# INFORMALITY REIGNS THE COUNTRY: THE CASE OF THE CZECH REPUBLIC[1]

*Nicole Gallina*

*Criminal networks have infiltrated the Czech justice system.*
Czech Security Information Services BIS, 2007

Abstract: *This work focuses on informal politics for the political elite level in the Czech Republic and proposes an actor-based view. It considers the relationship between formal and informal structures and the functions of informality. I analyse areas highly affected by informality: the justice system and anti-corruption agencies as well as state ministries and state monopolies distributing large amounts of money, and identify patterns of informality. Additionally, the work shows the effect of informality for the European level. The work concludes with a rather pessimistic view on the effects of informal politics in a democratic country.*

Keywords: Informality, Political Elite, Justice System, (anti-)Corruption, the Czech Republic

## Introduction

At least 200 Czech state prosecutors sighed with relief at the end of October 2010: Finally, the general state prosecutor, Renata Vesecká had resigned from her office. This would finally put an end to the instrumentalisation of the state prosecution. The destructive informal networks that had developed between the state prosecution and politics had used the justice and political system for their personal gains, and impeded independent agencies from fulfilling their function as control institutions.

The Czech Republic has some democratic traditions; however it is still a country in transition. One important aspect is that the formalisation of politics and of the political system is outweighed in certain situations – for instance, should future possibilities arise to generate financial gain or power advantages. Here, the functioning

of the police and justice agencies as well as other independent organizations is prevented, or instrumentalised. The above case of the general prosecutor is simply the tip of the iceberg. In the Czech Republic, politicians have openly expressed distrust in the police and justice system, and neglected justice reform or actively hindered independent investigations. The use of the police as an instrument became publicly relevant from the mid-1990s onwards. The most notorious example of this behaviour was the case of the Berdych-gang who had infiltrated the police, leading to cooperation between inspectors and criminals for personal gain.[2] On a political level, suspects of political corruption were immune and official accusations were impossible. Until today, not a single person under investigation has been brought in front of a court, even if investigations have been possible. The case of Renata Vesecká has re-illustrated the problematic of close-knit, informal (and corrupted) justice-political elite networks.

Informality is not, *per se*, a vice. In traditional cultures most rules and institutions have been of informal character and a valued means to a structured society. In the Western world, it might seem that our whole lives are formalised. However, they are not. Often, formalisation is only a façade. This fact is particularly relevant for recently "formalised" countries. Much informalism is at work beyond formal rules and institutions. This paper holds that informality is rarely depictable in the form of institutions; for instance, the Czech Republic is a rather stable, formalised democracy which lacks informal institutions, but disposes of many informal practices. Thus, negative informal actions dominate over positive informal ones. This analysis has two purposes: first, to give a detailed overview of informal practices, namely political elite practices, and to generate insights that go beyond the discussion of informality-concepts. The second purpose is to identify patterns of informality in describing the relationship between formal institutions and informal politics in the Czech Republic. The paper starts with a theoretical discussion of the meaning of informality for Central/Eastern Europe and its various patterns. The empirical part identifies the relevant practices of informality in four crucial "informality areas" in the Czech Republic. Moreover, I list some consequences of informality for the international level as well. The paper concludes with insights on

the umbrella problem of corruption and the structural nature of informality.

## The Meaning of Informality

*Nicole Gallina*

This paper holds that informality is a crucial power mechanism in Central/Eastern Europe, practiced by the vast majority of political elites – mostly, in a rather erratic way. Central/Eastern European political systems are not as institutionalised as those in the more established Western European democracies; they lack institutionalised informalism such as fixed power shares between parties. Overall, twenty years has not been enough time for the definite consolidation of formality and informality. Examples are the volatility of political parties and the instability of political party systems as well as political participation schemes. Informality is important at the level of political elites: informal instruments had been used to provide a certain scope of action during socialism, i.e. not to follow rules too strictly, rather to follow them formally, as the application of the five-year plans shows. Elites today have been determined to maintain informal practices that have been proven hard to control and support negative informal structures, such as corruption or clientelism. Informal instruments have been very important in the confrontation of formal structures after 1989 as they provide more flexibility than formal ones. The use of informality allows political elites to change and adapt more rapidly to political needs; and also to outweigh formal democratic instruments.

Some authors who examine informal structures emphasise informal institutions, such as corruption and clientelism.[3] Beyond the structural problematic of corruption and clientelism, this paper holds that informal institutions only emerge after a certain time. They emerge after both formal and informal institutionalisation processes have taken place. Therefore, the purpose of this paper is to look beyond informal institutions that are based on unwritten rules; rather, to focus on informal politics which are mostly chaotic and determined by their respective situation. A preliminary analysis of Czech politics and institutions is more aligned with the "chaotic scenario." Besides, drawing on findings from general political psychology, it is also problematic to assume that unwritten rules will be followed systematically by political elites. The ad-hoc nature of

informality has been neglected, maybe because authors on the topic largely ignore the behavioural aspect of the topic. They part from the "system" and a top-down view. This paper holds that it is of more use to part from the actors and their influence on the system. It applies an informality-concept for Central/Eastern Europe that understands informality as the use of informal practices. It claims two approaches toward informality: first, institutions are shaped and controlled by political elites, even those which are independent. Such institutions are "subversive" as they are instrumentalised by elites for their personal or political power purposes. Second (or in parallel), elites have an unsystematic and ad-hoc approach in which they apply informal instruments – mainly corruption. The case study of the Czech Republic has been undertaken examining whether it is possible to identify a "subversive institution" and an "informal practice" pattern of informality.

Another question to be addressed is whether corruption has been relevant in all informality patterns. On a theoretical level, Lauth holds that corruption is an informal institution; research in this tradition has treated corruption as an institutionalised umbrella-phenomenon. However, corruption is a diverse and volatile phenomenon, and corruptive practices depend both on the institutional framework as well as actor-based caprices.[4] When establishing the connection of informality to political corruption, Central/Eastern European countries are confronted with what Carothers called the syndrome of feckless pluralism.[5] In those countries 'political elites from all the major parties or groupings are widely perceived as corrupt, self-interested, and ineffective.' Feckless pluralism goes together with the absence of responsiveness and accountability on the part of political decision–makers. Such observations are consistent with studies of the gap between the informal values that guide political elites and the principles that guide formal democratic institutions.[6] This underlines the importance of an actor-based view of informality to detect patterns of informality.

*Patterns of Informality*

In any modern polity, informal political practices, or even institutions, continually "come up" against formal rules. Informality affects formal institutions through four mechanisms: replacement,

undermining, support, and the secondary effects of competition.[7] Helmke (et al.) presented a typology of informal institutions; the first two options represent that informal institutions co-exist with formal institutions, as well as that informal rules modify the effects of formal rules – those are common cases in functioning democracies.[8] For the purpose of this analysis, the other two options proposed by Helmke (et al.) are of more relevance: these are informal practices that compete with, or substitute, formal institutions. Substitutive informal institutions are employed where actors seek outcomes compatible with formal rules and procedures. Like competing institutions they exist in weak states where formal rules are not routinely enforced (this might be gentleman's agreements after elections or self-defense patrols). Informal rules are created because formal rules are incomplete. Corruption however goes further; it is informality that undermines and replaces formal institutions.[9]



Analysing informality empirically, this paper finds that those approaches have two weaknesses: the first is that the in-between zone is not included, i.e. political elites who create formal rules/institutions that outweigh independent institutions as well as political elites who create subversive formal institutions on purpose.[10] The second problem is the danger of the reduction of informality in institutions, and the exclusion of the ad-hoc nature (see above). Therefore, research has to look beyond informal institutions and seek to de-institutionalise informality for Central/Eastern Europe. Informality is operationalised as an informal, mostly corrupt, practice used to fulfil power-related goals or certain business and/or personal interests.

What are the patterns of informal practices? Meyer (et al.) discuss how informal practices influence political power in Central/Eastern Europe. They focus on the description of informal and formal patterns and argue that most studies on Central/Eastern Europe do not pay attention to the informal mechanism of rule, or only take a look at single aspects of informal politics (corruption, clientelism etc.). On a case study basis, Meyer (et al.) highlighted informal politics, but have not systematised informal instruments.[11] Additionally, existing accounts do not tell us which areas of a given state are most affected by informality. In sum, existing concepts differentiate informality, but they are reluctant to identify patterns and to qualify the importance of informal structures (e.g. high,

middle, low). Here, a research gap has to be filled when proposing empirical studies on informality patterns.

For Central/Eastern Europe, it can generally be said that the formal institutional change after 1989/1991 provoked a situation in which formal rules have not achieved the strength to control rising informality. Formal structures are confronted by informal practices, but where and how are they important? The first hypothesis is that informal structures are important, however controlled to a large extent by democratic state structures. In certain areas, strong informal actors challenge formal institutions, yet informality does not determine the relationship between political institutions and actors i.e. informality is formalised. The second hypothesis is that informal structures are important and successfully challenge formal institutions. Such a situation could be described by the "informalization of formality." The informalisation of formality would lead to a situation in which the elite only faces little control from formal institutions, hence giving political actors the power to generate their desired gains through corruption and/or violence. Areas most probably relevant for both hypotheses would be ones that (1) generate economic or power gains and (2) concern institutions/agency control over elite behaviour – this means media, courts etc.



## Patterns of Informality: A Case Study of the Czech Republic

This preliminary case study on informality in the Czech Republic concentrates on (1) areas that dispose of large financial resources and (2) control of institutions to identify patterns of informality. For the Czech Republic, (1) this includes areas with monopolies as monolithic structures which can be better controlled (and corrupted) than pluralistic ones. This concerns both economic and political monopolies.[12] In the Czech Republic, examples are the energy monopolist ČEZ and the monolithic political rule, e.g. twenty year rule of the ODS party in Prague. Additionally, we have to consider agencies administrating or distributing large amounts of money: consolidation agencies,[13] privatisation schemes, EU or national tenders for infrastructure projects, regional development etc.[14] The case study of point one thereby concentrates on the examples of the energy monopolist ČEZ and the defense ministry. Point (2) concerns the infiltration or intrumentalisation of

independent institutions, such as the justice system, anti-corruption-agencies, media, parliament etc. The case study of point two thereby focuses on the examples of the justice system and the office investigating organised crime. The examples have been selected on the basis of a media-analysis. The advantage of the Czech Republic is the existence of a full-scale developed investigative journalism. Journalists mostly publish in the weekly *Respekt*, but also in daily papers, blogs etc. This allows for an assessment and selection of relevant topics in the realm of informal politics. Informality has been operationalised as informal practices are used to fulfil power-related goals or certain business and/or personal interests. Those four topics presented are those that have had the highest relevance in terms of corrupt practices (and media publications) in the last five years.[15]



*Example 1: The Case of the ÚOOZ*

**Background:** Formal independent police units for the battle against corruption were established in the mid-1990s: the Anticorruption Service SPOK, and the Office for the Detection of Organised Crime ÚOOZ.[16] Different political power networks, notably from the Czech Social-Democratic Party ČSSD, as well as from the Civic Democratic Party ODS, attempted to influence the ÚOOZ for their own political purposes or even to shut it down. In the summer of 2000, the only successful head of the Anticorruption Service, Evžen Šírek, was forced to leave office.[17]

**Patterns of Informality:** The more recent (and perhaps also more important) case of Jan Kubice occurred in the mid-2000s and has had implications until today.[18] In May, 2006 he presented a report in his function as the head of the ÚOOZ that showed the deep involvement of Social-Democratic political elites with criminal structures – for example the case of a huge biological fuel licences tender. It stated that mafia structures have infiltrated the state administration and the ČSSD government led by Prime Minister Jiří Paroubek (2005–2006). Additionally, high level Social-Democratic politicians were accused of impeding the investigation of the murder of the controversial businessman František Mrázek, as they had been linked to his businesses.[19] In this case, a wire-tap was used to aid the investigation: on the tape, a policeman informs the trustee (Pavel Přibyl) of Prime Minister Stanislav Gross that the police

files have been cleared of all incriminatory material. Přibyl was then suspected of blocking the investigation, along with the police president who intervened in order to close the case. The state prosecutor finally terminated investigations of the matter in summer 2007. Jan Kubice, the main investigator, received threats to his life and faced sixteen criminal charges which culminated in a special investigation into whether his report signified a criminal act. He resigned in December 2007, along with many other key functionaries, mainly blaming the ODS Interior Minister Ivan Langer for the professional liquidation of the service.[20]

In August 2010, the daily *Mladá Fronta* reminded that administrative measures are used to prevent investigations in general, e.g. the sub-officials have to report on every planned meeting to their superiors. According to a regulation from 2007, individual investigators have to inform their superiors of the opening of a new criminal case. The police presidium or the head of the respective service are obliged to give a formal order to start a prosecution.[21] An informal rule here is that those superiors inform the head of the service, and the heads of service inform the president of the Czech police. The police president himself then regularly briefs the minister of the interior on pending investigations. On the formal side, a regulation was issued in 2002 (by former Prime Minister Gross) that the service is to investigate organised crime, but not in connection with corruption and the national economy. This complicates investigations as organised crime is often tied to political corruption.[22] The rapid change of the service's seven directors in the last ten years, and the different administrative and investigative proceedings they brought with them, has also had a negative impact. Another example of an administrative measure, for instance, has been the decision not to pay investigators overtime, knowing that the most important informants do not meet during office hours.

The case of Jan Kubice underlined the unwillingness of Czech political elites to tolerate an independent investigator as the head of the service. In particular, prime ministers and interior ministers have no interest in independent police work, as their interventions showed; ordering office searches, clearing of files, and making public accusations. Later, independent media proved that the accusations against Jan Kubice were constructed and illegal, though nobody had to face the consequences.[23] His successors

have not succeeded in stopping politically-motivated influence of investigations or the repression of inconvenient investigators. Until winter 2010, the Czech police had not closed a single of the big post-communist corruption scandals. In this case, the two main patterns of informality were to use administrative ressources in order to prevent serious investigation – i.e. to prevent wiretaping, to clear files, to report to the superior who is dependent on certain politicians to remain in office – and to create informal rules – obligations to report to the police president who has been influenced by political elites.



*Example 2: The Justice Mafia*

**Background:** The existence of a "justice-mafia" in the Czech Republic was unmasked with the case of Jiří Čunek.[24] The police initiated an investigation as this politician was suspected of corruption,[25] though the state prosecution publicly expressed doubts about the credibility of the principal witness and accused investigators of having manipulated relevant information (i.e. exchanging e-mails with the principal witness). The goal was to keep Jiří Čunek in office as vice-prime minister in a highly instable government.

**Patterns of Informality:** The case gained relevance for informal power mechanisms, when the General Prosecuter Renata Vesecká consigned it to another prosecutor, because the prosecutor in charge had shown no readiness to close the case.[26] The new prosecutor stopped the investigation on account of procedural errors.[27] This decision led to a government crisis. The accused, Jiří Čunek, refused to step down and instead, he demanded the "cleansing" of the prosecution and the police. However, his power connections were not stronger than the connections of his adversaries. The police were allowed to re-open the bribery case, and the accused stepped down from the posts of regional development minister and deputy-prime minister. However, he insisted on remaining senator and chairman of the KDU-ČSL party. The General Prosecutor Renata Vesecká ordered detailed investigations (to maintain the façade), but the responsible prosecutor decided to close the corruption proceedings again in November 2007. The general prosecutor was suspected of having moved the corruption investigation from

one prosecutor to another to delay proceedings. Čunek returned to the government in April 2008.[28]

Another interesting fact in this case was that the general prosecutor had been appointed by the justice minister, a fact that could influence judicial investigations in "political cases" as a "willing" prosecutor could block the investigation of these so-called "political cases." The above case gained momentum in May 2008, when the displaced first prosecutor, Zlatuše Andělová, said in a court hearing that the Vice-President of the Supreme Court, Pavel Kučera, and the General Prosecuter, Renata Vesecká, had pressured her to stop the investigation during personal meetings. She used the term "justice-mafia" and accused the general prosecutor and members of the Supreme Court of control over the judiciary for the benefit of corrupt politicians. In this context, the Vice-President of the Supreme Court, Pavel Kučera allegedly stated that 'the stability of the government is more important than judicial independence.'[29] Justice Minister Jiří Pospíšil refused to dismiss the general prosecuter.



The police and judicial apparatus had to bear the consequences for political elite conduct and a politicised state prosecution. On the one hand, the state prosecution discredited itself in not sueing corrupted politicians and proved its dependence on the political power structures. On the other hand, judicial staff members who were willing to enforce the rule of law were ousted by their own colleagues. The consequence of this behaviour has been a total loss of public trust in the office of the public prosecutor. Yet, in this case, new government constellations brought a solution with two new governing parties which placed ODS under heavy pressure. This new situation generated a new dynamic in the politically dependent justice sphere: in October 2010, more than 200 prosecutors (out of 1.200) signed a petition in which they urged a demission of Vesecká and the definite departure from public office. Public and official dissatisfaction accelerated the dynamic, and the two most prominently involved persons, Pavel Kučera and Renata Vesecká, had to leave their offices in September and October 2010, respectively.[30] Here, the main pattern of informality had been a personal network between state prosecutors and government politicans. When the involved politicians lost their powerful offices the network came under pressure.

*Example 3 – The Defense Ministry*

**Background:** The Czech Defense Ministry has been notoriously known for its corrupted directors and officials. An example of this was the former Deputy Defense Minister Martin Barták (a minister in the Fischer government). The reasons behind this are manyfold. One factor is the disproportionally high funds that were made available for the purchase of Western army equipment – e.g. the cases of the Gripen fighters, or the Pandur transport vehicles. The ministry has been notorious for its connections with providers of material and (re)construction enterprises where former ministry staff had worked.



**Patterns of Informality:** In this case, informality structures have been tied to monetary incentives. The employees of the ministry showed more loyalty to the providers of military equipment than to their employer, the state. Always the same firms benefited from the mandates and long-term contracts (and long–term relations with staff in the ministry), in particular the Czech firms Omnipol and Zenit. For example, in 2000, the former minister Jaroslav Tvrdík tried to cancel a contract with Omnipol after the firm had sold useless rockets to the Czech army for 80 million crowns; however, this was not possible due to the conditions established in the long term contracts. Besides, the anti-corruption efforts did not last long.[31]

In fact, corruption in the ministry has been an issue since the 1990s.[32] The obligation of the ministry to purchase equipment through domestic agents since 1994 has fostered this development. Thus, Omnipol provided most of the flight-equipment, whereas ground-equipment was secured by the MPI Group and Praga-Export. Until the police were able to wire-tap the ministry in 2010, there was not enough evidence for the wide-scale corruptive practices (on one of these tapes, a long-serving director of the ministry outlines an absolutely useless purchase of mortars in order to milk the budget). Additionally, the former US ambassador William J. Cabaniss stated in the daily *Mladá Fronta Dnes* that then Deputy Defense Minister Barták offered a solution to lease the supply of Tatra vehicles at a meeting in the US. These accusations caused a series of follow-up accusations and statements from the involved parties.[33]

Mostly, funds have been used beyond the regular military strategy: a show-case has been the Gripen scandal. In 2002, the

government decided to replace the old fighter jet fleet with British-Swedish Gripen fighters. Here, large amounts of money were spent to ensure government approval of the project and ODS politicians reported that they were offered bribes. In 2004, 14 jets were leased, presumably under corrupt conditions. Anti-corruption policemen faced huge pressure from their superiors who prevented the investigation of politicians, and an information embargo was issued by the state prosecution.[34] A similar scenario is observable with the case of the Pandur transport vehicles – first 400 of those vehicles were to be purchased, in the end it was merely 100 (a number still far too high for the Czech army). The government of Stanislav Gross approved the contract in 2005, and it remained a topic for the subsequent government. Czech politicians of all major parties were accused of having taken bribes to ease the 14 billion crown purchase, as well as officials in the ministry. In the case of the transport vehicles the Czech police first received valuable material from the Austrian authorities, but additional material was blocked, and investigations in the Czech Republic were hindered by the state prosecution.[35] Here, corruptive practices during contracting were eased by the respective suppliers both in the ministry and the parliament, supposedly also in the government, and ignored by the judicial authorities.

*Example 4: ČEZ*

**Background:** The Czech Republic has maintained some monopolies since the democratisation of the country, one example being the energy branch. The ČEZ company is a state monopoly, and the National Property Fund holds a strong share majority. In recent years, it has led an aggressive international and domestic expansion strategy concerning electricity and heating. This strategy had been supported by increasing energy prices and strategic investments.[36]

**Patterns of Informality:** ČEZ is a monopoly that has used its position economically (high domestic energy prices)[37] as well as politically (to realise its energy investments). Opposition politicians and the Head of the Constitutional Court openly discussed the fact that the company was taking important decisions that are not in line with environmental laws – in particular the semi-legal erection of coal-fired plants – nor EU competition politics (antitrust activities)[38] nor international agreements ($CO_2$ reduction promises). Recently,

Karel Schwarzenberg, the foreign minister of the Czech Republic, stated that the country is the property of ČEZ. Schwarzenberg had in mind that the former Environment Minister of the Fischer-government Rut Bízková is a former employee of the power company and she has been suspected of being a key player behind the politically approved expansion of the ČEZ-owned Prunéřov coal-fired power plant.[39] With the new government appointed in July 2010, she switched to the deputy post, and Pavel Drobil, another person suspected of being influenced by the energy giant became minister. Here, the company went beyond indirect political influence in installing "their" people in important political positions. Additionally, it scandalised provider-costumer relations: the ČEZ-security firm openly broke laws and used violence against citizens that did not pay their energy bills. However, the state prosecution closed the trial against 13 members of the energy squad in 2010 without issuing any sentences (this decision stood in contrast to the findings of the anti-corruption police).[40]

In sum, the energy sector as well as adjacent political offices have been characterised by high informality including political clientelism and corruptive practices, all with strong support from political personalities since the late 1990s.[41] In contrast to the defense ministry example, evidence shows that the company was actively building an energy-power complex with the goal to control energy-business relevant politics. The example of the Czech Republic shows how a state monopoly can develop sufficient political power using informal instruments and subversive institutions.

The presented corruption cases in the Czech Republic reveal the following patterns:

| *Informality* | *ÚOOZ* | *Justice-Mafia* | *Defense Ministry* | *ČEZ* |
|---|---|---|---|---|
| Personal Networks | Yes | Yes | Yes* | Yes |
| Administrative Measures | Yes | No | No | No |
| Subversive Institutions | Yes | Yes* | No | Yes |
| Corruptive Practices | Yes | Yes | Yes | Yes |

* Allegedly, they exist but they have not been described in depth, yet.

In the case of the anti-corruption service, all relevant informal power methods have been used as this presumably independent institution posed the biggest threat to informal political elite power. Where public control has not been strong, corruptive practices and political networks have been sufficient to secure elite interests. Interestingly, subversive institutions have been created more often than previously assumed.

## Corruption: The Umbrella Problem

The above case studies all have a connection to corruption or to corruptive practices which are often tied to personal networks. In the first example, non-corrupted heads of the anti-corruption service had to be stopped by a combination of law and illegal means (deleting evidence on their computers, charging them with crimes when following suspects, etc.). In the second example, a willing general prosecutor was not only generated by the fact that s/he is appointed by the minister, but most presumably also by a sufficient amount of money. The defense ministry has used high-value biddings to generate personal wealth. The state monopoly ČEZ corrupts political elites by influential posts in the company and utilises similar means to evade established environmental or financial regulation. According to Jordan, there are three potential explanations for political (and economic) elite corruption in the Czech Republic.[42] First, old structures enable corrupt behavior in the Czech Republic, such as the highly politicised state administration due to the civil service law in force. Second, high-level political corruption is based on corrupt networks which remain strongly embedded in the Czech government. Third, external corrupt networks, notably the Russian mafia and intelligence services, exploited the favourable conditions for corruption on all levels. This is seen in the above table: corruptive practices go hand in hand with old structures/relationships and personal networks. To weaken corruptive practices, a dynamic and open environment has to be created to discourage long-term political (economic, etc.) networks.[43]

Examples from the governing periods underline the assumption that corruption-climaxes were reached during long-term governments of one party, and the co-ruling of the largest parties:

the ČSSD government of Miloš Zeman from 1998–2002 (tolerated by the conservative party ODS) is supposed to have been one of the most corrupt, laying the basis for the above discussed cases. Later on, governments had less obstacles to build up corruptive networks: former Prime Minister Stanislav Gross (2004–2005) was suspected of having connections to the Czech underground. During the second Topolánek government, and beyond, another climax was reached in instrumentalising the state prosecution to conceal political corruption, and hindering the police to bring investigation results before the courts.[44] In the political realm, the Czech political scientist Bohumil Doležal argued that a culture of corruption has been established in politics, penetrating all political parties and a lot of the ministries.[45] Political elites were in a position that enabled them to exert political influence and to maintain powerful personal networks that reached into independent and control institutions (such as in the case of the "justice mafia."[46]



An investigation against accused politicians could not be opened without proving the act of the physical handing over of the money, in accordance with the 1961 criminal code (exemplarily shown by the cases of Stanislav Gross or Jiří Čunek). A new criminal code was passed in the late 2000s but so far public pressure has not been strong enough, nor political interest existent in a sufficient amount, to establish effective instruments.[47] Every single government promised to combat corruption, but deeds did not follow words. The current example was the "anti-corruption strategy" of Interior Minister Radek John. Transparency International ceased cooperation with him in the late summer of 2010 when he presented his "anti-corruption strategy" on the grounds of not being professional and serious enough; he 'contained too many repressive measures and too few preventive ones.'[48] Until now, there have been no convincing steps, and anti-corruption politics is alibi-politics, proclaiming the great importance of anti-corruption measures verbally, however never enforcing effective instruments. Former ÚOOZ head Jan Kubice stated that the research and information collected had been useless as politicians circumvented prosecutions and gave the suspected activities certain legitimacy with their non-intervention.[49]

One might assume that those informality patterns only have consequences for domestic politics. The first two examples have considered the connection between political elites and justice and criminal investigation. Those informality-levels thereby have more implications for the domestic level as they are tied to "political" informality and political corruption. Informality is more relevant for the international (or EU) levels in the third and fourth examples. High amount of public tenders for state ministries and monopolies generate countless incentives for informal bargaining and corruption. In accordance with the above patterns of informality, we can say that informality with "international" implication concentrates on large financial resources made available through high amount EU or public tenders, and on the level of control institutions – for instance, the audit/control agencies that ensure the application of EU regulation. Here, informality can have serious consequences for public health, for example if public agencies do not adhere to sanitation or food safety norms (EU norms).

The fact that political elites shape institutions and turn them into subversive ones, e.g. ministries administrating big public tenders, has implications for the EU level only as long as international funds are involved. In this sense, the European Commission has frequently criticised public tenders in the Czech Republic; corrupted tenders within the Ministry of Defense have been a show case.[50] Another problem are the monopolies which ignore domestic regulation, once again most of which is based on EU regulation. For example, the afore mentioned ČEZ has made dubious decisions in the field of energy policy. Additionally, domestic tenders have not been public, and it has not been clear on which grounds the respective enterprises were selected.[51]

EU funds have been corrupted, especially and systematically, in motorway construction where preference is almost always given to thehighest, though not necessarily the best, bid which has pushed the price to over 500 million Czech crowns per kilometer.[52] In some communities, for example in Southern and Northern Bohemia, EU funds have been systematically corrupted as well.[53] Such cases are proof that informality in the form of subversive, corrupt institutions can have both serious negative effects for domestic development as

well as international reputations. Here, personal networks and corruptive practices absorb capital that would otherwise be invested into the development of a public (or security) infrastructure.[54]

In sum, patterns of informality have concerned public tenders of all sorts, and the larger cases also have international implications, as they often violated EU regulations or prefer corrupted bidders. In this sense, informality can also have a serious impact on security, namely if strategic enterprises in the field of energy or transport can be bought through informal means or corruption.



## Conclusion: The Structural Nature of Informality

Informality depends on institutional efficiency and the kind of institutions involved. If independent formal institutions are efficient, then informal instruments are used to prevent them from being efficient. This is the case with special anti-corruption and crime units: They are able to present results – however, informal power is used to stop investigations or to disallow evidence from reaching a court. This is especially elevated as the prime minister might call the interior minister or the police president to stop investigations, to dissolve the investigating unit etc. Also, the state prosecution can be instrumentalised to halt investigations, to delay procedures or to dismiss officers. In those cases, formal regulation is often misused. It can be said that regulations have been designed to serve a purpose, for instance, by the police president having to report to the minister, or the general prosecutor being dependent on the justice minister. Additionally, administrative measures are used: reports that have to be written many times, decisions made not to pay overtime, salaries held low etc. Here, the emergence of "negative" formal rules has been tied to the implications they provoke, rather than vice-versa. If independent agencies are perceived as a long-term threat then formal measures are applied.[55] In the Czech Republic, informal rules have rarely affected the emergence of formal rules. The actors have no interest in their informal codes becoming formalised. Furthermore, actors mostly do not have an interest in replacing formal rules with informal ones. They need the official framework to function and to structure their actions as few informal institutions exist.

Formal state structures are officially placed above the existing power networks. Generally, power networks adhere to the picture of a functioning democracy and stick to formal provisions; however, in a considerable amount of cases those networks try to outweigh formal institutions – for example, the application of lustration laws, anti-corruption measures, public tenders, privatisation etc. Thus, the function of formality is to maintain a certain façade and to structure politics. Informality, however, is "real life." Power relations are personalised and attached to emotions. The analysis suggests that informality can help to form institutions, though not to form actors.

Informality is highly structural, i.e. where formal institutions are weak, informality is strong. This means that informal networks are turned into institutions where desirable (media, justice) and become highly destabilising for the democratic political structures. From a democratic theoretical perspective this setting is negative as it undermines the democracy in place. From an institutional perspective the situation is ambivalent, but informality is mainly destructive in weakly institutionalised formal systems. From an elite theoretical perspective, informality prevents the establishment of democratic elite and supports vertical power structures, and a top-down approach to policy-making.

Informal networks subvert established institutions and outweigh formality everywhere, as they begin to work for their own egoistic goals and co-opt formal institutions. In the context of Central/Eastern European politics, informality is not an instrument that backs democratic structures, as informal structures are not controlled by strong democratic institutions (including supportive informal institutions). On the contrary, informality is negative and so are the informal codes which dominate political relations and stand diametrically to (democratic) institutions. Hence, an informalisation of formality has taken place. The personal needs of single members of political power networks have manipulated the state and its institutions to their favour. They are used as political instruments that drive the respective political actors further away from becoming democratic actors.

Nicole Gallina is affiliated to the Interfaculty Institute for East and Central Europe, University of Fribourg, Switzerland. She may be reached at: nicole.gallina@unifr.ch.



1 This paper was presented at the conference 'Informal Power and Practices,' Fribourg, 18 November 2010. The country has been selected as a test case for a research project on the patterns of informality in different Central/Eastern European countries.
2 Rob Cameron, 'Mafia Boss Berdych and Gang Appear in Court,' *Radio Prague*, 16 January 2007. <http://www.radio.cz/en/article/75412> (accessed 20 October 2010).
3 Joachim Lauth (2004), 'Formal and Informal Institutions: On Structuring Their Mutual Co-Existence,' *Romanian Journal of Political Science*, 4 (1), pp. 66–88.
4 For empirical overviews on different natures of corruption see the Transparency International Reports on corruption, <www.transparency.org>.
5 Thomas Carothers (2002), 'The End of the Transition Paradigm,' *Journal of Democracy*, (13)1, pp. 5–21.
6 Nicole Gallina (2008), *Political Elites in East Central Europe: Paving the Way for Negative Europanisation?* Leverkusen: Budrich UniPress.
7 Anna Grzymala-Busse (2010), 'The Best Laid Plans: The Impact of Informal Rules on Formal Institutions in Transitional Regimes,' *Studies in Comparative Intitutional Development*, (45), p. 313.
8 Gretchen Helmke and Steven Levitsky (2004), 'Informal Institutions and Comparative Politics: A Research Agenda.' *Perspectives on Politics*, 2 (4), pp. 725–740. Gretchen Helmke and Steven Levitsky (2006), *Informal Institutions and Democracy,* Baltimore: John Hopkins UP.
9 Joachim Lauth presents clientelism and corruption as informal institutions (see above; 2004, p. 73). However, Lauth fails to present cases or the detailed functioning of informal institutions.
10 Subversive Institutions in Russia are discussed by Vladimir Gel'man (2010), 'Subversive Institutions and Informal Governance in Contemporary Russia,' in Thomas Christiansen and Christine Neuhold (eds), *The International Handbook on Informal Governance,* Cheltenham: Edward Elgar.
11 Gerd Meyer (ed.) (2008), *Formal Institutions and Informal Politics in Central and Eastern Europe: Hungary, Poland, Russia and Ukraine*, Opladen & Farmington Hills: Barbara Budrich Publishers.

12 S. Kotkin and A. Sajos: *Political Corruption. A Sceptics Handbook*. Budapest: CEU Press.

13 For example, the Czech Consolidation Agency ČKA See Jaroslav Spurný, 'Ticho v České korupční,' *Respekt*, 18 September 2007.

14 Czech motorways are a third more expensive than similar ones in Germany, *Respekt* 26 July 2010.

15 Of course, this leaves out informality practices not covered by the media.

16 The ÚOOZ would investigate ordinary crime and not inspect political corruption, which should be subject to the Anticorruption Service SPOK. However, ordinary crime has reached deeply into politics since 1989 and has therefore also been a focus of the ÚOOZ.

17 Based on a claim that he had accessed delicate information from his private computer. In late 2007, the Czech daily *Mladá Fronta Dnes* quoted an official from the police presidium, who said that Evžen Šírek had been on the verge of uncovering serious fraud in the Czech Savings Bank. Investigative journalists claimed that the order came from the former Prime Minister Stanislav Gross. Jaroslav Spurný, Ondřej Kundra, 'Dědictví mafianá Mrázka,' *Respekt*, 2 June 2008.

18 The described period included four prime ministers of different political parties.

19 He was negotiating the privatisation of state enterprises, e.g. the petrochemical giant Unipetrol to the Polish PKN Orlen on behalf and in favour of high ČSSD politicians during the 2000s. See Jaroslav Spurný 'ČSSD a organizovaný zločin,' *Respekt*, 26 May 2006. On the doubtful connections between politicians and Mrázek see Jaroslav Spurný '30 vražd kolem Mrázka,' *Respekt*, 12 February 2007.

20 Former Interior Minister Ivan Langer (and ODS-member of the "first" hour) is still highly suspected of being involved in the issue, such as the high-ranking politician Vlastimil Tlustý. See <http://www.radio.cz/en/section/ news/news-2008-09-20> (accessed 20 October 2010).

21 The investigative journalist Jaroslav Spurný has counted the cases that the anti-corruption police brought to the procurator (180 for 400 employees). In Germany the figures are four times higher, in Austria three times, and Slovakia has shown similar figures as Austria since the governing of Robert Fico. The current police president Oldřich Martinů has allegedly informed the minister of the interior on each "hot" case. Jaroslav Spurný, 'Strážci korupce,' *Respekt*, 28 June 2010.

22 Jan Kubice in an interview with Ondřej Kundra 'Nový život lovce mafianů,' *Respekt* 19 July 2010.

23 On the Kubice case, www.kubice.estranky.cz/clanky/kauza-kubice---tisk/30_5_2006 (accessed 10 October 2010). The new superiors of the

elite police unit appointed had made their careers during communism. Jaroslav Spurný 'Policie odkrývá své práskače,' *Respekt*, 14 January 2008.

24 Mayor of a Moravian town and KDU-ČSL politician, vice-prime minister in the ODS/ KDU-ČSL/Green Party government of 2007–2009.

25 During his time in office, he allegedly obtained half a million crowns (18,000 Euro) from a real estate agency. Furthermore, Czech Television reported that he had accumulated three and a half million crowns in his bank account in the mid-1990s, at the same time receiving social benefits.

26 Jaroslav Spurný, 'Žalobkyně končí,' *Respekt*, 21 January 2008. In the Czech Republic, the justice minister still appoints the general prosecutor; a practice not tolerated in the rest of the EU countries.

27 Jaroslav Spurný, 'Detektiv Šošovička jednal fér,' *Respekt*, 1 October 2007, and Erik Tabery, 'Čunek drtí politickou scénu,' *Respekt*, 9 June 2007.

28 Ulrich Schmid, 'Rückkehr Cuneks in Tschechiens Regierung,' *Neue Züricher Zeitung*, 3 April 2008.

29 Jaroslav Spurný, Tomáš Sachr, Ondřej Kundra, 'Vláda v pasti justiční mafie,' *Respekt*, 17 May 2008.

30 Cat Contiguglia, 'Member of Judiciary Mafia Falls,' *Prague Post*, 15 September 2010. Her successor was Pavel Zeman.

31 Jaroslav Spurný, 'Vondra s matkou úplatků,' *Respekt*, 8 November 2010.

32 Till Janzer, 'Korruption im Verteidigungsressort,' *Radio Prag*, 2 September 2010.

33 Gabriella Hold, 'Gripen Inquiry Ordered Reopened,' *Prague Post*, 5 May 2010.

34 Jaroslav Spurný, 'Gripeny opět u ledu,' *Respekt*, 7 December 2009.

35 Sabina Slonková, 'Byl nákup Pandurů korupcí?,' *Aktualne,* 20 June 2010 <http://aktualne.centrum.cz/domaci/ kauzy/clanek.phtml?id=671827> (accessed 15 November 2010).

36 Stephan Delbes, 'CEZ is World's Most Profitable Energy Company,' *The Prague Post*, 4 November 2009.

37 Polish electricity prices have been 15 percent or 20 percent lower than in the Czech Republic, see above.

38 Global Competition Review: <http://www.globalcompetitonreview.com/review/20/sections/99/chapters/1094/ energy> (accessed 15 November 2010).

39 Gabriella Hold, 'Schwarzenberg Attacks CEZ,' *Prague Post*, 20 July 2010.

40 Those practices were revealed in 2008, see <http://www.dw-world.de/dw/article/0,,5232756,00.html> (accessed 20 October 2010).

41 Marek Švehla, 'Misto na slunci,'15 February 2010.

42 Jeffrey Jordan (2002), 'Patronage and Corruption in the Czech Republic,' *SAIS Review*, 22 (2), pp. 19–52.

43 Zpráva o boji proti korupci v ČR, 9 December 2010 <http://www.bez-korupce.cz/2010/12/zprava-boj-proti-korupci-cr2010/ > (accessed 12 December 2010).
44 Gallina, *Political Elites.*
45 One of the most notorious examples has been the defense ministry.
46 Jaroslav Spurný, 'Recepty proti korupci,' *Respekt*, 18 December 2007.
47 Among them are: the institution of a principal witness, pre-emptive law, the establishment of special courts with attached investigators and prosecutors; or the interdiction of anonymous shares in the economic sphere (a scheme that has been widely misused in the Czech Republic).
48 Klára Jířičná, 'John under Investigation for Corruption,' *The Prague Post*, 28 July 2010. Bill Lehane, 'Ministry Defends Anti-Corruption Plan,' *The Prague Post*, 22 September 2010.
49 Jaroslav Spurný and Ondřej Kundra, "Konec lovce zločinu," *Respekt*, 5 November 2007.
50 In March 2011, 52 persons have been accused of having participated in the corrupted network. In 2010, the Agency for anti-corruption and finance criminality accussed 37 persons for the whole year <http://www.nekorupci.cz/> (accessed 20 March 2011).
51 See <http://www.nekorupci.cz/> for suspicious ČEZ tenders. The last case was in December 2010, when AZ Elektrostav gained a seven million contract being the only bidder.
52 On roadprice corruption see 'Staví dálnice za miliardy, ale s korupcí se prý nikdy nesetkal,' *Hospodářské Noviny*, 1 September 2010.
53 'Korupce v Ústí,' *Aktualne.cz*, 25 March 2011, <http://aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=695214> (accessed 26 March 2011).
54 A highly debated issue has been the fact that the most important Czech hospital, Motol, mobilised one billion Czech crowns in the period 2000–2010, in contrast to other hospitals in the capital which got (approx.) five millions; see <http://www.nekorupci.cz/>.
55 For Eastern Europe, media legislation has been an example.