic corruption, however, is still a rather marginal segment of corruption research, yet it must respond to a constantly changing reality because it is closely related to organized crime (Piga 2011), whose development and practices are very progressive. The development of the topic is so fast and probably will not be completed in the foreseeable future.

As regards the issue of public procurement in a systemic corruption environment itself, any theoretical support is lacking. Some publications work with the original concept of state capture (Hellmann et al. 2000), which we consider to be one of the indicators of systemic corruption. However, they often fail to overcome the positivist economic outlook (the relationship of corruption, methods of awarding and transparency) and related methods and schemes, such as the phase analysis of public procurement (pre-bidding, bidding, post-bidding), and red flags that show or may indicate some of the corrupt risks (EU 2013, 45, OECD 2009, 52 n., TI 2006, 17, TI 2014, 12 n., Ware et al. 2007, 300–301, etc.). This approach is based on the traditional principal-agent concept to effective control of agents (civil servants who prepare public procurement/politicians who initiate procurement, etc.) with the principled principals (Klitgaard et al. 2000).

### **1.1 The triangle of corrupt relations and/or a new corrupt hierarchy**

However, in the context of systemic corruption, a fundamental problem arises from the above. Systemic corruption is a collective/institutional behavior where we lack principled principals (Persson et al. 2013, Teorell 2007, Uslaner and Rothstein 2012, Langr 2014, Balian and Gasparyan 2017) because we are working on the assumption that the institution is corrupt as a whole. Therefore, the principal-agent concept, or the related processes here, cannot work, they fail as well as the public institution itself. What is characteristic on the other hand, is the establishment of new corruption standards (Caiden and Caiden 1977), the interdependence of individual actors as corrupt accomplices and the reciprocal system of relations, resources and profits as shown by the following triangle of corrupt relations:

**Figure 1**  
The triangle of corrupt relations



Source: Langr 2014, Langr and Ochraha 2015a, 2015b

The corruption triangle is a typical example of an asymmetric network, in whose vertexes allied political elites, officials and private business representatives meet. While politicians and officials operate within a public institution, i.e. in a formal sphere, private business forms informal parallel structure. Among all three vertexes, the reciprocal system of relationships and bonds, which form the duties and benefits and based on the agreed corruption rules, is gradually brought. Leading roles take on business parallel structures that coordinate and manage their political and bureaucratic contacts, divide benefits and impose sanctions. Their primary aim is rent-seeking at the expense of public funds, in particular through public procurement. Political elites are all interested in retaining their share of power and overseeing corruption operations within the formal role of the institution, and economically it is about the illegal financing of their political parties and their election campaigns. Officials have control over resources; they are interested in consuming the benefits offered by politicians and entrepreneurs, to be able to build a career, or simply to keep their jobs.

Based on our research (Langr 2014, Langr 2017b, Langr 2017c), we claim that the parallel structures reflect in their leadership role the traditional mafia pattern between the patron and the client. The asymmetric network gradually develops into a new order – a new hierarchy dominated by the patrons/godfathers. In this case, this new hierarchy is not primarily regarded as a purely formal institutional arrangement, as in the case of the native bureaucratic institution, but as a privatized

structure serving private interests (Jowitt 1983, 1992), even though it also fulfills the tasks entrusted to public administration. The new corruption hierarchy, therefore, contains elements of the typical bureaucratic hierarchy as well as elements of asymmetry and corruption networks built on the relationships between the accomplices, i.e. politicians, officials, and godfathers.

The following table shows the comparison of traditional public institutions, system corruption networks, and new corrupt institution. In particular, the variability of the involvement of the various actors involved in the new structures, as well as the objective they want to achieve, is evident.

**Table 1**  
Difference among public institution, systemic corruption,  
and new corrupt institution

	<b>public institution</b>	<b>systemic corruption</b>	<b>new corrupt institution</b>
<b>actors</b>	public administration	public administration, private sector	public administration, private sector
<b>structures</b>	bureaucratic hierarchy	asymmetry, networking	new corrupt hierarchy (bureaucratic hierarchy + asymmetry, networking)
<b>relations</b>	coordination, cooperation, interdependence on the basis of principal-agent (social standards)	interdependence, complicity (corrupt standards)	coordination, cooperation (social standards) vs. interdependence, complicity (corrupt standards)
<b>objective</b>	common profit	private profit (rent-seeking)	limited common profit, full private profit (rent-seeking)
<b>impact</b>	non-zero-sum game	zero-sum game	non-zero-sum game (common affairs) vs. zero-sum game (private interest)

Source: own processing

## 1.2 Risks of public procurement in systemic corruption

For the public procurement in a systemic corruption environment itself, a significant formal process within a public institution, taking place at the pre-bidding, bidding, post-bidding phases, is not at all important, but instead, the time levels immediately previous and following. If we describe the formal process for example by the time phases  $T_1 - T_2 - T_3$  (pre-bidding, bidding, post-bidding), then in systemic corruption, we have to take into account the  $T_0$  phase when basic collusion deals based on corrupt standards arise (what will be put out to tender, who will be awarded and for what bid) and phase  $T_4$ , when accomplices divide their illegal profits (Langr and Ochraha 2015b). The inner relation between where the behavior of

actors take place, the timing of that and the outcome of the action whole are clearly shown in the following simple table:

**Table 2**  
Phase analysis of public procurement in systemic corruption

<b>Where?</b>	triangle of corrupt relations	→	public institution	→	triangle of corrupt relations
<b>What?</b>	establishment of corrupt deals	→	formal bidding process	→	the dividing of illegal profit
<b>When?</b>	time phase $T_0$	→	time phases $T_1 - T_2 - T_3$	→	time phase $T_4$

Source: own processing

In chapter 1.1, we have already mentioned how corruption in the systemic corruption system is manifested by **the failure of a public institution** that, due to the corruption norms and acts of the actors, passes into the corruption network or, respectively, into a new corruption hierarchy. And it is the time phases  $T_0$  and  $T_4$  when corruption deals and the division of illegal profit occur (Langr 2017a, 2017c).

Both corrupt phases  $T_0$  and  $T_4$  have also been covered by a phenomenon called **big rigging**. These are collusive cartels between competitors, carried out at the expense of public funds through public procurement, especially when the collusion takes place within corrupt networks and with the participation of informal structures or various middlemen (e.g. Kovacic et al. 2006, OECD 2009, 2010, Ochrana 2013, Reeves-Latour and Morselli 2017, Søreide 2002, Vanucci 2009, Andvig 2012, etc.). For our research, it is essential that bid rigging mainly reflects the two basic features of the system-corruption network and/or new corrupt hierarchy:

- A. It confirms that the actors are accomplices and make a conspiracy to falsify competition by pre-agreed corruption rules,
- B. It supposes a mutual distribution of benefits and profits among all the actors involved. This fact results in the misuse of public funds of municipalities, regions, state and transnational entities (typically EU funds).

Other signs of systemic corruption include **state capture** (Hellmann et al. 2000) or **business capture** (Yakovlev 2006). In both cases, it concerns the interconnection of business, political and official structures to rent-seeking for a limited band of corrupt actors. State capture can be defined as the captivity of public administration by economic entities that try to reduce competition and gain public funds for themselves (cf. vendor lock-in in chapter 1.3) in a variety of ways. Business capture is to a certain extent the opposite; the bidders have to buy themselves out first to get from the public authorities the space to fulfill their private interests, i.e. to get public contracts (Langr 2014). From the above, it is clear that both state capture and business capture intertwine with the systemic corruption phases of public procurement  $T_0$  and  $T_4$ .

The theory of systemic corruption still has worked with many other phenomena, but it is obvious that many of them are either very closely related or even intertwined – we might mention, i.e., **systematic corruption** or **venal corruption** (Wallis 2006). More important than cumulating indicators with similar content, however, is to realize the fundamental common features that these key concepts cover:

1. The existence of a systemic corruption network or corruption hierarchy, originating from the background of the original (and now privatized) public institution,
2. The existence of new corruption rules that dominate the network or the new hierarchy,

3. Mutual compliance of the behavior and the dependence of all corrupt actors (officials, politicians, businessmen),
4. Common rent-seeking, no matter the form – career, political posts, funds, etc., and its division by the pre-arranged rule.

### 1.3 More risks of public procurement in the Czech environment

Moreover, in the Czech environment, we might identify using illegal methods of tendering and vendor lock-in as frequent risks of public procurement. For the  $T_0$  phase, the over-use of **illegal and non-standard methods of tendering** is typical – in the Czech environment, it is an extensive use of a competitive procedure without negotiation (CPWN), which in principle means awarding the contract to a single bidder, selected entirely without a competition (Act 134/2016 Coll., § 63). In the Czech public administration, this problem is all the more severe as it affects its top level, i.e. ministries and state administration bodies. The Czech Supreme Audit Office repeatedly, in its audit reports and annual reports, draws attention to the high percentage of use of the CPWN in public procurement by Czech ministries. Its percentage of the total volume of contracts reached between 31 % and 62 % between 2011 and 2016, with the financial value of CZK 3–7 billion. Typically, this is particularly noticeable in ICT procurement, where the share of the CPWN in the total volume of procurement of ministries reached 50 % in 2013, then halved in the next two years (SAO 2016, 32, 60). As the SAO analyzed from the open data of the European Commission, the Czech Republic was the third worst EU member state in the rate of using non-competitive methods in 2015. The European average of using non-standard methods was 1.06 %, seven times more than in the Czech Republic (SAO 2016, 62).

A common problem with non-standard methods, especially in the ICT field, is the phenomenon called **vendor lock-in**. Simply put, this is the capture of the organization or institution by the exclusive service provider, who knows the details of how the ICT systems within contracting authority work and is, therefore, the only one able to provide new components or licenses (EC 2013, 2). Then the contracting authority often tends to compete for long-term contracts in closed procedures, leading to a further deepening of dependence, rising contract prices and wasting public funds. For a systemic corruption researcher, the crucial issue is to what extent vendor lock-in is just a coincidence or negligent work of the official apparatus or a purposeful collusive systemic corruption agreement between an organization or institution and a supplier of ICT services. Together with an extremely widespread CPWN, vendor lock-in is one of the significant indications of systemic corruption.

## 2. Methodology

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Our approach to actors and the newly defined risks in public procurement in the context of systemic corruption imply the necessary modification of the management of research. The current mainstream approach, aimed at detecting common individual corruption in public procurement, or increasing the transparency of the procurement process, has often been shared by legal or economizing concepts. At the same time, such research is usually done at the micro level, because the primary research object here is an individual who abuses the rules for private gain (Nye 1967). In such cases, analyses of the legislative framework, cross-country comparisons of the environment, discursive analyses of regulations, or quantitative verification of variables dependence (e.g. increasing the transparency of the procurement process vs. reducing the level of corruption) are often used (Strand et al. 2011, Nemeč et al. 2006, Ochrana and Pavel 2013, Ochrana et al. 2015, Ochrana et al. 2017 etc.). However, these are hardly applicable as research methods in the context of systemic corruption.

Not only do they not reflect the change of environment and the different structure of the actors, but they can also make mistakes because the process of public procurement in systemic corruption is often outwardly defect-free and in compliance with regulations. And therefore it seems to be formally correct (see Phase  $T_1 - T_2 - T_3$ ). At the same time, they cannot answer the crucial issues that are linked to systemic corruption and which are related to its deep impact on public funds. So how does systemic corruption in public procurement manifest itself, and what are the roles of individual actors and/or structures? This can then have a fatal impact in defining and implementing wrong and subsequently inoperable anti-corruption measures.

Our methodological approach (Langr 2017a, 2017b, 2017c) reflects, among other things, the following facts:

- The main research levels are the meso and macro levels, which includes both public institutions and various corrupt networks and other informal structures, incl. private business (business),
- The research focuses primarily on the behavior of these structures in the time phases  $T_0$  and  $T_4$  that immediately precede and/or follow the formal public procurement process by a public institution. Both time phases take place outside the public institution on the basis of the triangle of corrupt relations. The time phase  $T_0$  covers the decision of the corrupt structures about what will compete and who will be the winning supplier of goods, constructions or services (i.e. the establishment of corrupt deals); the time phase  $T_4$  is then the stage where the accomplices divide their profit reciprocally (i.e. the fulfillment of the corrupt deals). In both time phases, thus. we explicitly investigate criminal offenses at the level of organized groups and structures, not individuals. Both time phases

are also mutually conditioned because they fulfill the corrupt social contract, i.e. the rules of the corrupt game. So it goes for the following claims – if there are no corrupt deals, there is no division of illegal profits. And if the illegal profit is divided, it is based on pre-agreed deals,

- Research methods also include qualitative techniques, such as interviews with insiders, analyses of public administration documents incl. control bodies, court case analyses, etc., with an emphasis on an interpretative view,
- A researcher trying to understand systemic corruption and its manifestations also uses indirect proof and indications, which are often the only clues to identifying systemic corruption. Robust verification is, on the contrary, often impossible, especially for the way in which corrupt networks/institutions are organized, for complexity relations among the corrupt actors (accomplices) and for the role the external (parallel) structures play,
- An effective source of information is also the media discourse, which often has its investigative potential, as well as relevant police and court documents from various cases,
- If an analysis of court cases is used in the research, which is still exceptional in the Czech environment, it is appropriate to include both sentenced and unfinished cases and to follow the similar elements in detail,
- At the same time, an extensive view (Gardiner 1993) is applied for every researched signs and case that we can denote a specific behavior as corrupt even though it has not yet been condemned, but it has a negative impact on the public interest. In other words, if the corrupt actors have not been punished yet, it does not mean they did not do it.

### **3. Data and Findings**

The empirical part of the paper aims to back up, by real data, examples of systemic corruption risks as defined in chapter 1.2. They are the indications of systemic corruption in public procurement in the Czech environment. At the beginning of the paper, we have identified two primary research questions:

- 1) How does failure of the public institution, or, respectively, its actors, manifest in the systemic corruption environment?
- 2) How do pre-agreed collusive deals and other signs of systemic corruption (e.g. in the form of bid rigging, illegal and non-standard procurement, state capture, business capture, etc.) affect public procurement?

The data take into account the analyses of the decisions of the Office for the Protection of Competition (OPC) for bid rigging in the years 2013–2017 and the analyses of the Supreme Audit Office's (SAO) audit conclusions from 2013–2017,

which focus on illegal and non-standard methods of public procurement and inefficient use of public funds of the ministries and state administration bodies in the Czech Republic.

Within several years of our research, we have also gathered some court cases that indicate a strong root of systemic corruption in the Czech environment. Their analysis aimed at the confirmation or falsification of the following patterns of systemic corruption behavior of actors, structures, and institutions as we have previously defined them (Langr 2017b):

- a) The presence of a parallel structure which has a direct decision-making effect on public procurement instead of a public institution,
- b) The existence of pre-agreed deals on the course of the public procurement process,
- c) The presence of a middleman who co-decides on the access of private entities to the public contract, and/or illegally obtains information from the contracting authority and provides them to selected competitors,
- d) The existence of a formal procurement procedure, i.e. the failure of a public institution as a contracting authority,
- e) The existence of illegal profits and their division among the various actors (accomplices).

For this paper, we present the analysis of the David Rath Group case, which is a significant example of systemic corruption in public procurement.

### 3.1 Bid rigging

In the theoretical part of the paper, we mentioned that bid rigging is considered one of the significant risks of public procurement in a systemic corruption environment, as it covers the corrupt time phases  $T_0$  and  $T_4$ , when corruption deals are made or, respectively, when the illegal profit is divided. By analyzing individual cases of bid rigging, we can get an overview of the personnel (number of involved actors) and material (amount of public procurement) extent of this phenomenon.

Between the years 2013 and 2017, the OPC concluded a total of 14 cases of bid rigging in connection with public procurement of different contracting authorities. We present all the verdicts that were terminated either on appeal or in the leniency program, where the offenders had to acknowledge their guilt unconditionally and accepted the sanctions. In this context, they have the right to sanction remission or for reducing the fine by 20 %.

As part of the analysis, we mainly looked at three themes:

- The forms of wrongdoing,
- Specific bid rigging patterns (OECD 2009, Ochrana 2013),
- The amount of the fine.

**Table 3**  
Bid rigging cases under OPC investigation in 2013–2017

Rank	Year	Type of verdict	Number of offenders	Sanction	Pattern
1.	2014	leniency program	6	1.9 mil. CZK	cover bidding + market allocation
2.	2014	leniency program	2	0.97 mil. CZK	cover bidding + market allocation
3.	2015	appeal	2	1.8 mil. CZK	bid suppression
4.	2015	appeal	2	1.57 mil. CZK	market allocation
5.	2015	appeal	2	44.1 mil. CZK	cover bidding
6.	2016	leniency program	2	2.5 mil. CZK	cover bidding
7.	2016	leniency program	2	1.1 mil. CZK	cover bidding
8.	2016	appeal	2	5.88 mil. CZK	market allocation
9.	2016	leniency program	2	0.89 mil. CZK	cover bidding
10.	2016	leniency program	4	39.84 mil. CZK	market allocation
11.	2016	appeal	7	1,660 mil. CZK	cover bidding + bid suppression + market allocation
12.	2016	appeal	12	300.5 mil. CZK	cover bidding + market allocation
13.	2017	leniency program	2	1.83 mil. CZK	cover bidding + market allocation
14.	2017	leniency program	2	4.56 mil. CZK	cover bidding + market allocation
				<b>Σ 2.1 bill. CZK = 83 mil. EUR</b>	

Source: own processing

The table shows that the most commonly used pattern of bid rigging is cover bidding and market allocation, which also often appear in combination. It is quite ordinary, because the patterns are, in principle, intertwined or support each other (OECD 2009, Ochrana 2013). However, the number of proceedings concluded by the so-called leniency program is already interesting, too, as it shows that the Czech OPC can gather convincing evidence of bid rigging. As for the sanctions themselves, the OPC handed down fines for almost CZK 2.1 billion, i.e. EUR 83 million in the current recalculation.

On the other hand, the OPC not only does not have sufficient capacities to investigate many other cases but is even accused of deliberate slackness and slowing of investigations, which has already stopped several hundred complaints about public procurement in the amount of CZK 25 billion (Anticorruption Endowment

2017) If that were true, then the OPC itself would aspire to be one of the actors of systemic corruption.

By far the most important category of bid rigging analysis is a specific form of wrongdoing, that is, how collusive deals are taking place and what illegal fulfillment the accomplices gain from them. Significant are cases No. 10, 11 and 12 concerning 21 building deliveries, especially for transport and water management projects in the South of Bohemia between the years 2006 and 2013 in the total amount of CZK 1.07 billion (excluding VAT). Interestingly, Case No. 11 featured the largest construction companies operating on the Czech market (such as Skanska, Strabag or Eurovia). The OPC set up an investigation into conspiratorial documents with handwritten notes on the manipulation of individual contracts discovered in the office of some accused companies, as well as on mail correspondence between companies that demonstrate the coordination of tenders in individual competitions (OPC S834/2014, 31–34). The notes then summarize in detail which companies make a bid and which of them, on the contrary, do not, including specific bid amounts. In all three cases, the OPC received the indication through an anonymous filing, which contained *“a precise description of the infringement itself and an inventory of the individual building companies involved in the behavior, including the designation ‘leading role’ of a particular entity”* (OPC R381/2016, 31).

The rate of wrongdoing also corresponded to high financial penalties, which together reached almost CZK 2 billion. In mid-2017, however, the Regional Court in Brno canceled the OPC verdict in case No. 11 incl. Fine due to procedural defects; in March 2018 the same court annulled the sanction in case 12 for the same reasons. In effect, only the conclusion of the OPC in Case No. 10, which was concluded under the leniency program, remains valid. However, the OPC is convinced of the correctness of its procedure and intends to challenge the court verdict. As commented by the Chairman of the OPC Petr Rafaj: *“Cartels are not about one contract, but about a chain of more contracts. In essence, they have a password – once for you, once for me. ... We have clear evidence; companies are just defending against how we discovered that. After all, nobody doubted that the cartel really happened. ... When I say this, murder will always be murder, no matter how the law judges it”* (iDNES.cz 2017b).

Analysis of e-mail communication and mutual meetings of representatives of rival companies also shattered the cartel for the supply of medical technology and modern technologies to two large Czech hospitals – the University Hospital Ostrava, controlled by the Ministry of Health, and the Regional Hospital in Liberec. Two rigged contracts (Case No. 5) reached CZK 125.5 million in 2010 (excluding VAT). According to the OPC, in both cases, company A did not make a competitive bid, but a cover one, which was prepared in cooperation with winning company B or, in the latter case, through company C’s winning bid. The participation of company C was only formal, and company B was its subcontractor (OPC R3,5/2015, 24, 28).

What is apparent from the findings above? In particular, they confirm that we can actually identify in both cases phases  $T_0$  and  $T_4$  as part of bid rigging, which are the key stages of making and implementing systemic corrupt deals. Individual cases also show that illegal profit may not only be a direct financial gain but also subcontracting. This will be most obvious in the analysis of the Rath and accomplices court case.

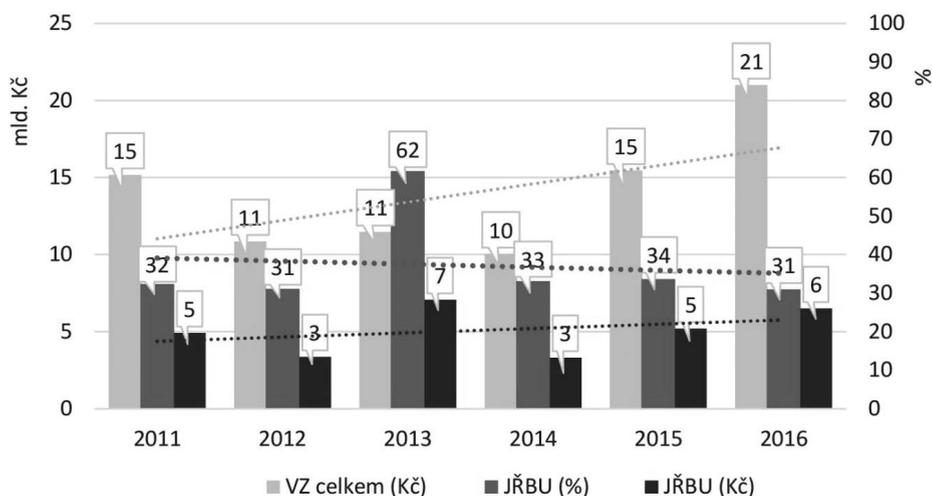
### 3.2 Illegal and non-standard public procurement by Czech ministries

As in previous cases, the use of illegal ways of public procurement by the public administration is linked to the making and implementation of corrupt deals. In many of the cases listed below, there is still no tangible result of a police investigation that would expose both all corrupt actors and ways of dividing illegal profits. So we can only get the acquired knowledge as an indirect indication.

The use of illegal and non-standard methods of public procurement is prevalent on the top level of the Czech state administration. The following figure describes the situation in the Czech ministries in 2011–2016 and shows that the volume of contracts awarded in a non-competitive way (CPWN) is still growing (in billion CZK), the percentage share then remaining roughly one-third.

Figure 2

Public procurement (PP) under Czech ministries between the years 2011 and 2016



Source: SAO 2016, 60

The left column always shows the total number of contracts by the Czech ministries in billion CZK; the middle one is the percentage share of the CPWN, and the right one is the financial volume of the CPWN in billion CZK.

If we analyze the audit conclusions of the SAO in 2013–2017, we can find that the highest corrupt risks (illegal tendering to the sole bidder) are mainly linked to the Ministries of Defense (MD), Transport (MT), Finance (MF) and Labor and Social Affairs (ML). In all cases, they are about billions of CZK from public funds in a corrupt game. The analyzed cases are summarized in the following table, the cases are discussed in more detail below:

**Table 4**  
Examples of illegal tendering under the Czech ministries audited  
by SAO in 2013–2017

No. Case/Ministry	Quantity and Object of Procurement	Period	Type of procurement	Amount of procurement (in CZK)
(1) MD	9x weaponry & equipment	2008–2012	single contractor	4.6 billion
MD	85x ICT	2009–2012	single contractor	3.5 billion
(2) MT	7x ICT	2010–2015	single contractor	392 million
MT	1x toll	2016	existing supplier	6 billion
(3) MF	6x ICT	2015–2016	single contractor	43 million
(4) ML	1x ICT	2011	existing supplier	1.15 billion

Source: own processing

- (1) Significant corrupt risks we found in 13 MD contracts from 2008 to 2012 for the purchase of weaponry/equipment in the amount of CZK 5.8 billion. Only four of their tenders were carried out under the open bidding procedure, in all other 9 cases, MD approached a single contractor directly – for example, 851 night vision sets for CZK 261 million, 87 sets for chemical observers for 64 million CZK or 32 signal drivers for armored vehicles for 155 million CZK. Similarly, for ICT procurement in 2009–2012, of which 72 % was awarded to a single supplier, and the volume of these contracts reached CZK 3.5 billion.
- (2) A similar conclusion is reached for seven ICT MTs contracts for CZK 392 million from the years 2010–2015, which the Ministry also awarded illegally to the only tenderer. The case of extraordinary dimensions is, however, an electronic toll in two contracts in 2016 and 2017. In the first case, MT extended a deal for the 6 billion CZK for toll collection between 2017 and 2019 with the existing supplier Kapsch, although it had known for ten years that the original deal would expire in 2016 and was supposed to prepare open lawful competition (OPC S0629/2016). Suspicions of manipulation, however, also exist in the

downstream contract in the amount of 29 billion CZK for toll collection after 2019 (ihned.cz 2017). The contract is still under scrutiny by the OPC.

- (3) In at least six cases, the law was also violated by MF, in contracts for 43 million CZK for ICT systems (support for funding programs and subsidies), as the SAO found out between 2015 and 2016. By awarding contracts to a single supplier, MF just supported the vendor lock-in effect and deepened its own dependence on existing suppliers.
- (4) Also rigged was the ML contract in 2011 with an IT service provider to support computer programs for paying social benefits in the amount of CZK 1.15 billion. Instead of a competition ML took advantage of the addendum to the framework contract for IT supplies for the Ministry of the Interior and awarded the contract directly to Fujitsu Technology Solutions. Due to the case, Minister of Labor Jaromír Drábek resigned in 2012, his deputy Vladimír Šiška was sentenced to four years in prison for the manipulation of this contract in 2017 (iDNES.cz 2017a).

### 3.3 Court case David Rath and accomplices

The last section of the empirical part of this paper is the analysis of the court case of David Rath and his accomplices. It is a case of a former Social democrat Party (SPD) MP and president of the Central Bohemian Region, who shook the Czech political scene significantly in 2012 and is still affecting it (Langr 2017b). Rath was arrested after long-term police monitoring and tapping of his activities together with his two main accomplices and accused in connection with public tenders awarded by the Central Bohemian Region and its district hospitals. The figure 3 clearly shows the entire corruption system.

The figure takes into account not only the well-known phases of public procurement, as reflected in the traditional approach ( $T_1 - T_2 - T_3$ ), but above all the two systemic corruption phases, i.e.  $T_0$ , in which the key actors of the system decide on what will be contracted and who will win the contract, and  $T_4$ , when the illegal profits are divided. Phase  $T_0$  concurrently illustrates the fatal failure of a public institution deprived by the corrupt accomplices of the task to secure a transparent public procurement process and is built into a purely formal role (phases  $T_1 - T_2 - T_3$ ). What can be deduced from the case analysis?

1. In our research, we focused not on the individual behavior of individual actors, but on the corrupt network of accomplices, which at each peak consisted of president Rath, the director of one of the district hospitals, Pancová, and her husband, Kott, who worked as the consultant for particular hospitals. This network beforehand debated what would be tendered for particular hospitals, to what extent and who would get the contract (see phase  $T_0$ ).
2. Allied private companies were also part of the corrupt structure – some of them acted as middlemen, who thus co-decided who would overcome the threshold



and win the contract; the second part was formed by the competitors themselves, who subsequently won the contracts and also participated in the process of creating specifications that were tailor-made for them (see bid rigging). However, they had to commit themselves to future corrupt fulfillment (see business capture) to get the job.

3. In the whole process, it was mainly about rent-seeking and its division for corrupt accomplices (see Phase  $T_4$ ). It was possible to identify direct financial bribes (10% of the winning price) for the main network actors, net profit from the contract for winning firms, bribes for middlemen and also subcontracts for other allied companies. Specifically, it was about filling the black funds for Rath's SPD.
4. The detailed qualitative analysis of the documents was used mainly by the accusers of the main actors, the extensive media discourse, which among other things also contained parts of the police wiretapping.

However, the same coverage of the  $T_0$  and  $T_4$  phases can be demonstrated in other cases of the Czech public administration that the author has gathered for his current research – for example, the purchase of armored vehicles by the Czech government in 2003–2009, public procurement in Liberec city, Czech Rep., before 2010 (Langr 2013, 2014), public procurement of the Ministry of Defense in the 1990s, an unsuccessful corruption case at the State Environmental Fund of the Czech Republic (2010–2013), etc.

## **4. Results and Discussion**

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In the previous chapter, we presented a set of empirical data from public procurement in the Czech Republic on examples of bid rigging, illegal and non-standard ways of tendering the Czech Ministries and the court case Rath and accomplices. The research was not carried out at the micro level as common cases of individual corruption, but at the level of structures and institutions, and it monitored their interconnection with the systemic corruption environment. Thus, in each case, the researcher monitored the behavior of corruption structures at the time before the procurement process started (the establishment of corrupt deals) and after the termination of the procurement process (the distribution of corrupt profits). This is all the more important because it is not only the basis with which it is possible to uncover the corruption networks and punish all the victims but also the primary platform of knowledge from which steps must be taken to prevent such behavior in the future.

What conclusions can be drawn from these data for our research questions?

Above all, it is important to say that the bid rigging patterns, i.e. the manipulation of procurement based on pre-agreed corruption deals, are overrepresented in the Czech environment, and the cases investigated by the OPC in previous years

are probably only the tip of the iceberg. It shows a wide range of occasions of competitors and allied public administrations circumventing laws and reshaping public procurement environments for their benefit. It is confirmed by the assumption that the collusive deals made by Czech companies seem to be worthwhile for them, because the probability of their revelation is probably not too high, even if the financial penalties can be draconian. If we analyze on what initiatives the OPC initiated investigation in all 14 cases, we can find that in four cases it was own activity, in four cases it was based on the submission of other state bodies or institutions, in three cases from police (based on an anonymous submission), in two cases from regional council of the cohesion region and once from an anonymous letter. It is clear, therefore, that the possibility of making bid rigging deals which, as a sign of systemic corruption, have a considerable impact on the waste of public funds, can be almost boundless in the Czech Republic. Bid rigging can be uniquely identified as part of the  $T_0$  public procurement phase, where outside the formal structures of the public institution the corruption deals – about what will be tendered, who will get the contract and what will be the subsequent division of corrupt rent in real time  $T_4$  – have been made.

Concerning analyses of the SAO cases, we can summarize the fact that illegal public procurement is rather frequent in the Czech state administration. The awarding of large contracts of hundreds of millions and billions CZK to one pre-selected bidder is a significant risk of systemic corruption. In the case of the Czech ministries, it must be assumed that it cannot be about an individual failure of a few individuals. By contrast, we must anticipate a sophisticated system in which officials and politicians play the role of the addressee of the illegal fulfillment (at the time of  $T_4$ ), and private business performs as the leading actor. Moreover, in the case of ICT procurement, the state administration is increasingly falling into a longtime dependence on suppliers (vendor lock-in). In both matters, there is undoubtedly a waste of public funds, which could cover the funding of other policies in a cost-effective, effective and efficient way.

As it turns out, the vendor lock-in effect is also closely linked to the risks of state capture and business capture. In this case, contracting authorities (public administration bodies) are apparently in the hands of private business. But the dependence is mutual – the administration is dependent on the supply of services and technical support of the particular supplier that with its input product (software, licenses, etc.) is standing at the beginning of the whole chain (state capture). Business is, in turn, dependent on the public funds directly provided by the state administration and is often forced to offer an illegal fulfillment for having permanent access to these resources (business capture). In all these cases, the Czech state administration fails as an institution and is privatized due to private interests.

The court case of David Rath and accomplices is then a momentous confirmation for that. The public administration bodies have entirely receded in the back-

ground, leaving the whole space to private structures of rent-seeking at the expense of public funds. Although the tendering process may seem flawless ( $T_1 - T_2 - T_3$ ) from the outside, it is only brutally formalized because all the necessary arrangements have already been made at  $T_0$ , and they are gradually being fulfilled with the final division of the illegal profits at  $T_4$ . In the case of David Rath, we can identify most of the risks of systemic corruption as we have previously defined them.

A key issue that accompanies every empirical survey of corruption is how to fight against this phenomenon. The prevention of systemic corruption, linked with institutional actors and very often with organized crime, is very complicated. If we look at the analogy with individual corruption, whose activities and prevention are carried out at the level of individuals, the struggle against systemic corruption must be reversed at the level of the change of the institutions affected by the corrupt behavior (cf. Mungiu-Pippidi 2006, Stefes 2007, Rothstein 2011, Persson et al. 2013, etc.), respectively, they are transformed into new corrupt institutions with very specific social standards. It, in fact, shows examples of public procurement in Czech ministries, as the SAO points out over the long-term – but with no visible success. Only a radical change in favor of long-term and strategic investment planning and transition of the investment system that would be based on the demand of public interest and with a thorough analysis of the real need for investments and, above all, eliminating the role of any external actors may have a chance to succeed. However, the very last condition, i.e. the perfect removal of the contracting authority (the public institution) from the influences of business and the political sphere connected in close relations of accomplices, is by far the most exacting and probably in the short term hardly solvable without the use of a big bang effect (Rothstein 2011).

## **Conclusion**

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In the previous paper, we have outlined how the failure of a public institution and its change in a corrupt institution occurs. This very fact is extremely dangerous because it undermines the performance of public administration and prefers private interests to those that are satisfy the public interest. The core of the transformation of the institution is related to systemic corruption, i.e. to the rent-seeking of private actors, who are recruited from office, politics and business. We also introduced a set of corruption risks in public procurement related to the systemic corruption environment. We then tried to empirically verify the examples of public procurement examined in the previous five years by the Office for the Protection of Competition, the Supreme Audit Office, and the Czech judiciary.

Verification has shown that our cases bring analogies or comparable indices confirming our theory of the real existence of a system of corruption deals and the subsequent division of profits. For analysis, we used a common public procurement model phase consisting of the legal definition of the three timeframes  $T_1 - T_2 - T_3$ ,

(from the award procedure to the execution of the contract), complemented innovatively by the preceding phase  $T_0$  and the following phase  $T_4$ , when the accomplices make collusive deals or, respectively, divide the illegal profits. The analysis of the contracts examined by the OPC fully confirmed our assumptions in both directions. In the case of contracts inspected by the SAO, we can state that in the environment of Czech ministries, as the top level of state administration, there are at least many strong indirect indications pointing to the long-standing presence of systemic corruption standards that result in often repeated illegal tendering for the one supplier. Court case analysis of the David Rath Group, which is just one of several recent cases, has fully confirmed our theory of the failure of a public institution in a systemic corruption environment and its transformation on the basis of a triangle of corrupt relations. The case also confirmed the real existence of  $T_0$  and  $T_4$  corrupt timeframes in the procurement process.

Successful verification of defined risks in practice is the indication of an obvious occurrence of systemic corruption in public administration in the Czech Republic and the proliferation of private interests in the public sphere. It is therefore imperative to devote detailed research to the behavior of these institutional actors (especially structures and networks) and its impacts, as well as reaction to innovation proposals to prevent these phenomena or, respectively, to distract them.

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