

## **Analysing Informality: A Case-Study Based Concept Applied to the Czech Republic**

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### Abstract

This paper offers some thoughts on the relationship between informal practices, political elites and formal rules/institutions. It presents categories of informality and rates them according to their power vis-à-vis formal rules/institutions. This informality complex is shown in the context of formal control institutions and informal practices in the Czech Republic. On the one hand it examines institutions that control the work of the police and state prosecution, namely anti-corruption units (officially) created to provide a rule-of-law based framework as the police, state prosecution tended to operate according to their own informal rules which often were reduced to corruption, and on the other hand lists the counterstrategies of the police and the justice realm. The paper finds that political, but even more personal changes in single institutions are crucial to break down a vicious informality complex that leads from rule negligence, façade rules, rule capture to subversive institutions and systemic corruption to a corrosion of the formal political framework.

“There is no other option for us now and we’ll speak up.”

Czech MUS-manager commenting his verdict in the MUS-privatization trial (*Praguemonitor.cz*, October 2013).

## Introduction

In 2013, the dubious privatization of the Czech coal mining company MUS (Mostecká uhelná společnost) in the 1990s became an international issue as it included a very large sum of money laundered and deposited in Switzerland (*Radio.cz*, 2012a and Häfliger 2012). The Swiss state prosecutors took over the main investigation of the case, as the Czech side had no interest in the issue. The Czech prosecutors, the Czech state as the damaged side and the accused kept silent about the background of the privatization until the end of the Swiss trial.

In the context of the MUS-affair, in early 2012, the former Czech Minister of Justice Jiří Pospíšil (Civic Democratic Party, ODS) sacked the Chief Prague Prosecutor, Vlastimil Rampula, who had allegedly impeded investigations into the above case. However, the latter was installed in office again as a result of a court verdict. Those events were evidence of an ongoing battle to either depoliticize or further politicize justice-political relations. The battle has been taking place in a very informal way, and this observation is the starting point to discuss selected aspects of informality. I give a short overview of the informality discussion that is explored at length in this book, and propose some categories of informality. Then the paper features widespread informal practices in the Czech Republic while it concentrates on the politicized justice branch and the police, namely the General Prosecutor and the Police President. The paper concludes with some thoughts on the analytical complex necessary to examine informal practices.

## **The Meaning of Informality for the Political Elite**

So, what are informal relations? What is informality? This topic has been considered by Gel'man (2004, 2010) and Ledeneva (2006) with regard to Russia, but also in the edited volume by Meyer (2008) discussing Eastern European cases, and, in this tradition, Hayoz

and Gallina (2011). First of all, it is necessary to recall the importance of informal political elite behaviour in any political system. Political elites participate in parliamentary sessions, lobby in regard to social and economic groups, make backdoor agreements or deals with important decision makers, while business circles or lobbyists promise jobs, media coverage and so forth. In this informality game it is not easy to identify each informal goal of each player, as they might change quickly, according to personal preferences or external pressure.

Gel'man (2004, 2010), Ledeneva (2006) and Grzymala-Busse (2010) have analysed relations between formal institutions and informal practices, and argued that informality is mainly negative in Eastern Europe. Grødeland (2005) has examined those negative effects within Eastern European judiciaries. The features of informality are not negative *per se*, as they drive decision making and may foster elite cohesion. In democracies informal practices are supposed to support decisions for the common good. We have to value the fact that Western scholars such as Helmke and Levitsky (2004, 2006) or Lauth (2004) include the positive potential of informal institutions. The question is whether Western European countries can really teach us in which sense informality is used positively, for example in the police and justice realms.

The general meaning of a negative form of informality is the use of informal practices in order to outweigh independent institutions, to ignore formal rules and so forth. Informality in this sense also means to capture or to create institutions in order to generate economic or political gains, mainly through corrupt practices. Political elites and their conduct are the heart of informality in the political process, and often the source of informal practices (we do not have to forget business interests and actors here). As we can observe in daily politics, political elite conduct that is not formally constrained supports corruption and clientelism (see also Miller et al. 2000). Informality in this sense is elite driven and stands in contrast to the formality of a political system. Informal practices in general are used in regard to formal pillars, such as a codified constitution, or certain rules that apply for political institutions. This does not mean that the rules that build the political system are good, but in any case they exist, and in any form one might

imagine. The crucial points are whether formal rules matter at all, and whether elites try to carry out their transactions at all costs.

In democratic countries – or in countries where formal regulation is powerful enough – police and justice step in and apply sanctions to constrain political elites. The question here is, rather, whether those sanctions are followed. In Eastern European countries, some researchers hold that rules exist, but they have been established in order to be broken or to be used – see, for example, the above mentioned authors on negative informality, and also Hayoz and Gallina (2011). Vachudova (2009) mentions that adequate rules might have been written but actors can rely on political connections, corrupt judiciaries and exploit inappropriately functioning state institutions. She does not include the public administration explicitly but an overloaded bureaucracy with many rules is certainly supporting rule evasion.

Beers (2010) holds that superior institutional rules do not necessarily lead to a healthy judicial culture that enshrines democratic principles and compels actors within the judiciary to take the formal rules seriously. In the Czech Republic, politicians have openly expressed mistrust in the police and justice system. Phone calls of Finance Minister Kalousek to a state prosecutor and the Police Chief himself concerning investigations into possible corruption in the Defence Ministry have been interpreted in this way (*Lidovky.cz*, 2012). In general, political elites have neglected reforms, ignored rules, or actively hindered independent investigations of both police and justice, mostly by intimidating their subordinates.

In a rule-based framework, three dimensions can be identified in the context of informality-political elites:

- A lack of rules, which could implicitly signify negligence in establishing rules.
- Façade rules, which can either mean rules that are too weak or rules that are too complicated – and their ignorance. It includes personal pressure on subordinates in order to force them to ignore rules.

- Rule capture in a personalized sense – strategically placing a man in the structure, or a whole group of them.

It is difficult to separate the rule factor from the human factor, in our case political elites, although the third category appears to be most evidently based on the human factor. Rule capture through “our man” is the strongest dimension and can provoke the establishment of façade rules, negligence in establishing rules, impeding investigations into corruptive practices, or the establishment of a parallel, informal structure. This suggests that a circle of informality can be activated by capturing certain institutions and their rules.

The following are examples of those dimensions:

- A notorious case of cooperation between police and politicians in the Czech Republic was the case of the Berdych gang, which infiltrated the police and resulted in the working together of police officers with criminals for personal gain (*Radio Prague*, 2006). Additionally, rule capture took place in the form of cooperation between politicians and judges had the effect that official investigations were impeded. Those events seem to be an extreme case of rule capture and infiltration.
- Close cooperation between judges and politicians provided evidence that political corruption was diminishing. The formal framework turned out to be weak and rules inadequate to counter those networks.

This does not mean that police and justice do not work. Taking investigations to the very end sometimes was possible. The infamous Rath case so far was the culmination of police work and further processing. This case involved a politician who engaged in large-scale corruption (hospitals and cultural assets), but it took a long time before any measures were taken, and it was only possible for the police to present evidence in public

in summer 2012 under a new justice minister and general prosecutor. This already points to the importance of the human factor.

It has been especially difficult to bring politicians (or persons involved into political corruption) in front of a court because of corrupt police and a politicized justice system. A very serious hindrance has been the institution of parliamentary immunity. A first step to reduce parliamentarian immunity was made in February 2012, however, and this change soon had consequences: two politicians, among them David Rath, were deprived of their immunity in spring/summer 2012, and evidence for corrupt transactions was accepted as a sufficient reason for this (*Radio.cz* and *Mlada Fronta Dnes* 2012).

In relation to the discussion of corruption, we have to keep in mind that systemic corruption is qualitatively different from case-by-case corruption. It is no exaggeration to maintain that we can identify case-by-case corruption in every country; this does not in itself imply that state structures are corrupt. On the contrary, systemic corruption has the potential to undermine the very pillars of a given state as it cuts across key state institutions, runs from the top to the bottom, and is political in nature – see Caulson (2010) for a general overview and Gallina (2013) for the case of the Czech Republic.

It might already be clear at this stage that we cannot fully consider the human dimension that is not as rational as rules might be. Therefore, it is necessary to take a case-by-case approach to the issue of whether rules matter and whether informality is the better solution, whether rules are established in order to be ignored, how they are ignored and what the actual results are.

Nevertheless, a possible informality complex, based on the combination of rules with categories of informality that also means to put together the human factor with the rule factor, could display the following dimensions. (The interested researcher may find it of value to compare them with the work of Lauth (e.g. 2004). The proposed categories include the subversive institution aspect that Gel'man (2004) considers to be crucial for Eastern Europe.)

- Maintaining the status quo where there is a lack of rules, or deliberate failure to establish and to strengthen independent institutions (such as the justice or the media). No rules are in place and informal arrangements substitute for them – this substitutional informality is not necessarily negative.
- Establishing façade rules, which are either too simple or too complicated – and their subsequent ignorance, especially a forced, superior-induced ignorance or re-interpretation. This would be in line with the concept of competitive informality, where informality competes with existing rules, but is favoured.
- “Our man”: Rule capture in an active, personalized sense – i.e. to strategically place somebody or a whole group in a given structure, who subsequently alter the system (in a formal, but also informal way).
- Building and maintaining subversive institutions – which is system-endangering (be it a democracy or not). Systemic corruption falls into this category as it undermines the goals of public institutions (hospitals, universities) or public actions (public investment, public procurement and privatizations).

### **A Case-Based Analysis of the Institution of the Police President/General Prosecutor**

The following section will build on the insights of previous papers, and try to combine the dimensions of informality with the rule aspect. The focus on the police and justice realm is justified by the widespread assumption that a strong rule-of-law based political system is a guarantee and prerequisite for the establishment of a strong and stable democratic system. For our example of the Czech Republic, informal practices, rule capture and supposedly subversive institutions exist in the political system. A process analysis of informality in the Czech Republic has furthermore revealed a preference for informal elite practices over rule-based institutions, and the tendency to ignore rules, independent of their nature (Gallina, 2008, 2011). Therefore it is also necessary to give some information on the institutions that control the work of the police and state prosecution, namely anti-corruption units – those institutions were (officially) created to

provide a rule-of-law based framework as the police and state prosecution tended to operate according to their own informal rules which often were reduced to corruption.

Informal bargaining, and relations between either politics and economics or politics and the justice realm have been an issue in public discussions. But they have not been as popular as the corruption topic. The reason is quite evident: international anti-corruption organizations consider the Czech Republic as one of the most corrupt countries in the region. Vachudova (2009, 45f.) pointed out that the Czech Republic was ranked just after Romania and Bulgaria among the ten new post-communist members of the EU concerning corruption problems. The problems with corruption mostly originate from the 1997 opposition agreement period between the conservative ODS and the social-democratic ČSSD that resulted in co-government of the country. Politicians distributed spheres of influence and rent-seeking possibilities (Tabery, 2008).

In analysing informality and the use of informal practices or the creation of subversive institutions an actor-based view would be desirable. But unfortunately (or fortunately?), we are not the actors, and thus cannot easily measure the degree of actor involvement and the degree of rule capture, for example. Therefore I take an institutional-based perspective. This chapter attempts to offer some insights into the relations and types of informality of political representatives, police chiefs, and state prosecutors.

The following discussion would not be possible without the strong presence of investigative media in the country. The close relationships between the Police Chief, Interior Minister and state prosecution basically date from the so-called opposition agreement between the conservative ODS party and the social-democratic ČSSD in 1998 (again Tabery, 2008).

After a period of neglect, when politicians and political parties deliberately acted against the establishment of independent police units in the mid-1990s, agencies were established in order to reveal political corruption in the Czech Republic. The lack of rules, or their neglect, in this period, had strong features of substitute informality.

The agencies then established were the Anti-Corruption Service (SPOK) and the Office for the Detection of Organized Crime (ÚOOZ). However, their role was limited to the investigation of ordinary crime and not political corruption. This is a classic case of rule limitation and the establishment of façade rules (i.e. institutions) with little power in the relevant areas, allowing the political elite to continue with “business as usual”.

Until the so-called opposition agreement, the police had investigated relatively independently. But then, the main adviser to the Prime Minister, Miloš Zeman and the Interior Minister Stanislav Gross (considered one of the most corrupt persons in the country, Tabery, 2008) put into place loyal individuals who would not investigate politically relevant cases – they captured the police agencies in order to make them politically dependent, working in favour of their allies. The outcome can in fact be described relatively well by the term “subversive institution”.

Following the evolution of informality we can observe its increasing sophistication. In the beginning, it was sufficient to apply instruments that were never intended to work; later came complementary instruments, followed by single persons pushed into important positions who then established subversive institutions. This was a sign of the growing institutionalization and rule-dependency of the political system..

The human factor is very relevant in a situation of informality, especially when it comes to subversive institutions. One director of the ÚOOZ, Jan Kubice, ignored an order not to investigate politically relevant cases and was suspended on grounds that he had violated the regulations. The reason was presumably that he had presented a report in May 2006 that showed the deep involvement of social-democratic political elites in criminal structures and informal practices. The report stated that mafia structures had infiltrated the state administration and the ČSSD government, led by Prime Minister Jiří Paroubek (2005–2006), who impeded investigations into the illegal and informal structures that the ruling elites kept creating (Kubice, 2006). Politicians were, to some extent, annoyed, and the former Prime Minister, Stanislav Gross, ruled that the service would only investigate organized crime, but not in connection with corruption and the national economy. This was a *de facto* end to the prosecution of political corruption. This

fact didn't evoke any protests either on the part of the Police Chief or the respective ministers. Investigative journalists claimed that the order to keep silent came directly from the former Prime Minister Stanislav Gross (Spurný and Kundra, 2008).

Here, the question is how this infiltration worked. Informal practices such as threats and an informal alliance between the Interior Minister, the Police Chief and the acting state prosecutor played a role; competing informality also existed in respect to the independent investigators acting within a formalized framework. Nevertheless, the latter also relied on informal networks, although they proved weaker. Police unit directors were put in place in order to establish a subversive institutional framework and they strictly followed orders from political actors. As a result of the whole informality package, Jan Kubice resigned in December 2007, along with a numerous key functionaries.

To prevent the police from investigating efficiently, and to keep their institutions weak, well-known administrative measures were used in order to harass individual investigators in anti-corruption police units: They had to inform their superiors on the opening of a criminal case, and the latter had to give a formal order to start a prosecution, but the prosecution could be only started with the consent of the Police Chief who regularly informed the Interior Minister about pending investigations who himself stopped potentially dangerous investigations on time. The Police Chief, Oldřich Martinů, allegedly informed the Minister of the Interior about each relevant case (Spurný, 2010).

As a result, the investigations and efficient combat of political corruption were somewhat meagre. Officially an agency existed to combat corruption, but in reality the agency depended on politics and even fostered corruption. With politically placed heads which established their own structures, it also met the requirements for a subversive institution. Until winter 2011, the Czech police had not closed a single one of the big post-communist corruption scandals. It was the Swiss state prosecution (as the money had been parked in Switzerland) that had to push the investigation of one of the biggest scandals (the above MUS affair) – impeded by the Czech responsible (state prosecution, police and political functionaries up to the prime minister).

This did not rule out that single independent persons existed that pushed anti-corruption measures, for instance the above Jan Kubice. To what extent can individuals cope with the informality complex? The first round was lost by Kubice, as his political position was too weak. A possible solution would be to address informality either with informal instruments or with formal regulation– we will see below how this might work in our case.

Changing perspectives can be useful for the informality discussion. The anti-corruption agency has tackled the informality complex, unfortunately largely unsuccessfully. Now, what does informality look like from the other side?

Take the institution of the General Prosecutor. The Czech Justice Minister has had the right to appoint the General Prosecutor. This political dependency based on formal regulation has been exploited for the sake of informality. This means that the government, i.e. the Justice Minister, has repeatedly influenced judicial investigations in political cases through dependent General Prosecutors. Here, we can speak of rule capture and the option to create a subversive institution. A politically reliable General Prosecutor was able to block investigations – notorious examples were the former general prosecutor Renáta Vesecká and the Prague state prosecutors.

In one example of the impact such a subversive office can have, the Czech police initiated an investigation of possible corruption tied to the politician Jiří Čunek in 2007, as he had acquired expensive assets with a modest income. A witness alleged illegal deeds, but the state prosecution publicly expressed doubts about the credibility of this principal witness, and accused investigators of manipulating information. The loyalty of this supposedly corrupt KDU-ČSL politician and his party was important to hold the thin government majority (2007–2009). To express doubts about witnesses publicly was outrageous for most observers, because it ran counter to state prosecution regulations. However, the state prosecution game did not go well, as individual judges behaved like the above anti-corruption agency director Kubice and did not give way to the requirements of informality. A prosecutor showed no readiness to close the Jiří Čunek corruption case. The corrupted General Prosecutor, Renáta Vesecká, assigned it to

another prosecutor who promised to be more reliable, and the new prosecutor stopped the investigation on account of procedural errors (Spurný, 2007, 2008a).

Here we have, again, the fact that, if one knows the rules well or can play with them, they can be used easily to achieve one's goals. The police became involved again (for reasons that were not fully clear) and allowed to reopen the bribery case, and Čunek had to resign – the investigating side apparently had better networks here. This shows us also that it is not only the bad guys who use informality instruments effectively, but the presumed good guys can also master them. Interpersonal dynamics, topics and current power constellations could have been the decisive factor for this outcome. However, the informal battle apparently had continued behind the scenes. The General Prosecutor, Vesecká, ordered further investigations, and the subordinate prosecutor in charge decided to close the corruption proceedings in November 2007. Čunek returned into the government in April 2008 (Spurný, 2007; Tabery, 2007).

The case went on. Judges, police and the media struck back: General Prosecutor Vesecká was publicly suspected of having moved the corruption investigation from one prosecutor to another in an attempt to delay proceedings, using rules in favour of the accused. In May 2008, the displaced first prosecutor of the Jiří Čunek case, Zlatuše Andělová, said in a court hearing that the Vice-President of the Supreme Court, Pavel Kučera, and the General Prosecutor, Renáta Vesecká pressured her to stop the investigation. This was a case of ignoring formal procedures; the rules became a façade. At this stage both sides, especially the politicized actors and politicians, relied increasingly on rhetoric. This is indeed another dimension we can observe quite often – and often a measure of last resort. In regard to political culture, it is the most important dimension as rhetoric always reveals something about the actors' perceptions. In our case, some fellow prosecutors accused the General Prosecutor of being part of a “justice mafia” that tried to control the judiciary for the benefit of corrupt politicians. For the first time, they confronted their superiors in public with the fact that judges and state prosecution staff members who were willing to enforce the rules were ousted by their own colleagues (Spurný and Kundra, 2008).

This case showed how far informality can go: the General Prosecutor's office had turned to a subversive institution (the "justice mafia" as observers called it): state prosecution, high judges and politicians formed an alliance to prevent politicians from being sued on the grounds of corruption. The misuse or ignoring of rules was evident; additionally, political networks and dependency relations played a significant role, although we do not fully know to what extent corruption, personal interests, and so forth, played a role, fuelling informality. Power networks and political corruption have been very relevant and often decisive, and should not be forgotten in the informality discussion.

### **A Renewed Role of Informality? Political and Personal Changes versus Informality**

The Czech general elections in 2010 brought two new parties in the government (VV and TOP09) and created a window of opportunity to get rid of the most prominent persons of the late 2000s responsible for pushing informal practices up to the creation of subversive institutions: the Vice-President of the Supreme Court, Pavel Kučera, and the General Prosecutor, Renata Vesecká, and the police president who impeded the work of anti-corruption agencies. As a result of the new political situation, the anti-corruption police made considerable efforts to dismiss the suspected prosecutors in order to work more independently. The most visible outcome was that the police were granted the necessary search warrants and could conduct a search in the offices of the general and the Prague state prosecution to collect relevant material (Spurný, 2008b).

This was possible with the support of the new Police President, Petr Lessy, and Interior Minister, Jan Kubice. A crackdown on the informality complex was possible as due to the fact that it was possible to get rid of the corrupt old guard and because of the existence of a small pool of determined individuals within the police or judiciary.

And here we can make the link to the above case of Jan Kubice. A new political party in parliament (TOP09) pushed him into the office of Interior Minister – a powerful position from which he could apply his own measures, both formal and informal. However, the new Interior Minister and Police Chief did not continue to cooperate

smoothly. The latter began to play a dubious, politically influenced role; back-door struggles between him and the Interior Minister and allies or enemies followed, culminating in a public dispute about the de-bureaucratization of the police – the Police Chief blocked the issue and the Interior Minister supported a reform. This struggle allegedly led the Police Chief to hinder police reform and weaken its supporters – notably with a newspaper interview in which he accused a senior police officer who strongly supported the reform of professional incompetence, and of tolerating criminal networks. In another interview he accused the Interior Minister of harassment. As a consequence, the Police Chief had to leave and proceedings were instituted (Kundra, 2012).

What can we learn from this case? Once an informality circle is endangered, its members presumably will try by all means to maintain their position. One effective method has been to create mistrust between the members of the supposedly new circle. This was very visible in the relationships between the circles of the Interior Minister, Jan Kubice, who was determined to disempower old informal networks, and the circles around Police Chief Lessy, who was more susceptible to the demands of his institution. In the end the latter overstretched his political influence, support and power. In this context it is crucial to point to the multi-layered nature of such issues. A striking detail in the case of the Police Chief was his hard line regarding corruption cases tied to government members.

The new guard was also personified by the new General State Prosecutor, Pavel Zeman, who drew attention to the country's capital, Prague. Here, the prosecution of political cases had been systematically delayed, supposedly by the Highest Prague Prosecutor Vlastimil Rampula. He sacked a Prague City Court judge on the grounds of incapacity and delay of judicial processes (this reminds the above mentioned accusations of the Police President concerning his subordinate). But this meant a turning point, because of the fact that in the 2000s only 12 judges faced this fate, and he came under suspicion that the evidence was fabricated. As a consequence, Rampula was wire tapped, and was found to have acted unlawfully concerning another serious corruption case in which he had revealed the name of a crucial witness. But there were presumably more

serious cases – such as corruption around the IPB bank, the Gripen fighter lease, and especially the privatization of the country's biggest brown coal company MUS in 1999, a 12 billion loss, featuring money laundering in Switzerland and active hindering investigations into the issue (Häfliger, 2012). It was here, when MUS also became a more serious issue in the Czech Republic. Moreover, for the first time in such struggles between detached state prosecutors (detached from the corrupted informality circles) and their corrupt peers, the independent (general) State Prosecutor won. Rampula had not succeeded in recruiting powerful allies, namely his superior, or the Prime Minister, and had to leave in summer 2012 (*ihned.cz*, 2012).

The lack of rules, and in particular the lack of depoliticized relations in the area of justice and the investigating agencies, together with an elite pact in the late 1990s, fuelled informality and corruption. In the 2000s, political elites felt, and were strong enough to establish weak institutions, ignored them, and based their interactions on informal practices and circles which in turn led to increasing corruption (Gallina 2013 on the corruption topic). As anti-corruption demands became louder, elites tended to strengthen institutions, but placed allies (“our man”) in them in order to control them and to take the whole institution over, a strategy that succeeded in the case of the general state prosecution and police agencies. However, this, in turn, provoked a movement in the opposite direction, towards depoliticized relations – a development possible in countries with a certain political plurality, and possibilities for political and personal changes.

A positive outcome is nevertheless not ensured. It is necessary to keep in mind that informal relations between humans have existed before formal institutions, and have proven their power and persistence in the course of human history. Thus, democracies have to face various forms of informality, and the Czech Republic also its worst feature – subversive institutions that operate in areas crucial for maintaining a democratic political system, such as the justice system. Despite the importance of informality, there have been so far no attempts to abolish generally accepted democratic, independent institutions. Instead, political elites have preferred to create counter-institutions, or façade institutions,

and have tried to undermine the rules and institutions they do not consent to, or to design them so that they do not to too much harm.

Can we thus talk of political elite clans in the country infiltrating formal structures? This would go too far, and in fact better describes the situation in a country such as Ukraine. In the Czech Republic, informality appears to be systemic, but not tied to clans that operate on a structured basis and have to be considered in almost every decision. Informality is tied to selected elites who form coalitions, which are not necessarily stable, in certain branches and for special cases. The “justice-mafia” was a serious case and able to maintain a close, structured relationship between state prosecution and politics, but it lost power after a relatively short time.

As we can deduce from the above, most informal practices tend to be volatile, tied to individuals who might hold their offices for a limited period – which means that the nature of informality changes according to those involved, especially depending on the political party in power, an aspect that has not been sufficiently taken into account here. Even if subversive institutions also seem to be dependent on individuals, the difference from informal practices is that institutionalized informality is substantially more powerful than informal practices. What is remarkable in this context is that in the above examples it has been far easier to identify the nature of rule capture based on institutions, in contrast with situations dependent on informal practices.

### **A Possible Generalization of Informality: The Informality Circle**

Strong informal actors – political elites, businessmen, criminals – challenge formal institutions and try to ignore formal provisions; they informalize formality. The example of the Czech Republic shows that independent democratic state structures have problems to control informal practices. Generally, independent institutions like special state prosecutions have not functioned very well in a post-communist setting.

Our case study shows different dimensions of informality, namely informality through rule negligence, façade rules, rule capture through persons and subversive

institutions. Those patterns are expressions of the attitude of the political elite toward the institutional setting in place.

Elites instrumentalize rules differently, also the informal rules of power networks and the respective elite cultures. They generate various forms of informality and shape the institutional system – in order to strengthen networks, generate power or just to enrich themselves; a few also support the common good and state development.

An analytical complex has to take into account informal instruments that are based on elite conduct, power networks and political and economic constellations. Corruption can be an inherent and subversive part of this complex as it for example undermines the goals of public institutions (hospitals, universities) or public actions (public investment). In this sense corrupt networks build on the different dimensions of informality and influence institutions by their sheer existence or through informal instruments, and as a consequence are able to endanger the position of the highest state representatives and independent institutions.

An informality circle would thus be provoked by the fact that elites do not function according to the formal rules – they do not identify with them, feel uneasy in institutionalized settings etc. Instead, they stick to the above presented dimensions of informality in order to alter institutions and rules for their personal purposes or group necessities.

Thus, when elites have to confront political institutions, informality is a resort to advance personal or group interests in a strategic sense. It is often used to conceal corrupt behaviour, but corruption has not to be a goal per se of informality. Informal practices are most powerful in a situation where formal institutions are over-regulated, weak, not clear enough or not efficient. They bring certain advantages, such as power or financial gains, and those resources in turn influence the selection of “who belongs to the circle”. Those taken in most probably do not accept formal rules what closes the informality circle.

How is it possible to identify the flexibility of informality and the instruments used? This can be only done with a detailed, chronological analysis for single branches, such as the judiciary. We have to undertake a case-to-case analysis as circumstances vary

considerably. Informal codes might become a dominating factor within political relations and can challenge (democratic) institutions. Generally, empirical evidence suggests that political actors in Eastern Europe have experienced difficulty in accepting limits on their conduct by formal institutions (in any form) after the change to democratic political systems. Taking into account the above preliminary results, the interrelations between political elites with the institutional system through informal instruments are sufficiently interesting to warrant further analysis.

A comparison with established democracies could reveal more subtle instruments, especially in regard to corruption, and the instruments depending on rule-based traditions – just consider the role of lobbyists and expertise. Another assumption is that human incompetence and cooperation capabilities, just to name a few, are very important factors that might dominate political developments far more than mere informality/formality categories. In this way individuals who are part of political power networks are able to manipulate the state and its institutions in their favour, intentionally and unintentionally dividing actors and institutions, resulting in authoritarian systems and/or a subtle deterioration of democracy.

## Postscriptum

- A Swiss court convicted five Czech MUS managers of fraud and money laundering, and issued prison sentences up to four years and four months in October 2013.  
(see <http://www.srf.ch/news/schweiz/kohle-barone-muessen-hinter-gitter>)
- David Rath was released on bail in November 2013.  
(see <http://hn.ihned.cz/c1-61215670-david-rath-je-volny-soud-ho-pustil-z-vazby>)
- The Interior Minister Kubice had to resign because of the collapse of the government in mid-2013, the prosecution of the former Police President Lessy was stopped in autumn 2013, and the General Prosecutor Zeman had to make a decision whether to accept the verdict or not (see <http://www.novinky.cz/domaci/319137-zalobcum-se-neliby-osvobozeni-lessyho-chtej-se-obratit-na-nejvyssi-soud.html> (all accessed 13 November 2013)).

## **References**

- Beers, D. (2010) A tale of two transitions exploring the origins of post-communist judicial culture in Romania and the Czech Republic. *Demokratizatsiya: The Journal of Post-Soviet Democratization* 18 (1), 28–55.
- Bušta, P. (2012) *Causa Barta: To by byla politika, podle soudce Šotta! Česká Pozice*, [www.ceskapozice.cz/domov/politika/byla-politika-podle-soudce-sotta](http://www.ceskapozice.cz/domov/politika/byla-politika-podle-soudce-sotta) (accessed 8 February 2013).
- Radio Prague* (2006) *Mafiaboss Berdych and Gang Appear in Court*, <http://www.radio.cz/en/article/75412> (accessed 9 February 2013).
- Caulson, R. (2010) Systemic Corruption: Daunting Challenge in Globalized Era. *Radio Free Europe/Radio Liberty and ISN*, 10 December 2010, [http://www.rferl.org/content/corruption\\_systemic\\_soviet\\_afghanistan/2243654.html](http://www.rferl.org/content/corruption_systemic_soviet_afghanistan/2243654.html) (accessed 21 August 2012).

- Gel'man, V. (2004) Unrule of law in the making: the politics of informal institution-building in Russia. *Europe-Asia Studies* 56 (7), 1021–1040.
- Gel'man, V. (2010) Subversive institutions and informal governance in contemporary Russia. In *The International Handbook on Informal Governance* (eds T. Christiansen and C. Neuhold), Cheltenham, Edward Elgar, pp. 135–153.
- Gallina, N. (2008) *Political Elites in East Central Europe: Paving the Way for Negative Europeanization?* Leverkusen, Budrich UniPress.
- Gallina, N. (2011) Informality reigns in the country: the example of the Czech Republic. *Central European Journal of International and Security Studies* 5 (2), 57–78.
- Gallina, N. (2013) Anti-corruption revisited: the case of the Czech Republic and Slovakia. *Zeitschrift für Vergleichende Politikwissenschaft* September 2013.
- Grødeland, Å.B. and Aasland, A. (2006) In the Judiciary you are lost without contacts. Informal Practices in the Judiciary in East and South East Europe. *Norwegian Institute of Urban and Regional Research*, <http://www.u4.no/recommended-reading/in-the-judiciary-you-are-lost-without-contacts-informal-practices-in-the-judiciary-in-east-central-and-south-east-europe/> (accessed 10 January 2013).
- Grzymala-Busse, A. (2010) The best laid plans: the impact of informal rules on formal institutions in transitional regimes. *Studies in Comparative Institutional Development* 45 (3), 311–333.
- Häfliger, M. (2012) Bundesanwaltschaft will 660 Millionen konfiszieren. *Neue Zürcher Zeitung (NZZ)*, <http://www.nzz.ch/aktuell/schweiz/bundesanwaltschaft-will-660-millionen-konfiszieren-1.17797721> (accessed 10 January 2013).
- Hayoz, N. and Gallina, N. (2011) Beyond democracy: the relevance of informal power in Eastern Europe. In *1989 in Central and Eastern Europe: Implications and Meanings Twenty Years Later* (eds N. Hayoz and J. Leszek), Bern, Peter Lang.
- Helmke, G. and Levitsky, S. (2004) Informal institutions and comparative politics: a research agenda. *Perspectives on Politics* 2 (4), 725–740.
- Helmke, G. and Levitsky, S. (2006) *Informal Institutions and Democracy*, Baltimore, John Hopkins University Press.

- Ihned.cz. (2012) Rampula bude už jen týden státním zástupcem. Pak si založí advokátní kancelář, <http://zpravy.ihned.cz/c1-57161980-rampula-bude-uz-jen-tyden-statnim-zastup-cem-pak-si-zalozi-advokatni-kancelar> (10 January 2013).
- Jordan, J. (2002) Patronage and corruption in the Czech Republic. *SAIS Review* 22 (2), 19–52.
- Kotkin, S. and Sajos, A. (2002) *Political Corruption. A Sceptics Handbook*, Budapest, CEU Press.
- Kubice, J. (2006) *Zpráva velitele ÚOOZ*, <http://zpravakubice.sweb.cz/> (accessed 9 February 2013).
- Kundra, O. (2010) Interview with Jan Kubice “Nový život lovce mafianů”, *Respekt*. 19 July.
- Kundra, O. (2012) Lessy dojel na Právo, *Respekt*, 3 August.
- Lauth, H. (2004) Formal and informal institutions: on structuring their mutual co-existence. *Romanian Journal of Political Science* 4 (1), 66–88.
- Ledeneva, A. (2006) *How Russia Really Works. The Informal Practices that Shaped Post-Soviet Politics and Business*, Ithaca, Cornell University Press.
- Lidovky.cz, (2012) *Kalousek neuposlechl varování. Odvolá ho Nečas?* [www.lidovky.cz/skonci-kalousek-od-premiera-petra-necase-dostal-dve-varovani-p5d-/ln\\_domov.asp?c=A120712\\_172430\\_ln\\_domov\\_mev](http://www.lidovky.cz/skonci-kalousek-od-premiera-petra-necase-dostal-dve-varovani-p5d-/ln_domov.asp?c=A120712_172430_ln_domov_mev) (accessed 9 February 2013).
- Meyer, G. (ed.) (2008) *Formal Institutions and Informal Politics in Central and Eastern Europe. Hungary, Poland, Russia and Ukraine*, Opladen and Farmington Hills, Barbara Budrich Publishers.
- Miller, W. et al (2000) *A Culture of Corruption? Coping with Government in Post-Communist Europe*, Budapest, Central European University Press.
- Mlada Fronta Dnes (2013) *Případ Davida Ratha*, <http://zpravy.idnes.cz/pripad-davida-ratha-0oz-/domaci.aspx?klic=64175> (accessed 15 November 2013).
- Praguemonitor.cz (2013) *Convicted coal manager Koláček plans his strong defence*, <http://praguemonitor.com/2013/10/15/convicted-coal-manager-kol%C3%A1%C4>

- %8Dek-plans-his-strong-defence (citing CTK for the statement; accessed 15 October 2013).
- Radio.cz (2012a) *MUS-Affäre: Tschechien wartet vorerst Schweizer Berufungsentscheid ab*, <http://www.radio.cz/de/rubrik/tagesecho/mus-affle-tschechien-wartet-vorerst-schweizer-berufungsentscheid-ab> (21 August 2012).
- Radio.cz (2012b) *Prominent Social Democrat MP charged with corruption*, <http://www.radio.cz/en/section/curraffrs/prominent-social-democrat-mp-charged-with-corruption> (accessed 10 August 2012).
- Spurný, J. (2007) Detektiv Šošovička jednal fér, *Respekt*, 1 October.
- Spurný, J. (2008a) Žalobkyně končí. *Respekt*, 21 January.
- Spurný, J. (2008b) Vzpouza policistů. *Respekt*, 27 July 2008.
- Spurný, J. (2010) Strážci korupce. *Respekt*, 28 June.
- Spurný, J. and Kundra, O. (2008) Dědictví mafianá Mrázka. *Respekt*, 2 June.
- Spurný, J. and Kundra, O. (2012) Interview with Interior Minister Jan Kubice “Červíček je perfektní a nezávislost trvá”. *Respekt*, 3 September.
- Spurný, J., Sahr, T. and Kundra, O. (2008) Vláda v pasti justiční mafie. *Respekt*, 17 May.
- Tabery, E. (2007) Čunek drtí politickou scénu. *Respekt*, 9 June.
- Tabery, E. (2008) *Vládeme nerušit*, Praha: Respekt edice.
- Vachudova, M. (2009) Corruption and compliance in the EU's post-communist members and candidates. *Journal of Common Market Studies*, 47, 43–62.