



CORRUPTION
RESEARCH CENTER
BUDAPEST

No Public Procurement Corruption in Hungary?

*Analysis of the Decisions of the Hungarian Court between
2009-2014*

Research note

Budapest, June 2015

The notes below were made by the research group of the Corruption Research Center Budapest (CRCB). The continuation of the research was facilitated by the financial resources of the center, and the volunteer work of the participants. We welcome any financial support and volunteer, who help us continue our project (info@crCb.eu).

Nincs korrump közbeszerzés Magyarországon? A magyar bíróságok határozatainak vizsgálata 2009-2014 / No public procurement corruption in Hungary? Analysis of the decisions of the Hungarian Courts 2009-2014

Kutatási jegyzet / Research note

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Date: 12th June 2015.

Abstract

This brief paper examines court orders related to corruption issued in and after 2009 in Hungary. The aim of the analysis was to identify confirmed crimes related to corruption in public procurement in order to inspect the validity of CRCB's composite corruption risk indicator, or CRI. A court order was examined if it met the following criteria: it was issued in 2009 or later, it was about corruption related crimes and it contained the words "közbeszerzés" ("public procurement"), "pályázat" ("tender") or "tender" ("tender"). However, none of the examined 47 court orders contained information on corruption crimes committed in or after 2009 in relation to identifiable public procurements. Hence, based on court documents, it seems that there had been no corruption in public procurement in Hungary since 2009. Possible reasons could be the mutual interest of both parties involved in the corruption to keep the crime secret, the longevity of legal proceedings, and the reduced number of accusations filed by the prosecution along with the increased number of interrupted investigations.

The Aim of the Research

The aim of the research was to identify public procurement contracts after 2009 which were deemed corrupt by the Hungarian courts. By comparing these cases to CRCB's composite corruption risk indicator, we hoped to examine how well the corruption risk indicator developed by CRCB worked in these cases.

For this reason we analysed all court decisions made after 2009, which (1) were given references about types of corruption in legal codes (2) included certain words that are related to public procurement.

Method

Crimes involving corruption in public procurement¹ and their legal codes are shown in Table 1. At present Act C of 2012 is in force, but the majority of the cases we analysed fell under Act IV of 1978.

Table 1. – Crimes relating to corruption in public procurement and their references in legal codes

Crime	Reference in Legislation	
Active form of bribery of authority	253§ of Act IV of 1978	293§ of Act C of 2012
Passive form of bribery of authority	250§ of Act IV of 1978	294§ of Act C of 2012
Profiteering with influence	256§ of Act IV of 1978	296§ of Act C of 2012

We found the decisions in the Collection of Court Decisions² available online including the references in legislation listed in Chart Nr. 1. Within these, we analysed the decisions

¹ Átlátszó.hu chose references to legislation concerning crime in connection with administrative corruption in a similar way: <http://atlatszo.hu/2015/02/06/polit-peter-kinevezese-ota-meredeken-zuhan-a-politikai-korrupcios-ugyekben-inditott-buntetoeljarasok-szama/> (Downloaded on 27.04.2015.).

Legislation in force can be read in the following link: http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV (Downloaded on 27.04.2015.).

Act IV of 1978 can be read in the following link: <http://btk.uw.hu/btk.html> (Downloaded on 27.04.2015.)

² The Collection of Court Decisions can be found at the following link: <http://birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara> (accessed on 27.04.2015.).

containing one of the following words: “közbeszerzés” (“public procurement”), “tender” (“tender”), or “pályázat” (“tender”). We believed that if none of these words occurred in a decision, it was unlikely to relate to corruption in public procurement. If such a case was still related to corruption in public procurement, based on the wording of the decision we would not be able to find out which public procurement it related to.

After finding the above mentioned decisions we next tried to identify the public procurement they refer to. There is no direct reference in the wording of the decisions as they are classified as confidential. This confidentiality covers important facts such as: the names of the accused, the witnesses, the companies involved and the issuing government institutions. In certain cases even the dates and other details concerning the crimes are also kept secret. Despite this, it would not have been impossible to link these data to their concrete tenders, since a lot of other information can be gained from the decisions. For example, the subject of the given public procurement and the approximate date are usually available. Based on this information it may have been possible to search the website of the Public Procurement Authority³ to locate the cases in connection to which the court ruled that criminal actions were committed.

Data

The database, together with the raw data of the court decisions including links to the decisions, can be accessed in the following file supplement: http://www.crcb.eu/wp-content/uploads/2015/05/research_note_2015_court_judgements_150509.rar.

Altogether we found 47 decisions in compliance with our criteria. From the decisions made in 2009 or later we found especially relevant those referring to cases that took place in 2009 or later: less than one third (15 decisions) out of the 47 decisions belonged to this category. Although the exact dates of the crimes are not made clear in the decisions, in many cases it is possible to deduce indirectly whether the crime took place before 2009 (for example from the starting date of the pre-trial detention, or from the date when a lower court verdict was delivered). Even among the decisions made later the majority of cases referred to actions from before 2009. In 2014 for example there were 4 cases (out of 8 in total) which referred to actions committed before 2009 (See Table 2).

³ The search site of the Public Procurement Authority:
<http://www.kozbeszerzes.hu/adatbazis/keres/hirdetmeny/> (accessed on 27.04.2015.).

Table 2. Number of decisions according to the year they were made

Year of the decisions made	Number of decisions	Number of crimes committed in 2009 or later
2009	7	0
2010	9	0
2011	6	4
2012	11	4
2013	6	3
2014	8	4
Total	47	15

The 47 decisions do not mean 47 different cases, since in 9 cases we recognized them as the first and second judgements on the same case; therefore, the 47 decisions altogether cover 38 different cases.

Table 3 breaks down the specific legal codes cited in the decisions. Several laws can be referenced in a single decision (for example, if in a particular case there was passive form of bribery of authority and profiteering with influence). It can be seen that there were 30 cases which referred to profiteering with influence, and 22 which referred to passive form of bribery of authority and 16 to active form of bribery of authority. There was no significant discrepancy between the years examined depending on which reference in legislation the decisions were made (see Chart Nr. 4).

Table 3. The distribution of the decisions based on the reference in legal codes

Crime	Number of decisions		
	According to Act IV of 1978	According to Act C of 2012	Total
Active form of bribery of authority	16	2	18
Passive form of bribery of authority	22	0	22
Profiteering with influence	27	3	30

Table 4. Number of decisions according to the year they were made

Year the decision was made	Active form of bribery of authority	Passive form of bribery of authority	Profiteering with influence
2009	2	4	5
2010	6	4	5
2011	0	4	3
2012	3	5	8
2013	3	2	3
2014	4	3	6
Total	18	22	30

Out of the 47 cases we found only five cases which referred to corruption in public procurement. The remaining cases concerned various criminal cases but none of them could be linked to concrete public procurements. To highlight a few typical examples, in a particular case of profiteering with influence, there are several examples of the accused claiming the ability to influence a tender, but in fact can not (or perhaps the tender does not exist at all). Another example is if the bribery in question was not related to public procurement such as when it is related to a job application, or renting an apartment owned by the local government).

Out of the 5 cases relating to corruption in public procurement there was only one which related to a crime committed after 2009.

Table 5. shows the search words⁴ used in the 47 decisions. Sometimes more than one search expression was found in a single decision, therefore the numbers in the chart can exceed 47. Concerning the single public procurement case which took place after 2009, the words “pályázat” (“tender”) and “közbeszerzés” (“public procurement”) were both used.

⁴ N.B. The search engine can find different forms of a word, for example, the word “közbeszerzés” can be found with all its possible endings.

Table 5. Number of decisions relating to the given search words and among them the number of decisions relating to public procurements and the number of public procurements from 2009 or later

Search words		Number of decisions	Number of decisions relating to public procurements	Number of decisions relating to public procurements from 2009 or later
“Közbeszerzés” (public procurement)	(public	11	3	1
“Tender” (“tender”)		4	1	0
“Pályázat” (“tender”)		43	5	1

In the end, not even the single remaining case could be related to a realized public procurement contract, despite the fact that the case could be identified.⁵ According to the decision the mayor of Pálháza accepted 200,000 forints (about 750 Euros at the time) in exchange for helping a company win a regional waste water treatment contract in the amount of 370 million forint in November 2010. The mayor was caught almost immediately, resigned later and the tender benefitting the company was not be realised. No announcement can be found relating to this case in the Public Procurement Bulletin, therefore we were unable to link the decision to a concrete tender.

⁵ For a short account of the case, See d: http://nol.hu/belfold/bortonbuntetes_a_volt_pal hazai_polgarmesternek-1366905 (Downloaded on 17.04.2015.).

Other Attempts

Apart from the above mentioned methods, we attempted free word searches in the Collection of Court Decisions⁶ without narrowing the search down to references in legislation. Unfortunately, we did not find any results. Among the 59 additional decisions, we found 20 cases of libel, defamation and press rectification relating to corruption. The remaining cases, although they related to bribery, could not be linked to any public procurement cases taking place after 2009.

Summary

It is extremely difficult to detect corruption. This is why relatively few cases are detected and are taken to court and, beyond that, reach the stage where the court may be able to convict the accused. One obvious reason is that both parties involved in corruption have an interest in keeping the corruption secret, therefore it is very difficult to reveal these cases.

Secondly, the timespan between the date when the crime is committed and the date of the verdict passed by the court is generally very long. We saw that out of the 47 cases analysed from 2009 to 2014, 32 referred to crimes committed before 2009, and that even four of the 8 decisions made in 2014 refer to alleged crimes committed more than five years before.

Thirdly, the number of cases involving corruption in Hungarian public institutions fell by an average 50% per year between 2010-2013 in Hungary. Additionally since Péter Polt's⁷ appointment as Chief Prosecutor, according to the data of the General Prosecutor's Office, the number of rejected prosecutions increased three fold and the incidence of abandoned investigations doubled.⁸ In this way fewer cases ended up in court during the examined period.

⁶ See: <http://birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara>

⁷ Péter Polt is a lawyer, prosecutor, university lecturer, and he was Chief Prosecutor of Hungary between 2000–2006, and again since 2010. He was a member of Fidesz between 1993-1995, and he was a candidate for MP in the general elections in 1994. http://hu.wikipedia.org/wiki/Polt_P%C3%A9ter. Péter Polt has a good relationship with Viktor Orbán <http://img7.hvg.hu/image.aspx?id=bea77cd2-7509-4d49-addb-f744ce25abe9&view=7fcefbf8-ac48-4ee6-ae5f-32203afa118c>.

⁸ Sources: Átlátszó.hu <http://atlatszo.hu/2015/02/06/polt-peter-kinevezese-ota-meredeken-zuhan-a-politikai-korrupcios-ugyekben-inditott-buntetoeljarasok-szama/> (Downloaded on 27.04.2015.).