



Corruptissima Re Publica Plurimae Leges

Edited by
Federico Sampalmieri
and Gian Marco Bovenzi



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Introduction by

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NOTE OF EDITOR

“Money, it’s a crime. Share it fairly but don’t take a slice of my pie”, wrote the Pink Floyd in their masterpiece The Dark Side of the Moon’s song Money.

Syllogistically speaking, money do not always represent corruption and, likewise, corruption is not necessarily practiced through the (mis)use of money (“other utilities”, under article 318 of the Italian Criminal Code). But ordinarily, corruption and money do go along pretty well together – especially when speaking about slices of pies.

This book represents a journey through the current situation of corruption in different countries belonging to four different European macro-areas: the Mediterranean and Western Europe (here represented by Italy and Portugal); Central Europe (here represented by Hungary); Northern Europe (here represented by Finland); Eastern Europe (here represented by Ukraine, Georgia, and Moldova).

The aim of the publication is to provide a comparative study analysing how corruption is rooted in the examined countries, highlighting the governments’ different approaches in tackling the phenomenon, and finally to sum-up the findings of the study underlining some potentially efficient policy recommendations under a liberal perspective.

Gian Marco Bovenzi

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PREFACE TO CORRUPTISSIMA RE PUBLICA, PLURIMAE LEGES

Introduction

The idea behind the title “Corruptissima re publica, plurimae leges” is that when corruption is wide spread, laws are many, because they are approved to maximize the private utility of individuals rather than the public good or the best interests of the (majority of the) population. Rephrased in the modern lexicon of political science and public choice, this is what Tacitus meant by that famous line. The logical next step of this quote actually reverses the causality link: when laws are many, the republic becomes more corrupt because the cost of recognizing the appropriate legislation, of interpreting, enforcing it and so on, all increase. This reduces both the certainty and the rule of law; corruption and malfeasance are direct consequences. In Latin that should translate in something like “Ubi plurimae leges, ibi corruptissima res publica” which Tacitus, whose Latin was so much better than mine, never wrote; but this next logical step of his reasoning should also be factually, if not grammatically, correct.

Most of the contributions of this volume surmise the idea that legislative overproduction generates corruption through a weakening of the rule of law. This is a common finding in the empirical literature on the causes of corruption. Furthermore, this idea is germane to another important result of this literature, namely, that the size of the public sector is positively correlated with corruption. Activities carried out in the public sector lack a least two disciplining principles that characterize market undertakings, the profit motive and competition. When one seeks profits but competition makes them hard to come,

accepting the inefficient practices or extra costs that corruption engenders becomes impossible. The rule of law exerts a disciplining force on individuals’ behaviors like the profit motive and competition. When the proliferation of laws attenuates the disciplining principle of the rule of law, corruption again becomes feasible, and spreads out.

Yet, these interpretations offer only a partial explanation of the nexus between legislative overproduction and corruption. One question remains unanswered, or rather, it is wrongly left exogenous to in the analysis of this relationship: why is there legislative overproduction? Are the incentives that generate it somehow associated with behaviors that we generally categorize as corrupt? In other words: is corruption also the cause, and not only the consequence of legislative overproduction?

A common answer to such question, that many contributors to this volume and many public choice scholars provide, is that rent seeking, weak institutions, majority voting, uninformed voters, logrolling, special interest groups, all generate this “over” production of laws and regulations, with their consequences in terms of corruption. But implicitly we define this as “over” production because we hold a negative value judgment of its consequences in terms of corruption. The prefix “over”, just like the adjective plurimae, implies a departure from a more moderate, probably less redistributive (according to Tacitus) and supposedly more Pareto efficient level of legislative production. Hayek, for instance, held a similar view in his book *Law, Legislation and Liberty*. Therefore, in our conception, in that of the title of this book, in Tacitus’ view, it is corruption that throws a negative value judgement on the actual level of legislative production and determines its evaluation as “excessive”. But this is not very scientific. One must be as wertfrei as possible and try to understand the process of legislative production first. Maybe one could find the seeds of corruption already there. And by that gain a more complete understanding of the legislation-corruption nexus.

The process of legislative production and the seeds of corruption

The economic theory of legislation, promoted by the Chicago and Virginia schools of Stigler, Peltzman, Posner, Buchanan and Tollison, considers laws as instruments that transfer property rights from individuals who “supply” such rights to those who “demand” them. Each law has a redistributive effect since it benefits some individuals, the demanders of the law, and harms others, who “supply” the law, inasmuch as they cannot oppose its approbation. Successful demanders usually get organized in special interest groups, so to exchange with politicians and legislators the support they require, in terms of votes and other resources, in return of the approval of the laws. Individual, unorganized voters cannot overcome the influence of special interest groups; hence they typically become suppliers of legislation, i.e., they are made worse off by it. Incidentally, as economic theories are general by nature, this model applies to the approval of any type of legislative instrument: laws, decrees, regulation and any variation thereof that lawyers can categorize.

The economic theory of legislation so describes the process of legislative production because the standard process of voting is characterized by a fundamental inefficiency: the impossibility to distinguish the intensity of voters’ preferences about the subject matter of each law. The principle that all individuals are equal and that votes must be counted and not weighted makes it difficult, if not impossible, to embed into the vote information about how much each voter cares for that law; if it has a direct and vital impact on his life, if it holds a moral principle, or if it is just a subject of educated opinion, or if it means nothing at all. The “equal vote” principle reduces these very different stances of the individual with respect to the law to the same value, one equals one, with no variance. The opportunity cost that the approval of the law holds for the voter is not accounted for. But it exists, and individual voters do perceive it. They react to it either by paying the cost of getting organized into a special interest group, so to increase

the chances that the laws that really matter to them are approved; or, if the law at hand has a negligible opportunity cost, they can cast their vote individually, without being organized.

So, this is where the seeds of corruption lie. We have an inadequate, outdated technology to represent voters’ preferences in policy decisions with a redistributive profile – actually, all laws. We all live in a democracy, and democratic governments tend to respond to voters’ preferences and transform them into political facts by means of legislation. Legislation is approved through voting processes, but those cannot, in principle, represent how much or how little voters care for a certain decision. The constitution imposes equality in voting processes, but it is a fake, a myth, because we do not care for all the subject matters of legislation to the same degree. Some are more important than others, and if we cannot signal this greater importance by means of our vote, then we must pay resources to get the law which we want. These resources can be bribes, support, information, whatever legislators need. We can call it rent seeking, even corruption but again we would make a mistake of expressing a value judgement before we fully analyze the phenomenon. Because this is where the seeds of corruption lie, at least in the legislative process. This is the problem we need to solve. In order to do so, we should begin by not being ideological about it. One does not equal one, and lobbies exist to overcome this neglect of the principle vertical equality – treat different people differently.

Why plurimae leges?

But how does this inefficiency in the voting process result in a proliferation of laws? For it to be possible, legislators must participate in the exchange, they must be willing to accept whatever resources lobbies are ready to give them in return for the approval of laws. That is not strictly legal; moreover, as legislators seek re-election, by rewarding

special interest groups at the expense of unorganized voters, they prejudice their chances of re-election. If lobbies and voters are in trade-off, a legislator who wants to be re-elected must find a way to arbitrage between these two conflicting interests. The Political Legislation Cycle theory (PLC) explains how such arbitrage takes place.

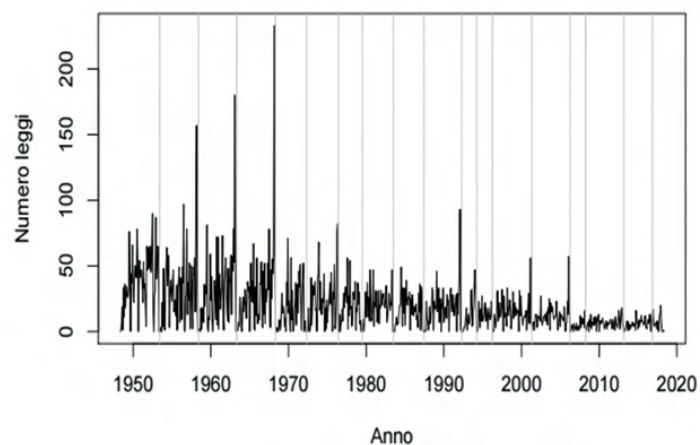
The first building block of this theory is that legislators can select different legislative instruments in order to make a given policy decision become legislation and thus produce legal effects. In such a choice what matters to the legislator is how each legislative instrument affects his probability of being re-elected; in this respect, what really counts is the visibility of the legislative instrument. The point is that voters acting as a special interest group will be much better informed than unorganized, individual voters. Members of special interest groups will be aware of legislators' decisions even when they resort to less visible acts; individual voters instead need more visible legislative instruments to learn about what legislators have done for them. Formal laws who are approved by the plenary chamber are, for instance, more visible (and easier to be informed about) than laws approved by parliamentary committees, than decisions embedded (and hidden) in multipurpose laws, than decrees, than ministerial regulations and so on. These are the *plurimae leges* that a *corruptissima res publica* can use, the various instruments and tricks available to increase the information costs for voters who need to verify to what extent legislators are accountable to them. Of course, there are limits to the possibility to use any legislative instrument for any subject matter: reserve of laws, parliamentary regulations, constitutional provisions and the like; but it is also true that legislators have and exert a considerable discretionary power in the selection of the legislative instrument to employ in a given situation, witness the ongoing debates about the misuse of the *decreti legge* in Italy, of the executive orders in the US, of the *ordonnances* in France and many others disputes in the same vein.

The PLC theory holds that legislators use their discretionary power in choosing legislative acts with different visibilities to solve the arbitrage problem between the conflicting interests of special interest groups and unorganized voters. For the sake of simplicity, let us assume that a legislator may choose among two alternative instruments: "laws" that require the approbation of the majority of the parliament, and by that are assumed to be visible to all agents; and "decrees" that are visible only to the better informed special interest groups. These names are purely theoretical; but if we want to find real world correspondences, a "decree" in the jargon of the PLC theory might be ministerial decrees or DPR in the Italian context, or an *ordonnance* in the French legislative process or any law characterized by high information costs relative to other legislative instruments.

The different information costs of the two sets of agents lead the legislator to use highly visible laws to provide unorganized voters with the type of legislation that they want, usually general purpose legislation (the *laetae quaestiones* in commune of Tacitus). Legislators instead will use less visible decrees to supply special interest groups with the legislation they demand, usually in the form of highly redistributive decisions (the laws for *singulos homines*). Were these decisions to be taken openly, by means of legislative instruments that voters can be informed about, the legislator might risk losing their vote at the next election. That is a first prediction of the model: more controversial and more redistributive issues should be passed by means of less visible legislative instruments, of which the special interest groups can be aware, whereas unorganized voters cannot. Issues that benefit a larger share of the population should be approved through more visible legislative instruments, that also unorganized (and less well informed) voters can appreciate. The tradeoff is thus solved, and the legislators can please both special interest groups and unorganized voters. Of course, more laws will have to be approved in order to satisfy both types of agents: *corruptissima re publica, plurimae leges*.

But that is not the end of the story, as the PLC model makes also another prediction. Since unorganized voters gather information mostly at the end of the legislature, when the next elections become near and they must decide how to cast their vote, while special interest groups are instead always politically active, the approbation of laws should be concentrated at the end of the legislature and that of decrees more towards its beginning. In other words, we should observe a peak of legislative production towards the end of the legislature and a peak of less visible decrees at the beginning of the legislature, i.e., two opposite cycles of laws and decrees.

Is that true? The figure reports the number of ordinary laws approved every month by the Italian parliament in the legislatures from I to XVIII, i.e., from 1948 to 2018 (the collection of the data about decrees is still going on). The grey vertical lines mark the end of each legislature. The peaks of legislative production are indeed all concentrated in the few months before the incoming elections, especially in legislature that reach their natural term of five years, when majority coalition are still able to legislate before the parliament is dissolved. Similar patterns are found in the legislative branches of France, the Czech Republic, the Korean Parliament, the European parliament, wherever the PLC theory has been tested. That is pretty solid evidence in favor of it.



Conclusion

To sum up the argument, the inability of the standard voting process to account for the intensity of preferences that voters have about the various subject matters of legislation pushes some of them to get organized as special interest groups. In this way, they increase their chances to have the types of legislation they care more about being approved. Lobbies can actually reward legislators not only with their votes, but also with resources that correspond to their willingness to pay for such legislation. This exchange of resources for legislation is the origin of corruption in the legislative process. We may take it to be corruption because resources are being traded for legislation, not only votes, as the law prescribes.

Unorganized voters bear the costs of the redistribution in favor of lobbies. To minimize these costs, which would harm their probability of being re-elected by voters, legislators adopt less visible legislative instruments to cater lobbies' interests, and resort to more visible ones to please voters. This strategy exploits the fact that lobbies are usually better informed than voters. Moreover, to arbitrage among the conflicting interests of voters and lobbies even better, legislators concentrate the approval of laws for voters at the end of the legislature, when the elections are near and voters become more politically active. Legislators instead approve the less visible legislative instruments with which they "take care" of the lobbies at the beginning of the legislature, when voters' attention is minimal.

Having unlocked the tradeoff, legislators can please both voters and special interest groups; they just have to approve more legislative instruments. *Corruptissima re publica, plurimae leges*. Tacitus was right.

SECTION I

The Mediterranean experience



Chapter 1

Key Issues of Corruption: Evidence from Italy
Nadia Fiorino

Chapter 2

Prevention of corruption approaches, methodologies and tools. The case of Italy in an evolutionary and comparative perspective
Giuseppe Abbatino

Chapter 3

Take the money and run: corruption risks in the next round of EU funds in Portugal
João Paulo Batalha

Key Issues of Corruption: Evidence from Italy

Nadia Fiorino

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CHAPTER 1

Chapter 1

Key Issues of Corruption: Evidence from Italy

Nadia Fiorino

Introduction

Scholars as well as studies and statements by international organizations, such as the World Bank and the United Nations, highlight that only countries characterized by high levels of quality of government can realize the benefits of economic growth and social development.¹ Indeed, high levels corruption distorts the objectives and effectiveness of public policies as well as free competition and meritocracy, leading to an inefficient allocation of resources.² They also increase income inequality and poverty,³ affect country's aggregate levels of education and health, subjective happiness⁴, citizen's support for government⁵, environmental sustainability⁶,

1 See among others, D. Acemoglu, S. Johnson, S., J.A. Robinson, Reversal of fortune: Geography and institutions in the making of the modern world income distribution. *The Quarterly journal of Economics*, 117(4), pp. 1231-1294, 2002.

2 See among others, A. Ades, R. Di Tella, Rents, competition, and corruption. *American economic review*, 89(4), pp. 982-993, 1999.

3 S. Gupta, H. Davoodi, R. Alonso-Terme, Does corruption affect income inequality and poverty? *Economics of Governance*, 3(1), pp. 23-45, 2002.

4 B. S. Frey, A. Stutzer, A. Happiness, economy and institutions. *The Economic Journal*, 110(466), pp. 918-938, 2000.

5 C. J. Anderson, Tverdova, J.V., Corruption, political allegiances, and attitudes toward government in contemporary democracies. *American Journal of Political Science* 47(1), pp. 91-109, 2003.

6 S. Morse, Is corruption bad for environmental sustainability? A cross-national analysis. *Ecology and Society*, 11(1), 2006.

and the consolidation of democratic institutions⁷.

The EU, one of the world's most developed and democratic area, is affected by corruption and bad governance. Within EU Italy represents one of the most perceived corrupt Member States. The 2020 Special Eurobarometer on Corruption shows that 88% of Italian respondents believe that corruption is widespread in Italy (the EU average is 71%).

This contribution focuses on corruption in Italy. While rich and democratic countries tend to enjoy relatively low levels of corruption,⁸ Italy represents an extreme case of systemic political corruption in an established, democratic setting. Indeed, since its unification in 1861, the Italian political system has been characterized by a strong interaction between politicians, bureaucrats and citizens aimed to reap high benefits through special laws or through political appointments. In more recent years various indicators show that the level of corruption in this country is on a par with or worse than that of the much less developed countries while being far above the level of similarly developed countries. The extent of corruption in Italy therefore deserves particular attention.

The work is organized as follows. Section 2

High levels corruption distorts the objectives and effectiveness of public policies as well as free competition and meritocracy, leading to an inefficient allocation of resources.

7 R. Rose, D.C. Shin, Democratization backwards: The problem of third-wave democracies. *British journal of political science*, pp. 331-354, 2001.

8 This hypothesis is based on an extensive literature originated by S. Lipset, *Political Man: The Social Bases of Politics*. Doubleday, Garden City, NY, 1960

presents evidence on how corruption varies in Italy compared to the main European countries and between Italian regions. Section 3 concentrates on selected key issues that may contribute to explain the diffusion of the phenomenon. Section 4 concludes.

Corruption in Italy: Evidence from the main indicators

At a macroeconomic level, much of what we know about the diffusion of political and bureaucratic corruption originates from the use of indicators based on subjective perceptions of either experts or users of a country's administration. The most popular indices of this type are the Corruption Perceptions Index (CPI) published by Transparency International, and the Control of Corruption Index (CCI). Although these measures have been subject to diverse criticisms,⁹ they all allow for international comparisons.

The CPI is a composite index based on 13 analytical tools and surveys conducted by business analysts and countries. It ranks 180 countries over the period 1995-2020. A country or territory's score indicates the

perceived level of public sector corruption on a scale of 0-100, where 0 means that a country is perceived as highly corrupt, and 100 means that a country is perceived as very clean.

The CCI is the one of the six indicators included in the Worldwide Governance Indicators (WGI) released by World Bank. The WGI project consists of six composite indicators of broad dimensions of governance for over 200 countries over the period 1996-2019. These indicators combine the views of a large number of enterprises, citizen and expert survey respondents in industrial and developing countries. The CCI country scores on the aggregate fall approximately between -2.5 and 2.5 inclusive, with higher scores corresponding to better outcomes (less corruption).

The CPI places Italy in the same group of several Eastern European, Asian and South American countries with a score of 53 in 2020. With this result, Italy ranks 53rd on a total of 180 countries surveyed. Compared to previous years, in 2020 the level of corruption is quite stable, while ranking 20th among EU 27 member countries. In the long term, it has nevertheless moderately declined in recent years (see Figure 1)

⁹ See, among others, C.J León, J.E. Araña and J. de León, Correcting for Scale Perception Bias in Measuring Corruption: An Application to Chile and Spain. *Social Indicators Research* 114(3), pp. 977-95, 2013. S. Voigt, How (Not) to Measure Institutions. *Journal of Institutional Economics* 9(1), pp. 1-26, 2013 and more recently J. Gutmann, F. Padovano, S. Voigt, S., Perception vs. experience: explaining differences in corruption measures using micro-data. *European Journal of Political Economy*, 65, 101925, 2020.

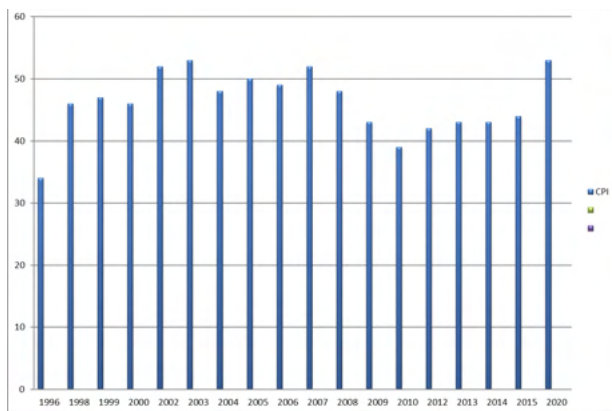


Figure 1 Corruption Perception Index for Italy, 1996-2020

Source: Transparency International.

Note: Higher level of the index indicate lower levels of corruption

European countries have not shown an improvement in their levels of corruption over the latest two decades (see Table 1). Nevertheless, there are significant differences across Europe. Looking at the evolution of the CCI indicator, a first group of countries, such as Germany, Sweden, the UK, the Netherlands, Denmark, and Finland, steadily exhibit high levels of quality of government. In the second place, there are other EU countries, such as France, Spain and Portugal, that tend to present significantly lower levels of quality of government. These countries have been diverging even more from the best performers. The lack of convergence is more remarkable in the case of Italy, Greece, and Central and Eastern European countries such as Bulgaria and Romania, where the levels of corruption have not significantly improved after joining the EU.

CCI	2008	2009	2010	2011	2012	2013	2014	2015	2016	2019
Austria	1.8	1.7	1.6	1.4	1.4	1.6	1.5	1.5	1.5	1.6
Belgium	1.4	1.5	1.5	1.6	1.6	1.7	1.6	1.6	1.6	1.6
Bulgaria	-0.3	-0.2	-0.2	-0.2	-0.2	-0.3	-0.2	-0.3	-0.2	-0.2
Croatia	0.0	0.0	0.1	0.1	0.0	0.1	0.2	0.2	0.2	0.1
Cyprus	1.2	0.9	1.0	0.9	1.3	1.2	1.1	1.0	0.8	0.6
Czech Republic	0.4	0.4	0.3	0.3	0.3	0.2	0.4	0.4	0.5	0.5
Denmark	2.4	2.4	2.4	2.4	2.4	2.4	2.2	2.2	2.2	2.1
Estonia	1.0	1.0	1.0	1.1	1.1	1.2	1.3	1.3	1.2	1.5
Finland	2.3	2.3	2.2	2.2	2.2	2.2	2.2	2.3	2.3	2.2
France	1.0	1.4	1.5	1.5	1.5	1.3	1.3	1.3	1.4	1.3
Germany	1.8	1.8	1.8	1.7	1.8	1.8	1.8	1.8	1.8	1.9
Greece	0.1	0.1	-0.1	-0.1	-0.2	0.0	-0.1	-0.1	-0.1	0.0
Hungary	0.5	0.4	0.4	0.4	0.4	0.3	0.2	0.1	0.1	0.0
Ireland	1.7	1.8	1.7	1.6	1.5	1.5	1.6	1.6	1.6	1.5
Italy	0.3	0.2	0.1	0.2	0.1	0.1	0.0	0.0	0.1	0.2
Latvia	0.3	0.2	0.2	0.3	0.2	0.3	0.4	0.5	0.5	0.5
Lithuania	0.1	0.2	0.4	0.3	0.4	0.4	0.6	0.6	0.7	0.7
Luxembourg	2.0	2.0	2.0	2.2	2.1	2.1	2.1	2.1	2.1	2.1
Malta	1.0	0.8	0.8	0.8	0.9	1.0	0.9	0.9	0.7	0.2
Netherlands	2.1	2.1	2.1	2.1	2.1	2.0	2.0	1.9	2.0	2.0
Poland	0.5	0.4	0.5	0.6	0.7	0.6	0.6	0.7	0.7	0.6
Portugal	1.1	1.1	1.1	1.1	1.0	1.0	0.9	1.0	1.0	0.8
Romania	-0.1	-0.3	-0.2	-0.2	-0.3	-0.2	-0.1	0.0	0.0	0.5
Slovak Republic	0.4	0.3	0.3	0.3	0.1	0.1	0.2	0.2	0.2	0.3
Slovenia	1.0	1.1	0.9	0.9	0.8	0.7	0.7	0.8	0.8	0.9
Spain	1.2	1.1	1.1	1.1	1.1	0.9	0.6	0.6	0.5	0.7
Sweden	2.2	2.3	2.3	2.2	2.3	2.3	2.2	2.2	2.2	2.1
UK	1.7	1.6	1.6	1.6	1.7	1.7	1.7	1.9	1.9	1.8
EU27 Avg.	1.01	1.00	0.99	0.99	0.98	0.98	0.97	0.98	0.98	0.97
Eurozone Avg.	0.99	0.98	0.98	0.98	0.96	0.94	0.92	0.95	0.96	0.95
Best performer (De, FI, Swe) Avg.	2.30	2.33	2.30	2.27	2.30	2.30	2.20	2.23	2.23	2.13
Southern Europe Avg.	0.85	0.78	0.73	0.73	0.70	0.73	0.58	0.60	0.53	0.41

Table 1 Control of Corruption for EU countries, 2008-2019

Source: Worldwide Governance Indicators, World Bank

The use of the indicators like the CCI or CPI, while making it possible to compare Italy with other EU and non-EU countries, omits the most deep-rooted of Italian peculiarities that is regional disparities.

Recently, the University of Gothenburg has developed an index – the European Quality of Government Index (EQI) – that focuses on both perceptions and experiences with public sector corruption and allows for in-depth analyses at the regional level. Indeed, this

index is the result of novel survey data at regional (e.g., sub-national) level of governance within the EU aiming to capture the extent to which citizens believe various public sector services impartially allocated and of good quality in the EU regions. The EQI is based on three pillars, i.e., levels of corruption, impartiality, and quality of government. The data – gathered in 2010, 2013, 2017, and 2021 – covers all 27 EU member states (together to the UK before Brexit, Serbia and Turkey) and about 206 regions (NUTS 1 or NUTS 2 level, depending on the country).

The EQI reveals that regional variations are surprisingly high in Italy, much higher than in other EU countries. Table 2 reports the values for the ‘Corruption’ pillar in 2021. The higher the value of the index, the higher the perception of corruption. The table shows that corruption is not homogeneously distributed across Italian regions. Italy contains substantial disparities, and virtuous regions coexist with vicious ones, especially in the South of the country. However, as Figure 2 displays, the quality of government corruption index is high in the rest of the country relative to Western and Northern EU countries and is on a par with that of the less developed EU countries in the East.

Region	Corruption
Campania	1,978
Calabria	1,702
Sicilia	1,462
Lazio	1,289
Basilicata	1,279
Puglia	1,213
Abruzzo	1,084
Molise	1,057
Lombardia	1,035
Sardegna	0,984
Valle d'Aosta	0,900
Umbria	0,817
Marche	0,713
Emilia-Romagna	0,681
Liguria	0,629
Toscana	0,588
Piemonte	0,547
Bolzano/Bozen	0,515
Trento	0,461
Veneto	0,345
Friuli-Venezia Giulia	0,288

Table 2 Quality of Government Index for Italian Regions – Corruption pillar, 2021

Source: European Quality of Government Institute database, <https://www.gu.se/en/quality-government/qog-data/data-downloads/european-quality-of-government-index>



Figure 2 Corruption pillar (EQI), 2021
Source: Quality of Government Institute database, <https://www.gu.se/en/quality-government/qog-data/data-downloads/european-quality-of-government-index>, 2021

What causes the diffusion of corruption in Italy?

The potential causes of corruption can usefully be divided into four groups: 1) economic and demographic factors; 2) political institutions; 3) judicial and bureaucratic factors; 4) geographical and cultural factors. This section analyzes a number of selected issues that may contribute to explain the diffusion of corruption in Italy. It specifically focuses on: 1) the size and composition of public expenditure as well as on the burden of regulation. (i.e., on factors related to the role of government), 2) socio-economic traits, 3) cultural factors

-The role of government

The benefits of corruption come from public officials being able to allocate resources to private individuals. Larger government size and discretionary power over government actions allow for extraction of (existing) rents or creations of rents to be extracted since there are more resources that can be stolen. Therefore, higher governments expenditure is associated with higher corruption.¹⁰ Generally, an increase in the cost of public infrastructure, besides indicating waste and mismanagement in the public contracting process, is considered a signal of mismanagement from outright fraud and other illegal monetary transactions that entail corruption.¹¹

¹⁰ E.L. Glaeser, A. Shleifer. The rise of the regulatory state. *Journal of Economic Literature*, 41(2), pp. 401-425, 2003.

¹¹ See M. Golden, L. Picci. Proposal for a new measure of corruption, illustrated with Italian data. *Economics & Politics*, 17(1), pp. 37-75, 2005.

Italy is characterized by a large size of government as a consequence of a long tradition of state intervention. Nevertheless, compared to European partners this country shows a significant delay in the quality and efficiency of the main public services offered at central (education and justice), regional (health) and local levels (local public transport, waste, water, gas distribution and crèches). In addition, while the amount of resources spent at local level is relatively uniform, well-known, deeply-rooted, and long-standing territorial disparities in the efficiency and quality of services exist. This reinforces the appropriateness of considering delay in public works and quality of public expenditure a signal of corrupt practices.¹²

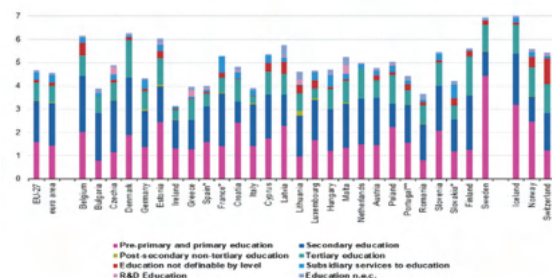
Corruption distorts the composition of spending towards those sectors in which it is easier to collect bribes and keep them secret (that is in those sectors where competition is low, monitoring is too costly and public projects are less labor intensive and more capital intensive, the latter being more prone to rent-seeking).¹³ As a consequence, corrupt countries invest fewer resources in social equality and inclusion (e.g., expenditure on basic education¹⁴) since they do not provide as many lucrative opportunities for government officials as other sectors of spending (e.g., military expenditure).

¹² F. Bripi, A. Carmignani, R. Giordano. The quality of public services in Italy. *Bank of Italy Occasional Paper*, (84), 2011.

Higher governments expenditure is associated with higher corruption.

Looking at the Italian data, the share of government expenditure on education over the GDP is below the Eu27 average (see Fig. 3).

Figure 3 Total general expenditure on education, 2019 (percentage of GDP)
Source: Eurostat, 2020



Red tape has long been identified as a major cause of corruption. A complicated, hard to understand, and costly regulation increases both the potential for hiding corruption and the demand for corruptly avoiding such regulations. Greater number of regulations therefore rises the opportunities for helping private actors evade these regulations and the possibilities for bribe taking.

Italy is characterized by a burdensome regulation, as Table 3 shows. Conversely, the efficiency of the legal framework for settling disputes and challenging regulations is low.¹⁵

13 See on this issue A. Ales, R. Di Tella. Rents, competition, and corruption. *American Economic Review*, 89(4), pp. 982-993, 1999 and S. Gupta, H.R. Davoodi, R. Alonso-Terme. Does corruption affect income inequality and poverty? *Economics of Governance*, 3(1), pp. 23-45, 2002.

15 *The World's Corruption Causes* (World Bank 2006) and *A Guide to Resolving Disputes* for *International Arbitration* (World Bank 2006) and *A Guide to Resolving Disputes* for *International Arbitration* (World Bank 2006) and *A Guide to Resolving Disputes* for *International Arbitration* (World Bank 2006).

The World Bank shows that in the 2009-2018 period the time to resolve a trade dispute in Italy is 1,210 days, while the average of the OECD countries and of the EU is, respectively, 510 and 549 days. Data also show a large territorial gap in the duration of judicial proceedings. Indeed, the time for resolving commercial disputes in the South is longer than in the North-West of the country. As the European Commission for the Efficiency of Justice (CEPEJ) underlines in the Report 2020, the main problem is the heavy backlogs. Moreover, while the amount of expenditure is in line with that of the average of European countries, the number of judges is comparatively lower.

At the same time, citizens are less confident in the judicial system: according to the results of the Eurobarometer survey (2020), the level of the independence of the judicial system perceived by citizens is decreasing.

Table 3 Burden of government regulation, 2019

	2019
Luxembourg	4,5
Netherlands	4,4
Germany	4,4
Denmark	3,9
UK	4,3
Ireland	3,9
Austria	3,7
Belgium	3,1
France	3,6
US	4,5
Portugal	3,1
Spain	2,9
Greece	2,6
Italy	2,1

Source: World Economic Forum, World Bank

Note: The indicator varies between 1 and 7 (1 = extremely burdensome; 7 = not burdensome at all)

-The role of economic and socio-demographic factors

Countries characterized by high levels of economic development and education are expected to be less corrupt.¹⁶ This positive relationship may be because education makes it easier to learn about politics and leads individuals towards having a higher value of staying politically. As a result, countries with richer and more educated citizens are expected to be both more willing and capable to monitor public officials and to take action against them when they violate the law.

A key feature of Italy relates to the strong heterogeneity of economic traits – and of the mechanisms of social fairness connected to it – from North to South. From a strictly economic point of view, many indicators geographically group Italian regions into more developed areas clustered in the Centre-North of the country, and more backward areas located in the South. One-third of the national population lives in the South which produces about 22% of national GDP (source of data, Istat). Per capita GDP level in Southern regions is about 44% lower than in the Centre-North, while labor productivity and the employment

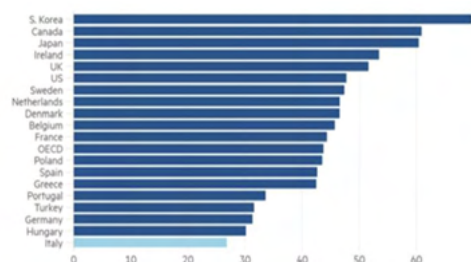
rate are, respectively, 19% and 30% lower than the Centre-North (source of data, Istat). Southern regions contain two-thirds of the poor in Italy and 53% of the national youth unemployment (source of data, Istat). At the same time, as Table 2 indicates, Southern regions show higher perceived corruption than those located in the North. The economic environment of Southern regions mirrors (and is strictly linked to) the poor institutional framework which in turn determines the persistence of poor economic performance and limited attractiveness for investors.

Italy has a very low percentage of young people with tertiary education (Figure 4) and it is not better in secondary education although has made good progress in improving the quality of schooling in recent years. Moreover, there are significant variation in students' performance across the country, with Southern regions consistently lagging behind the others. For example, while students in the Autonomous Province of Bolzano do as well as top performing nations like Korea, students in Campania compare with their counterparts in Chile or Bulgaria.¹⁷

16 D. Treisman, The causes of corruption: a cross-national study. *Journal of Public Economics*, 76(3), pp. 399-457, 2000.

17 See OECD. Education at a glance, OECD Indicators, OECD Publishing, Paris. <https://doi.org/10.1787/69096873-en>, various years.

Figure 4 Percentage of 25–34-year olds with tertiary education, 2017



Source: OECD, Education at a glance, OECD Indicators, OECD Publishing, Paris, various years.

-The role of cultural factors

It is well recognized that trust is an essential economic lubricant. Economic activities and contracts generally develop under asymmetric or imperfect information.¹⁸ Higher levels of generalized trust – i.e., trust in strangers or people who do not belong to ‘your group’ – as well as trust in political institutions allow to fully capture gains from trade by reducing transaction costs. Higher levels of trust also predict higher levels of quality of government since citizens feel more attached to their political communities. Trust makes citizens more likely to contribute to the provision of public goods, such as paying taxes, respecting and protecting public spaces and, very importantly, engaging in social and political mobilizations asking for improvements in quality of government.¹⁹ In turn, public

18 O.E. Williamson, *The Economic Institutions of Capitalism*. Free Press: New York, NY, 1985.

authorities receive both adequate resources and incentives to deliver policies, consolidating a ‘virtuous cycle’. In sum, good institutions generate good social norms, and good social norms in turn determine good institutions. Conversely, the perception of corruption and/or an experience of corruption are highly corrosive to trust in the state and its agents,²⁰ and to interpersonal trust.²¹ Dishonest and predatory actions of state agents or the perception that power tends to be abused lead to a diminished sense of trust which in turn corrodes the quality of government.

By continuing a negative trend, the latest Eurobarometer survey (2020) indicates that trust of the Italian citizens in political institutions (both, domestic and European institutions) is low (about 68% of the respondents do not trust).

In democratic countries, media are an important channel that allows to increase transparency and aid political accountability externally to formal governance.

Italian printed media highly report corruption cases. Nevertheless, the presence of a long-standing quasi-monopoly has been problematic for the independence of the media press. More recently, although market

19 B. Rothstein, E.M. Uslaner, All for all: Equality, corruption, and social trust. *World Politics*, 58(1), pp. 41-72, 2005.

20 L. Bianco, The impact of crime and insecurity on trust in democracy and institutions. *American Economic Review* 103(3), pp. 284–288, 2013.

21 M.A. Seligson, The impact of corruption on regime legitimacy: a comparative study of four Latin American countries. *The Journal of Politics* 64(02), pp. 408–433, 2002.

competition in this area has slightly improved, Italy has been rated by Freedom House (the related index is Freedom of the Press) as 'partially free'.

Conclusion

Among consolidated democracies, Italy has been traditionally perceived as a country with a high level of political and bureaucratic corruption. The performance is improving in the last years as a result of several reforms aimed to preserve the integrity and transparency of public officials. Nevertheless, the main conclusion to be drawn from previous discussion is that combating a pervasive and persistent phenomenon like corruption needs not only policy intervention in terms of criminal law. Data show that in Italy a red tape reform is fundamental as well as long term policies able to affect the 'legal culture' and to strengthen a weak social fabric. Reforming and simplifying the Italian legal system is not an easy task. On the other hand, corruption will not disappear due to some reforms. But they might bring it under control and minimize its adverse consequences. The ongoing National Plan for Recovery and Resiliency, and the fiscal pillar provided by the EU through the Next Generation EU funds to address the economic consequences of the pandemic are an opportunity to successfully reverse the decline of the Italian economy. Corruption could be an obstacle to the recovery and a risk to the efficient use of these

resources. At the same time, structural reforms such as cutting red tape and streamlining the legal system (the Italian government has negotiated with the EU Commission to receive the funds), represent an unmissable opportunity to fight corruption.

The fiscal pillar provided by the EU through the Next Generation EU funds to address the economic consequences of the pandemic are an opportunity to successfully reverse the decline of the Italian economy.

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Prevention of corruption approaches, methodologies and tools

Giuseppe Abbatino

Giuseppe Abbatino for twenty years has been working in the fields of national and international institutional relations, strategic planning, institutional organization, assessment and accounting, creation and management of intangible assets and knowledge, and of the prevention of corruption and the promotion of transparency and integrity in public administrations, gaining professional experience with national and international organizations including ANAC - Italian National Anti-Corruption Authority, CIVIT - Independent Commission for Evaluation, Transparency and Integrity of Public Administrations, European Commission, OECD - Organization for Economic Co-operation and Development, US Department of State, ISTAT - Italian National Statistical Institute, ENEA - Agency for New energy technologies and sustainable development, ASI - Italian Space Agency, Lazio Region, Chamber of Commerce of Rome, numerous Local Autonomies. In the scientific and academic field, he has gained experience in research, teaching and dissemination of knowledge activities with universities and research centers including Sapienza University of Rome, University of Tuscia, LUISS, MIPA-Consortium for methodology development and public innovation administrations, EGOS-European Group for Organizational Studies. He is author of books and scientific papers in the professional and research sectors mentioned.



CHAPTER 2

Chapter 2

Prevention of corruption approaches, methodologies and tools

The case of Italy in an evolutionary and comparative perspective

Giuseppe Abbatino

Background and general framework

In the last few years, the Italian prevention of corruption policies and practices have received important appreciations in various international fora.

In less than ten years, Italy has recovered 20 positions and 11 points (+ 25% approximately) in the Corruption Perception Index (CPI) ranking issued every year by Transparency international, passing from position No. 72 (42 points) in the ranking in 2012 to position No.

52 (53 points) in 2020¹.

In the recent meeting (29, March 2021 – 1, April 2021) of the G20 Anti-Corruption Working Group (ACWG)², as part of the work of the G20 – 2021, were presented as best practices the features of the Italian National Database of Public Contracts (BDNCP) and of the Project «Measuring the risk of corruption at a territorial level and promoting transparency» (funded by the «National Operational Program for Governance and Institutional Capacity 2014 - 2020» of European Union), managed by the Italian National Anti-Corruption Authority with the participation of numerous Italian institutional and academic actors.

In 2019, the UNODC country report concerning the implementation made by Italy of Chapter II and Chapter V of the United Nations Convention against Corruption (UNCAC) described in detail the features of the Italian prevention of corruption system, in line with the UNCAC provisions and recommendations³.

The 2019 European Union Country Report on Italy⁴, while in general terms recognizing progress of Italy and highlighting that a new

Concerning prevention, Italy experimented for years a worrying delay that determined widespread concerns at national and international level.

¹ <https://www.transparency.org/en/cpi/2020/index/nzl> ; see paragraph 2 for more details.

² The ACWG G20 promotes regulatory harmonization between the G20 countries and the enhancement of best practices in the field of preventing and combating corruption.

³ www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2019_11_22_Italy_Final_Country_Report.pdf

⁴ The report regards "the assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances".

anti-corruption law and stronger prevention measures can further enhance the anti-corruption framework, also points out that Italy's National Anti-Corruption Authority (ANAC) improved its prevention role, especially in the field of public procurement⁵. In the context of European Union (EU), the cited BDNCP, managed by the ANAC, is considered a peculiar experience, so much so that in 2018 it was awarded with the first prize of the "Better Governance through Procurement Digitalization" on the basis of its completeness, data integrity, interoperability, availability of access and information analysis, governance and sustainability". In the competition launched by the EU Commission, the BDNCP was recognized as the best example of "National Contract Register" within the European Union⁶.

In the same line of these acknowledgements, there are also recent statements and assessment results in the context of the OECD and of the Council of Europe GRECO.

What is interesting to underline is that these recent acknowledgments contrast with a previous "common sense" and above all, with some widespread institutional and political concerns at international level regarding Italian anti-corruption systems. More than from the point of view of the repressive system, in fact,

⁵ https://ec.europa.eu/info/sites/default/files/file_import/2019-european-semester-country-report-italy_en.pdf

⁶ https://ec.europa.eu/growth/content/european-commission-award-better-governance-through-procurement-digitalisation_en.

just a decade ago Italy was considered particularly underdeveloped, especially regarding the policies of preventing corruption and promoting integrity.

What we know now of the Italian anti-corruption system and what it seems to be very well conceived and functioning, also recognized as a good practice at international level, is the result of a process started at the end of 2012, with the approval of the Law No. 190/2012, better known as the "anti-corruption law" or "Law Severino" (named after the Minister of Justice of the government of that time). This process was then fueled in the following years by numerous legislative interventions with the main aim of introducing in Italy a coherent and stratified corruption prevention system that has completely changed "the rules of the game".

This article is focused on policies and practices to prevent corruption and to foster public integrity rather than on repressive initiatives. In general terms it is well known that policies and practices to fight corruption can be classified in repressive or preventive ones. Prevention is related to initiatives to foster integrity, to address and mitigate risks, to promote transparency, to manage conflict of interests, to measure corruption and to identify red flags, etc. Repression is related to the judicial system and law enforcement scope. In the past decades, Italy demonstrated a strong commitment and effective tools on the side of repressive system, due to the experience and the good practices taken from the fight against

organized crime and related inspiring principles such as the “follow the money” driver, the normative tools to seize assets etc.. Emblematic cases - such as the internationally well-known Italian judicial proceedings “Tangentopoli”/“Mani pulite” of the last decade of the past century - were models which inspired other countries in the efforts against corruption. But this was related to the repressive side of the problem: while concerning prevention, Italy experimented for years a worrying delay that determined widespread concerns at national and international level.

Focusing on the preventive scope, the aim of this article is to reconstruct the recent ten-year process that has led the Italian anti-corruption system from being considered a bad case study and object of concerns, to being highlighted as a good practice. The description of this process will try to explain: how Italy has been introducing methodologies and tools to prevent corruption and to foster integrity; why it privileged some specific approaches and models instead of others; what is the original contribution that results at the end of this process; if it is possible to identify an “Italian model” with specific features in a comparative perspective with other models and standards. The focus of this study is therefore on approaches, methodologies and tools and not on laws. Norms and legislative interventions will be cited and analyzed only to describe the trajectory of introduction of approaches in the Italian context and not to discuss them from a

“regulatory engineering” point of view.

The structure of the article

Paragraph 2 describes the Italian context of ten years ago concerning prevention of corruption and public integrity policies and the first steps of the process to introduce a new framework aligned with international best practices and standards.

Paragraph 3 describes the turning point of the process, with the approval of the Italian anti-corruption law in 2012 and the establishment of the Italian independent anti-corruption authority. In addition, through the description of the functions attributed over time to the authority, the methodologies and tools used to prevent corruption in the Italian system will be described.

Paragraph 4 is focused on some specific and distinctive features of the Italian approach that will be compared with other international models. This will also give the opportunity to reflect in general terms about the various methodologies and tools related to prevention of corruption.

Paragraph 5 tries to outline brief conclusions and to wrap up synthetic considerations.

Concerning prevention, Italy experimented for years a worrying delay that determined widespread concerns at national and international level.

Italian context before the introduction of a comprehensive system of prevention of corruption

In the previous paragraph are reported some examples of the current assessment and perception of the Italian prevention of corruption system at international level. As anticipated, this is a result of almost ten years of efforts made by the Italian institutions to align the system to the international best practices and standards in the field and to introduce some peculiar solutions that could now be considered good policies and practices themselves. Before this process started, the context was completely different and Italy for years has been object of concerns due to the inadequacy of its public integrity system. In fact, without mentioning the numerous international recommendations addressed to Italy in the past years (as this is not the purpose of this study), it is worth reporting an emblematic case, a now public but not very well-known episode which happened just before the decade of reforms that completely changed the anti-corruption system in Italy.

Decade 2000 – 2009: Italy was one of the first signatories of the Merida Convention (2003 United Nation Convention Against Corruption) but it was also in the group of countries that had not proceeded to implement it into the national system yet. It is well known that Chapter III of the convention provides for the implementation of an anti-corruption preventive system within each country. In

particular, Article 6 provides for the establishment of a body (or bodies) to prevent corruption with the necessary independence to carry out its functions effectively and free from any undue influence. It also provides that the necessary material resources and specialized staff should be assigned to the anti-corruption body.

For Italy, before the formal ratification of the UNCAC in 2009, one of the first concrete step towards the fulfillment of these provisions was the establishment in 2004 of the so called “High Commissioner Against Corruption”. It was an institution with limited powers and staff, maybe not fully corresponding to the provisions of the UNCAC, but for sure a first and encouraging attempt to introduce in Italy - a country traditionally focused on the repressive approach towards corruption and related crimes - some preventive policies against corruption. But this institution was destined to have a short life. In 2008 it was suppressed to be replaced by a small governmental office, objectively with no adequate requirements to be considered an independent institution according to the UNCAC. Without giving a judgment on this episode, it is worth taking into account the considerations expressed in a 2008 classified message, some years later made public by the wikileaks campaign, in which the US ambassador in Rome of that time reconstructed the story⁷. The message is clear

⁷ <https://racconta.espresso.repubblica.it/espresso-wikileaks-database-italia> ; <https://wi->

already from the subject: “the anti-corruption and transparency service: an underweight entrant in the anti-corruption effort”. In the summary of the message is openly stated that Italy abolished its Office of the High Commissioner Against Corruption, and that the functions of the office would be subsumed by another, newly created governmental office, the Anti-Corruption and Transparency Service (SAeT) that it seems without the capacity to be a major player in the anti-corruption efforts. In the message are reported concerns about the initiative and opinions of some Italian and other international actors concerning the risk that the new office was destined to not have a significant impact on Italy’s domestic corruption, to not have the ability to adhere to international commitments and to further tarnish Italian image internationally.

The conclusions of the message are a definitive sentence for the two institutions at that time conceived in Italy to start implementing a prevention of corruption system: “In our work with the High Commissioner’s Office, we had found that the organization was well-intentioned but largely ineffective. We went to SAeT hoping to find the beginnings of an organization that might be able to take effective action on Italy’s pervasive corruption problem. [...]. Because of its reduced level of independence, smaller size, and more circumscribed bailiwick, we think

SAeT is likely to prove even less effective than the organization that it replaced.”

Therefore, there have been years in which, rightly or wrongly, Italy has been considered a sort of backward country regarding anti-corruption policies. The issue for years has fueled a vicious circle of national debates, and concerns of chancelleries and international organizations, which has certainly contributed to worsen the perception of the immanence of corruption in the life of the country, as also reported by numerous indexes on the subject (especially subjective indexes).

For example, the case of the CPI is well known and widespread, the corruption perception index of Transparency international which for years has seen Italy navigating in the lower part of the ranking and with a descending trend. As mentioned, the plummet stopped in 2012 and the trend has reversed with the approval of the cited anti-corruption law.

Concerning the CPI as a mirror to see anticorruption policies in countries, it is necessary to specify some elements. It is well known that the CPI is a subjective-perceptive indicator that needs specific caveats to be read properly. In recent years, at international level, several measurement methodologies have been consolidated to produce different types of indicators which give a differentiated picture of corruption. Several studies and publications have highlighted some limits of these

kileaks.org; cable code 08ROME1416

indicators and indexes⁸. The caveats that must be always specified when using a corruption measure are mainly related to the methodologies used to aggregate the data and the presence of significant standard errors, to the reliability of the sources, to the different definitions of corruption used. These limits are reflected in the results and the scores calculated and they imply problems with the reliability of rankings, temporal trends and benchmarking between countries.

In general terms, the measurement methodologies widespread and developed at international level are distinguished on the basis of the sources used, which can lead to the production of subjective indicators or objective indicators. Subjective indicators refer mostly to the behavioral meaning of the phenomenon and tend to detect the entity of the submerged phenomenon through specific surveys. They differ in indicators of perception that investigate the opinion about the corruption phenomenon, and in indicators of experience which reveal the direct knowledge of the corruption phenomenon. The objective indicators, instead, tend to detect the corruption that has emerged ("the emerged part of the iceberg") and are based on the processing of data of different sources linked to some extent to corruption (for example the cost of infrastructures, the management of public tenders, etc.) or to judicial statistics (e.g.

complaints, reports, convictions for crimes against the public administration). Objective indicators could also be classified with reference to other categories, for example in contrast indicators related to the repressive scope, mostly based on criminal justice statistics, and risk indicators/red flags/early warnings related to the preventive scope. For intrinsic reasons of complexity and disclosure difficulties, objective indicators are mostly elaborated and are known and widespread in the research field, subjective indicators traditionally have a wide media echo. For the latter (and especially for the perceptive ones), however, while recognizing that they are at least proxies that report a problem, it must also be specified that they are mostly based on surveys conducted on limited samples which, among other things, make it difficult to investigate the corruption phenomenon by disaggregating it sectorially and territorially within the States. The intrinsic characteristics of subjective indicators (perception not always coinciding with experience, limited samples, non-homogeneity in the structuring of surveys between countries, lack of adequate territorial disaggregation, etc.) make the results (and eventually indicators and indexes) not always reliable, hardly comparable between different countries, not so useful to get the knowledge necessary to set policies.

While considering all these aspects, Italy's positioning in the CPI ranking on the eve of the approval of the anti-corruption law could be considered dramatic.

The measurement methodologies widespread and developed at international level are distinguished on the basis of the sources used.

⁸ See, among others: 2013, E. Galli, N. Fiorino, "La corruzione in Italia. Un'analisi economica", Il Mulino, Bologna.

The score generally attributed to Italy by the subjective indicators led at that time to a positioning in the international ranking that was out of the average of the other countries of the European Union. For example, in 2012 the score obtained for the CPI was 42 (72nd place) on a scale ranging from 0 (maximum corruption) to 100 (absence of corruption). These are «mid-ranking» positions that are also common to the other similar international rankings, in which Italy appeared closer to some Latin American, African or Asian countries than to European ones. In the past, every year the dissemination of this ranking led to a considerable media hype, probably partly fueling the perceptions of the interviewees who contributed to perpetuate this positioning⁹. Similar considerations applied in the past for the case of Italy to some reports which, although not presenting synthetic indicators of measurement of the corruption phenomenon in the various countries, included statistics and data referring to surveys and studies that had a wide media coverage. This is the case, for example, of the «Special Eurobarometer on corruption» published in February 2014. This is one of the reports on specific issues drawn up on the basis of opinion polls conducted periodically on behalf of European Commission since 1973. In the special edition of February 2014, the topic

investigated was precisely that of corruption with data referring to an observation period relating to the beginning of the previous year. The results placed Italy at the highest levels of perception of the phenomena of corruption, well above the average of other European countries, with reference for example to aspects such as the general spread of the phenomenon, the tendency to increase it, the need to pay bribes to obtain public services. It is unusual and interesting in this regard to note the difference between perception and direct experience of corruption. Considering the items of the survey which instead of perception refer to the experience of corruption phenomena, Italy ranks below the European average, with particularly low percentages for what it concerns those who have had direct experience of paying bribes, or those who declare that they have directly witnessed cases of corruption.

Also considering all these caveats, there is no doubt that Italy could be considered until 2012 a negative case study in Europe for anti-corruption policies. The introduction of a prevention of corruption system and the establishment of a strong and independent anti-corruption authority started changing the context both at domestic and international level, and the negative trend has reversed.

The turning point of prevention of corruption policies

⁹ Furthermore, perception can be also related to the efforts put in place by law enforcement agencies to fight corruption, so much so that, according to the so-called "Trocaadero Paradox" the more you fight against corruption, higher becomes its perception. See Trataglia Polcini: <http://www.dirittopenaleglobalizzazione.it/wp-content/uploads/2017/10/Il-Paradosso-di-Trocaadero.pdf> ; <https://www.dirittopenaleglobalizzazione.it/wp-content/uploads/2021/06/corruption-between-reality-and-representation.pdf>

The Anti-Corruption Law, Law No. 190/2012, in execution of the Article 6 of the United Nations Convention against Corruption, introduced in Italy a comprehensive set of measures aimed to prevent and repress corruption and illegality and established the National Anti-Corruption Authority.

The Law aligns the Italian legal system to the indications of the main international instruments subscribed by Italy (1997 EU Convention against Corruption, 1997 OECD Convention against Bribery in International Business Transactions, 1999 Council of Europe Criminal Convention against Corruption, 2003 UN Convention against Corruption – UNCAC), and implements the recommendations addressed to Italy by the competent OECD and Council of Europe Bodies on the occasion of the mutual evaluation procedures.

The main functions of ANAC according to the Anti-Corruption Law are the following: to approve the National Anti-Corruption Plan; to analyze the causes and factors of corruption and identify measures to prevent it; to monitor the implementation and effectiveness of public administrations' Anti-Corruption plans and the compliance to transparency rules. Regarding these functions, the Law assigns to ANAC inspection some powers: the power to enquire, to demand the exhibition of documents, to command the adoption of acts as well as the removal of acts and behaviors contrasting with law and with transparency rules. ANAC also defines criteria, guidelines and standard models for the code of conduct

regarding specific administrative areas as specification and integration of the general code of conduct for the public sector. In addition, it also cooperates with the corresponding international bodies and in general with international and foreign bodies in the field of anti-corruption to share information and methodologies for the implementation of anti-corruption strategies. ANAC reports annually to the Parliament on the activities against corruption and illegality in the administrations and on the effectiveness of the measures applied.

Law No. 190/2012, as amended and completed by other following legislative interventions up to the present day, constitutes the reference point for policies aimed at fighting corruption and puts into effect a complex institutional and organizational system referred to models mainly based on prevention. The norms introduced by Law No. 190/2012, find an essential complement in the Legislative Decrees No. 33 and No. 39 of 2013, to which the Law has delegated the implementation of important principles and guidelines with reference, respectively, to the transparency and to the system of ineligibility and incompatibility of positions in public administration, and in the Presidential Decree No. 62/2013 which sets out the rules of conduct which all public employees under contract must abide by.

The Legislative Decree No. 33/2013 (as amended above all by Legislative Decree No. 97/2016), «Reorganization of the regulations

concerning the obligations of publicity, transparency and diffusion of information by public administrations” specifies ANAC powers of control and inspection on public administrations concerning their duties related to data and information transparency.

The Legislative Decree No. 39/2013 provides the rules concerning the absence of conflicts of interest, both at regional and local level, and the incompatibility between management positions in public administrations, in bodies under public control, political offices and professional assignments. It also defines the role of ANAC in this particular scope of integrity.

The Law Decree 24th June 2014, No. 90 «Urgent measures for the simplification and administrative transparency and for the efficiency of the courts”, converted with modifications by the Law 11th August 2014, No. 114, introduced new and impacting measures in the anti-corruption system and in the ANAC activities. Among the most significant interventions intended to improve the fight against corruption in Italy it is to point out the legislator’s choice of anchoring the supervision on public contracts - until that time performed by another institution, the Authority for the Supervision of Public Contracts - in the system of corruption prevention outlined by Law No. 190/2012. The integration of the functions of the two institutions and the consequent extension of the powers of ANAC, in fact, set the conditions to oversee more effectively the scope of the

contracts and public procurement in which nestles a substantial part of the corruption phenomena.

In general terms, from 2014 on, several legislative interventions further developed the prevention of corruption system and the related scope of functions and activity of the ANAC. All reforms confirmed the relevance of the prevention topic in the public debate, the importance attributed by the Italian institution to policies and practices to foster public integrity and the central role of the authority in this system. As this article is not focused on normative aspects of the theme, such further interventions will not be deepened. What is important in this context is in fact to underline, as in the next sub-paragraphs, the resulted functions of the authority and, through them, the features and tools of the anticorruption and integrity system. The next paragraphs will try to point out and to deepen some peculiarities of this system also in a comparative perspective.



Figure 5 Italian Anticorruption system

-Integrity Tools

The prevention of corruption and integrity system in Italy is based on a model of regulation that provides for planning and control activities, with a “cascade” planning model that affects all levels of government. The National Anti-Corruption Plan (PNA), issued every year by the ANAC, is the heart of this planning model, and each public administration should adopt a Three-year Plan for the Prevention of Corruption and Transparency (PTCPT) using the PNA as the basis to follow. The PNA ensures the coordination of national and international strategies for the prevention of corruption in public administration. The PTCPT (basically the name of the integrity plan in the Italian system) identifies, on the basis of the first, the specific risks of corruption (using international standards for risk assessment) in each administration and the measures deemed necessary to prevent them (mandatory as rotation of assignments, training, civic participation, and specific for each organization) and to foster integrity. The PNA is a programmatic three-year tool subjected to an annual update with the inclusion of indicators and targets in order to make the strategic objectives measurable and to ensure the monitoring of the possible divergences from these targets arising from the implementation of the PNA. In order to be effective, the PTCPT must contain appropriate targets and adequate measuring indicators and it should be coordinated with other programming tools, mainly the budget,

ensuring the financial sustainability of the interventions needed. Furthermore, the PTCPT must include initiatives related to integrity trainings and to the participations of civic society. Among various other integrity tools, one notable decree is the Presidential Decree No. 62/2013 which defines the common rules of conduct for all civil servants and the related specific codes of conduct that each public administration must adopt.

-Transparency

The valorization of the principle of transparency of the administrative action, considered instrumental to integrity, was established by Legislative Decree No. 150/2009. Law No. 190/2012 has integrated this system, stressing the importance of transparency as a tool for the prevention of corruption. In the implementation of the mandate contained in Law No. 190/2012, the Government adopted the Legislative Decree No. 33/2013 that introduced the duty of publication on public organization’s internet websites of a great number and typologies of documents and data. It has also designed a system, in charge of the ANAC, of checks and sanctions regarding the implementation of the mandatory publication. In addition, the possibilities of a widespread control of the operations of public administrations have been broadened, with the recognition of the right of “civic access” to be activated by anyone for the publication of mandatory information and data in case of lack or lateness in compliance by

The prevention of corruption and integrity system in Italy is based on a model of regulation that provides for planning and control activities.

public administrations. The governance of this system was attributed to the ANAC with overview and regulatory functions. Following legislative interventions also introduced in Italy transparency re-active tools inspired to the freedom of information act in use in other countries (see paragraph No. 4). These measures completed the framework aimed at the maximum diffusion of the transparency of administrative action as an instrument that, by acting as an effective deterrent of the phenomena of mismanagement of public resources, ultimately benefits of the widespread control and accountability of the public administration.

-Impartiality of administrative action

As mentioned, the norms introduced by Law No. 190/2012, find an essential complement also in the Legislative Decree No. 39/2013, inspired by the constitutional principle of impartiality of administrative action, which regulates the hypothesis of ineligibility and incompatibility of positions in the public administration.

The objective of the forementioned norms is to avoid any form of interference between politics and administration in order to prevent corruption, conflicts of interest, breaches to integrity. The decree states that while the occurrence of cases of ineligibility¹⁰ involves

¹⁰ Ineligibility is verified in the case of conviction of public officials for offenses against the

the permanent or temporary exclusion from assigning offices, the occurrence of situations of incompatibility¹¹ causes, instead, the obligation, for the person who should be appointed, to decide, within 15 days under penalty of forfeiture, which of the two positions to keep.

Legislative Decree No. 39/2013 provides for an important advisory role of the ANAC, to be exercised through the formulation of opinions on the interpretation of the provisions contained in the decree and on their application to different types of ineligibility and incompatibility.

-Public Procurement and the national database of contracts for public works, services and supplies

As mentioned, one of the most peculiar features of the Italian prevention of corruption system is the integration in it of the public procurement scope.

public administration, with the consequence of not being able to be appointed to top administrative positions and management positions, both internal and external, in public administrations, public and publicly controlled private agencies on the national or territorial level. It applies also for those who have been members of political bodies at national, regional and local levels. Ineligibility also regards the recruitment of board members for local health who, in the previous two years, held political positions or positions in publicly controlled or funded private bodies belonging to regional health services.

¹¹ The situations of incompatibility operate in the following cases: between assignments and positions in publicly controlled or funded private bodies, and between them and the professional activities; between the executive positions in local public health bodies and members of national, regional and local administrations in the same field; between the internal and external executive positions and the positions on national, regional and local boards; between the positions of directors of publicly controlled private bodies and the members of political bodies in the central governments, regional and local administrations; between positions of leadership in local health bodies and the offices of members of political bodies in the central governments, regional and local administrations.

From this point of view, ANAC provides regulation, supervision and monitoring functions as described in the following:

- regulation to prevent mistakes or infringements in public procurement through acts on the interpretation of the legislation, decisions on claims (so called “Pre-litigation” - as a form of “alternative dispute resolution”), advice, guidelines and standard documents;

- supervision on public procurement procedures through economic sanctions for lack/delay of response to a request of information or for false declarations during the awarding procedures, inspections on public works performance;

- monitoring of the quality and transparency in public procurement through the management of data on public procurement contained in the BDNCP and standard costs analysis.

Among the various functions concerning public procurement, the management of the above mentioned BDNCP requires some further brief details. The BDNCP is a database that collects and integrates data concerning public contracts produced and transmitted by contracting authorities. It incorporates all the information contained in existing procurement databases in order to ensure central accessibility, transparency, publicity and traceability of the whole procurement process. The database supports both the Authority in its supervisory and regulatory functions, and all the stakeholders interested in the life cycle of

public procurement. In order to allow greater accessibility of information and to facilitate consultation by both internal and external users, in 2020 ANAC started releasing the contents of BDNCP in open data¹². A dashboard has also been created for guided access to the available information, which allow self-service analysis, from aggregated data to the details¹³. The publication of the contents of the BDNCP in open data is an important feature, because it facilitates even sophisticated forms of public use of a database of strategic interest to the country.

The BDNCP contains data related to about 60 million contracts over the last 10 years, for a value of about 2,5 billion euros. In terms of the quantity and detail of the data contained, the BDNCP represents a remarkable experience at European level.

Data stored in the BDNCP are also the main raw material for setting up corruption measurement processes, as better explained in the next paragraphs.

-Whistleblowing and civic participation

With the anti-corruption law, the Italian legislator for the first time has introduced a homogeneous protection for the whistleblower. Before the reform, the subject

¹² See: www.anticorruzione.it/portal/public/classic/Comunicazione/News/_news?id=c591bc320a7780422318aa12cd2d83d5

¹³ Below, the link to the portal: <https://dati.anticorruzione.it/#/home>

reporting misconducts was obliged (ex art. 361 of the Italian penal code) to report to the judicial authority or to the hierarchical superior, and there were no dedicated and protected channels. He also had no protection in case of possible retaliations following his report, except for the hypothesis of illegal dismissal as governed by the art. 18 of the Statute of workers. This imbalance has been reduced with the introduction of the art. 54-bis in the Legislative Decree No. 165/200, according to what provided for by the paragraph 51 of the Law No. 190. Out of the cases of responsibility for calumny or defamation, the whistleblower protection regards all forms of retaliations: demotion, mobbing, transfer and discriminations or similar and the decision about the possible remedies had been left to the discretion of the judge.

Among other aspects, the ANAC also play a central role concerning whistleblowing from both an overview and a regulatory point of view. Following legislative interventions further foster the effective introduction of whistleblowing practices in the framework of the Italian anti-corruption system, aligning it to international best practices and standards. Recent guidelines issued by ANAC with the act 469/2021 regulate the topic, waiting for the definitive introduction in the Italian system of the new provisions on whistleblowing of the EU directive 1937/2019 before the end of 2021.

Apart from whistleblowing, civic participation in general terms is the necessary pre-requisite

allowing all the anticorruption system functioning. Reports, complaints, training and cultural activities and other initiatives of engagement by NGOs, citizens, education system actors, etc. are encouraged by specific provisions and widespread practices at the heart of the anti-corruption system.

Peculiar features of the Italian prevention of corruption and integrity system in a comparative perspective

-Strong, independent, publicly well perceived authority as coordinator of the main prevention of corruption and integrity policies

Italy established a central body to coordinate integrity and prevention of corruption policies later than other countries but fully in line with the UNCAC article 6 indications. As mentioned, the Italian National anti-corruption authority was established with the law No. 190/2012. This and following legislative interventions provided the ANAC with the necessary requisites of independence (because the mechanisms to appoint the governance and the features of the financial resources assignment), with an adequate and skilled staff of 300 persons approximately, with pervasive and important functions, with a strong central coordination role concerning other institutions and fruitful interactions with other stakeholder, civil society, citizens. All these aspects are reported in detail in the

UNODC Country Review Report of Italy related to the implementation by Italy of Chapter II (articles 5-14) and Chapter V (articles 51-59) of the United Nations Convention against Corruption for the review cycle 2016-2021¹⁴. The comprehensive description of the new complex system, also considering some recommendations to be further fulfilled and developed, can be considered a confirmation itself of the progress made by Italy in the last decade and a starting point to compare the Italian model to other approaches. The establishment of a central authority in the field is not an obvious choice. At international level, countries as for example UK, Germany and outside of Europe, USA and Australia (also, but not only because of the federal model) don't have a central independent body with functions comparable to the Italian Anti-corruption Authority, while France in recent years adopted a similar model with the establishment of the central independent anti-corruption Authority in 2017, merging powers and functions before distributed in different governmental structures and other institutions. Features similar to the Italian approach are present in Western Balkans in Montenegro and above all in Serbia, while in Albania the functions are distributed in different institutions and commissions but there is a clear ongoing process in the sense of the establishment of a structured prevention of corruption system, also taking into account

¹⁴ https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2019_1_1_22_Italy_Final_Country_Report.pdf

the Italian experience.

-The central role of transparency and the mix of pro-active and re-active approaches and of centralized and decentralized models

From a general and theoretical point of view, transparency approaches can be classified in "pro-active" and "re-active" and described as follow.

Pro-active transparency is related to information, documents and data to be released without any specific request by citizens through the mandatory publication on public organization's web sites, and to "open data" publication, datasets available in bulk, machine-readable and reusable.

Re-active transparency is related to information, documents and data released upon request of citizens demonstrating a direct interest to them, and to access to public document and data as part of citizens' freedom of information right granted to everyone.

In Italy, systematic policies of pro-active transparency, apart from some previous sectoral experiences, were introduced with Legislative Decree No. 33/2013, in a context in which not only there were no previous policies and practices, but above all in which, as a form of "re-active" transparency policies, there was only the "classic" document access pursuant to Law. n. 241/1990, referring to the access of

At international level, countries as for example UK, Germany and outside of Europe, USA and Australia (also, but not only because of the federal model) don't have a central independent body with functions comparable to the Italian Anti-corruption Authority.

data and documents of the public administration by subjects with a direct and current interest. In this context, very extensive publication obligations were introduced by the legislator, with the provision of the so-called simple civic access, i.e. the possibility for citizens / stakeholders to directly request to the administrations the publication of data and documents required by the regulatory framework. Over the years, then, the publication obligations on the side of pro-active transparency policies have been enriched, and above all the re-active transparency system has been completed with the introduction of the so-called «generalized access», according to the Italian FOIA, inspired to the best and most consolidated international experiences of “freedom of information act”.

In Italy, therefore, a rich system of re-active transparency policies and practices has been consolidated in the last decade with characteristics similar to most European countries and to the most common international practices.

The policies of pro-active transparency in Italy are instead characterized by some peculiarities.

From a general point of view, both at a theoretical/regulatory level and at the level of implementation, two different models of pro-active administrative transparency can be established:

-the centralized model of active transparency, in which each public organization provides administrative data and documents in centrally managed portals/platforms to which citizens and stakeholders can access through filters and search engines; this is the prevailing model in the Anglo-Saxon and Northern Europe systems and it is focused on datasets and open data, especially for the purpose of data reuse;

-the decentralized model of active transparency, in which each public organization is required to publish on its institutional website, in the most standardized form possible, the data and documents required by the regulatory framework and possibly other additional data and documents. This is the prevailing model chosen by the Italian legislator starting from Law no. 190/2012 and Legislative decree n. 33/2013, but with some categories of big data managed at central level (procurement, use of EU and National funds, infrastructures, etc.).

Pro-active transparency policies see ANAC as a fundamental coordinating actor, which since the introduction of the system has exercised regulatory and supervisory functions, while regarding re-active transparency policies ANAC does not carry out supervision and does not have the duty to receive complaints but can issue second level regulation. As far as is known, Italy is the only country in which the coordination of pro-active transparency policies is entrusted to an anti-corruption authority. Even for re-active transparency

policies, the role of ANAC is however peculiar at an international level, as in other countries this role is usually entrusted to authorities/commissions that deal with both privacy and transparency.

This decentralized system certainly has some interesting features and has been successful in the sense of pushing administrations to make documents and data public through the internet sites in an orderly, schematic and standardized way. The negative aspects are mainly related to the difficulties experimented by small public organizations with few resources (small municipalities, schools, etc.) to be in full compliance with transparency provisions. This is why in Italy a debate and a reflection on how to simplify and enhance the system is underway. The recent National Recovery and Resilience Plan, related to the use of resources of the Next Generation EU Fund, introduces the vision of a centralized system of transparency, to be put in place almost on a reduced set of data and documents (see next paragraph).

-Public procurement oversight integrated in the prevention of corruption system

The previous paragraph describes in brief some of the features of the prevention of corruption related to the public procurement scope. What is important to underline here is that at international level there are very few systematic experiences of integration of public procurement overview in the prevention of

corruption system and no cases in Europe of a same Authority in charge of prevention of corruption according to article 6 of UNCAC and in charge of the coordination of the national public procurement policies and practices.

Generally, the structure in charge within each country to collect and elaborate this typology of data is a specific public procurement office/body/authority. In other cases, this function is in charge of the ministry of economics/treasure and in some cases of the courts of auditors or even anti-trust bodies. From this point of view, this kind of integration and the experience of ANAC is particularly interesting due to the huge amount of funds at stake in public procurement scope and the related corruption risks. According to EU data sources¹⁵, each year, more than 250.000 public authorities in the EU spend around 14% of GDP on purchasing services, works or supplies. In line with this data, public procurement represents a significant share of countries' economies, on average over 13% of GDP and 29% of government expenditure among OECD members¹⁶. Public procurement is also a swiftly developing field, involving more aspects than the only purchasing of works, goods and services, and referring to the general way to translate into practice national policies in all sectors of public interest. This is the reason why countries are reconsidering their rules and

¹⁵ https://ec.europa.eu/info/policies/public-procurement_en

¹⁶ <https://www.oecd-ilibrary.org/sites/0d83e1f9-en/index.html?itemId=/content/component/0d83e1f9-en>

procedures to increase efficiency, quality, integrity, transparency and accountability of all the processes concerning the public procurement, and to identify potential causes and eventual instances of corruption, with the aim to increase investors, stakeholders, and other actors' confidence in the national institutions and policies. For all these reasons, tightly integrating the field of public procurement into anti-corruption policies and practices in Italy was an innovative and courageous choice, and almost a decade later it can be considered a success and an original model now also available to other countries.

-The challenging role of ANAC and other institutional and academic actors in corruption measurement

Since its establishment, ANAC has worked to identify best practices for measuring corruption. After all, Law No. 190/2012 also attributes to ANAC the function to analyze the causes and factors of corruption and to identify measures to prevent it. To this aim, trying measuring corruption, identifying red flags, early warnings and risk indicators are the prerequisite for knowing corruption phenomena and to establish preventive and repressive policies.

After a first experience of use of qualitative and quantitative sources to try to measure some

aspects of corruption¹⁷, ANAC has long been coordinating the project “Measuring the Risk of Corruption at Territorial Level and Promoting Transparency” – funded under the “National Operational Program on Governance and Institutional Capacity 2014-2020” (hereinafter PON Risk Measuring Corruption or Project) – involving several other institutions, universities and experts, whose deadline is scheduled for the end of 2022¹⁸.

The main purpose of the project is to provide the public system with adequate indicators to detect corruption at the territorial level, to support prevention and integrity and to promote transparency in the action of the public administration, while at the same time overcoming the limits of the statistical measurement of corruption currently available, mainly perceptive indicators. The production of risk indicators of a quantitative nature on a systematic basis represents an important contribution not only in terms of increasing the scientific knowledge of the phenomenon but also in terms of the design of contrast measures that are more effective and adapted to the diversity of the contexts.

As part of the PON, ANAC is therefore working to integrate as many data sources as possible, to design methodologies for calculation and

Tightly integrating the field of public procurement into anti-corruption policies and practices in Italy was an innovative and courageous choice.

¹⁷ Corruzione sommersa e corruzione emersa in Italia modalità di misurazione e prime evidenze empiriche https://www.anticorruzione.it/-/corruzione-sommersa-e-corruzione-emersa-in-italia-modalità-di-misurazione-e-primarie-evidenze-empiriche-1?inheritRedirect=true&redirect=%2Frisultati-ricerca%3Fq%3Dcorruzione%2520sommersa%2520e%2520corruzione%2520emersa%26sort%3DpublishDate_sortable-

¹⁸ <https://www.anticorruzione.it/-/misurazione-territoriale-del-rischio-corruzione-e-promozione-della-trasparenza-progettpon-1>

validation of indicators, to involve as many institutional, academic, research, NGOs and other relevant actors to work together on the production and subsequent use of data and indicators.

Another highly innovative aspect of the project is the approach used for data processing. The calculation of the indicators, and in general to statistically analyze BDNCP and other data sources is used a widespread open source and free software. Not only data and indicators will be transparent and freely released, but so is the code, allowing any forms of re-use and participation by other stakeholders. The public availability of such a precious knowledge source, would make it possible then to better foster the central value of transparency and the essential role that it plays for the smooth functioning of an advanced democracy. Corruption measurement is a challenge for lots of researchers and dedicated institution in different countries. At national level there are some similar remarkable approaches to the ongoing Italian experience, for example in South Korea, where the Anti-Corruption and Civil Rights Commission developed a nationwide integrity assessment model which was used to assess the national integrity level of both public and private sectors, and in Canada-Quebec where the Commissaire à la Lutte Contre la Corruption structure is working on innovative ways to elaborate public procurement open data and to design corruption and collusion indicators.

Conclusions

The anti-corruption practices that feed democracy

The Italian anti-corruption system, from the preventive policies and practices perspective, is the result of a ten-year process that led the country from being considered object of concerns to being a source of innovative and effective approaches.

This process is mirrored in the functions over time attributed to the national anti-corruption authority, the ANAC, which resulting institutional mission consists in “the prevention of corruption in public administrations and in subsidiaries and state-controlled companies through the implementation of transparency in all aspects of management; through supervisory activities in the framework of public contracts, and in every area of the public administration that can potentially develop corruption phenomena, as well as through the orientation of the behaviors and activities of public employees by means of advisory and regulatory interventions”¹⁹.

As recently stated by the President of the ANAC in the annual report to the Italian Parliament, the legislator’s decision to concentrate the supervisory and regulatory functions concerning the prevention of corruption, impartiality, transparency and

¹⁹ <https://www.anticorruzione.it/mission-e-competenze>

public procurement in a single independent authority was a good choice. Beyond the necessary compliance of the commitments undertaken at international level with the UNCAC, ANAC is the pivot of a system set up to protect fundamental rights for the promotion of public trust²⁰.

As described above, some of the pillars, tools and distinctive features of the Italian anti-corruption system can be synthesized as in the following table.

Tools and distinctive features of the Italian anti-corruption system
✓ strong independent anti-corruption authority as pivot of the system and institutional synergies
✓ central role of transparency and mix of pre-active and re-active policies
✓ public procurement oversight integrated in prevention of corruption system
✓ national anti-corruption plan and three-year anticorruption and integrity plan within each public administration
✓ corruption risk analysis within each public administration
✓ ineligibility and incompatibility rules to avoid any form of interference between politics and administration and to foster impartiality
✓ protection of the employee who reports abuse (whistleblowing)
✓ efforts to better measure corruption and to identify risk indicators, red flags and early warnings
✓ training and initiatives in the field of public ethic and integrity and the spread of a culture of legality
✓ promotion of citizens and stakeholders' participation

Table 4 Tools and distinctive features of the Italian anti-corruption system

Surely, Italy has managed in a few years to recover the ground lost previously and it has achieved results that are internationally recognized as milestones, so much so that some approaches and tools are particularly appreciated, enabling a better perception of the country abroad and more confidence in its intuitional system that, among other aspects, could foster international investments.

²⁰ <https://www.anticorruzione.it/-/relazione-annuale-al-parlamento-2>

Anyway, Italy is not at the end of the process, but it has to consider the results achieved as a starting point to improve the system even further. After all, the challenges facing the world after the worst economic crisis of the post-war period, the scarcity of resources and the need to make the best use of them for the so-called economic «restart», are pushing several countries to strengthen anti-corruption policies. It is no coincidence that the President of the United States has recently issued an important act - the June 3, 2021 "Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest" - providing "all necessary efforts to promote good governance, bring transparency to the United States and global financial systems, prevent and combat corruption at home and abroad, and make it increasingly difficult for corrupt actors to shield their activities"²¹. On the other side of the Atlantic, the European Union recently created "The Next Generation EU fund", agreed by the European Council on 21 July 2020, a recovery package to support member states hit by the COVID-19 pandemic and the consequent economic crises. Conditionality related to the use of the fund of €750 billion and rules and constraints introduced by beneficiary countries in the national plans reflect also the necessity to avoid any form of misuse of the fund as consequence of corruption. In the case of

²¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>

Italy, the “National Recovery and Resilience Plan” (PNRR) explicitly addresses the issue and sets ambitious reform objectives. In the plan is stated that “the entire system of verification of the PNRR is inspired, in fact, by the control systems of the European structural funds and is aimed at the prevention, detection and contrast of serious irregularities such as fraud, cases of corruption and conflicts of interest [...]”. The PNRR calls for the simplification of the rules on corruption prevention and transparency avoiding that some of them may impose too heavy burdens and obligations on administrations. The PNRR also provides for a centralized transparency system, managed by the ANAC, to collect most relevant public data and documents with the aim of enhancing the use of such a knowledge richness.

In a certain sense, it is possible to affirm that the program for the further improvement of the corruption prevention system is already outlined, the next few years will tell if Italy will be up to the challenge as it has been in the last decade.

The prevention of corruption remains an essential point in which to invest. All public organizations must keep on doing their part by training their officials, by putting in practice without hesitancy transparency, by exploiting the potential of new technologies to make public every aspect related to the resources used and the results achieved by the public administration, by acting with a logic of effectiveness and public service and not with a logic of compliance, accepting without delay a

cultural change, not only a legislative one.

Nowadays it is above all necessary, and this of course cannot be done by a single anti-corruption authority, to emphasize the «cultural» aspect: everyone must be convinced - politicians, managers and operators of the administration, private actors, citizens - that corruption has to be contrasted because it is economically not convenient, because it dissipates resources of the community for the benefit of few actors, because it is an intolerable manifestation of lack of dignity, because it undermines democracy and civil coexistence.

All the institutional actors who have participated in the implementation of anti-corruption policies in recent years have contributed to foster the process described in the article. Nevertheless, above all Italian citizens participated in the “experience of anti-corruption”, with their contribution in terms of reports and requests for intervention. What is important to underline is that all those who have invoked the application of the principles and rules of anti-corruption have at the same time contributed to translate them into practice and participation, and through them to promote one of the fundamental principles of democracy, the public integrity. As long as there are citizens who ask institutions to intervene, it means that trust in the institutional system is alive - and this is in itself an indicator of the good health of the socio-institutional system -, and that the practices of anti-corruption feed democracy.

The next few years will tell if Italy will be up to the challenge as it has been in the last decade.

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Take the money and run: corruption risks in the next round of EU funds in Portugal

João Paulo Batalha

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CHAPTER 3

Chapter 3

Take the money and run: corruption risks in the next round of EU funds in Portugal

João Paulo Batalha

Introduction

In June 2021, the president of the European Commission, Ursula von der Leyen, stood with Portuguese prime-minister António Costa in Lisbon to announce the approval of Portugal's Recovery and Resilience Plan. While posing for pictures with the document, Costa jokingly asked: "Now I can go to the bank?". "Now you can go to the bank", replied von der Leyen.

"The bank" is Brussels' massive Next Generation EU programme, the post-pandemic recovery plan worth EUR 806.9 billion (EUR 750 billion in 2018 prices). This adds to the EUR 1.211 trillion (EUR 1.074 trillion in 2018 prices) in the European Union's budget for the period 2021-2027. Portugal is poised to receive EUR 16.6 billion under Next Generation EU alone, most of which (EUR 13.9 billion) through grants. That's a huge influx of funds,

worth 7,82% of the country's 2019 GDP¹, that aims to not only compensate the losses brought about by COVID-19, but also relaunch a greener economy, fight climate change and develop sustainable, high-value digital services.

The impact of the next round of EU funds is particularly relevant for Portugal, whose budget has been under tight constraints since 2011, when the International Monetary Fund, the European Commission and the European Central Bank issued a EUR 78 billion bailout at the height of the Eurozone crisis. The country's public debt stands at 133,6% of GDP, according to National Statistics Office estimations for 2020² – a rise from the pre-bailout figure of 100,2%.

Public investment, meanwhile, remains elusive. Under the weight of public debt and the public sector's running expenses, EU funds are absolutely crucial to allow for Government investment, which is sorely needed, given the difficulties in unblocking private sector investment. Among EU Member-States, Portugal is the most dependent country on Brussels' money to invest in its own economy. According to EU Commission's data³, structural and investment funds accounted for

Negative expectations align with Portugal's higher than average perceptions of corruption and the concerns of many experts.

1 <https://op.europa.eu/en/publication-detail/-/publication/d3e77637-a963-11eb-9585-01aa75ed71a1/language-pt> and <https://www.consilium.europa.eu/pt/infographics/recovery-fund-eu-delivers/>, last accessed 17/09/2021.

2 <https://www.pordata.pt/Portugal/Administrações+Públicas+divida+bruta+em+percentagem+do+PIB-2786>, last accessed 17/09/2021.

3 <https://cohesiondata.ec.europa.eu/Other/-of-cohesion-policy-funding-in-public-investment-p/7bw6-2dw3>, last accessed 17/09/2021.

84.2% of public investment in the period 2015-2017. This has been a fairly consistent figure over the years. Quite simply put: without EU funds, there is no public investment in Portugal.

In this context, Costa's little joke about going to the bank is a big deal. Approving and beginning implementation of the recovery plans for EU Member-States was the number one goal of Portugal's presidency of the EU Council, in the first semester of 2021. Portugal itself was the first country to submit its national Recovery and Resilience Plan – a point of pride for the prime-minister. Costa dubbed the funds a veritable “bazooka” of money, a strange word to qualify a massive investment programme that, hopefully, should have a constructive, not a destructive, impact in the country. The word stuck, however, and “bazooka” became shorthand for “European Union money”.

Considering that the country has been stuck behind the EU average standard of living for decades – Portuguese GDP per capita stood at 77% of the EU average in 2020, according to Eurostat data⁴ –, this money needs to be well spent. Managing the “bazooka” will also be a serious challenge to Portuguese public administration if we consider that, according to the European Commission, the implementation of EU structural and

⁴ https://ec.europa.eu/eurostat/statistics-explained/index.php?title=GDP_per_capita,_consumption_per_capita_and_price_level_indices, last accessed 17/09/2021.

investment funds for the period 2014-2020 stood at 63% as of June 30, 2021. The challenge for Portugal, therefore, is to efficiently and wisely spend as much of the vast sums coming into the country as possible. Maria Luís Albuquerque, Portugal's Finance Minister from 2013 to 2015, put it clearly and simply:

“The anticipated flow of funds can be the base for building a future that's better than our past, in a competitive and dynamic economy. But it can also be one more lost opportunity that ends up creating more losses than gains in the long run. If EU funds are again misused, namely, to increase the weight and power of the central, regional or local Governments in the economy, if access to financing is dependent on political connections and not the merit of projects, we will end up with a country inevitably poorer and more dependant, more at the tail end of Europe, less able to retain the best among its citizens and to attract foreign investors”⁵.

The risk of undue political interference in the management of the funds is a particularly acute concern. Portugal's Recovery and Resilience Plan and the associated funds dominated the political debate in the run up to Portugal's municipal elections that took place on September 26, with the opposition parties

⁵ Maria Luís Albuquerque, Fundos Europeus podem ser a solução ou o problema [European Funds may be the solution or the problem], in *Os Impostos e o Combate às Desigualdades (na era da Covid-19) [Taxes and the Fight Against Inequality (in the era of Covid-19)]*, Rei dos Livros, September 2020, p. 125. Translated by the author.

accusing the Government and candidates for the centre-left Socialist Party (PS) of using the promise of massive EU funds as an electoral “carrot”. Some PS candidates for local municipalities have openly touted their political proximity to the national Government, and to the prime minister personally, as a guarantee of their ability to get local projects funded. A poll published in late August by Portugal’s leading daily *Correio da Manhã*⁶ indicated that 60% of Portuguese citizens believe money will be allocated according to political allegiances, and 64,5% think the Recovery and Resilience Plan will not significantly alter the fortunes of the country. These negative expectations align with Portugal’s higher than average perceptions of corruption.

Part I:

Anti-corruption policies in Portugal: an unimpressive track record

-Public perceptions

Below average. This, in a nutshell, is how Portugal fares when it comes to the scope of its corruption issues and its effectiveness in preventing and combatting it. Transparency International’s Corruption Perceptions Index⁷ for 2020 – long considered the best global

⁶ https://www.cmjornal.pt/economia/detalhe/maioria-dos-portugueses-desconfia-da-eficacia-da-bazuca-europeia?ref=Mais_Sobre_BlocoMaisSobre, last accessed 17/09/2021.

⁷ <https://www.transparency.org/en/cpi/2020/index/prt>, last accessed 17/09/2021.

indicator of public sector integrity – ranks Portugal 33rd out of 180 countries surveyed, with a score of 61 out of 100 (where “100” means “maximum integrity” and “0” means “minimum integrity”). This places the country below average in the Western Europe & European Union region (where the average score is 66). Portugal’s score in the Corruption Perceptions Index, in fact, is the lowest since 2012.

Another relevant indicator compiled by Transparency International, the Global Corruption Barometer⁸ for 2021, illustrates the high public perceptions of corruption in the country. Although the number of respondents who reported having paid a bribe in their dealings with public services is negligible (staying at 2% to 3%, a number that has remained consistent over the years), a full 41% of respondents feel corruption increased in the last year. Bankers, members of Parliament and business executives are perceived as the most corrupt institutions, followed by local government leaders and national government officials. This paints the picture of a country plagued not so much by public sector petty corruption, wherein a citizen is harassed by low-level officials demanding bribes in exchange for access to public services, but by high-level corruption, born and bred in the promiscuity between key decision-makers in the political parties and government offices,

⁸ <https://www.transparency.org/en/gcb/eu/european-union-2021/results/prt>, last accessed 17/09/2021.

and well-funded private interests, with disproportionate access to power.

This perception is confirmed by the European Union's latest Eurobarometer on corruption⁹, published in June 2020. When compared to an already high EU average of 71%, the number of Portuguese who think corruption is widespread in the country reaches an astounding 94%, with 55% feeling an increase of the problem compared to the previous three years. 90% agree that there is corruption in local government, and 89% perceive it also in national public institutions – in both cases, well above EU averages. Again, political parties and politicians at the local, regional or national levels top the charts of perceived corruption, with bankers and financial institutions following closely. Public procurement or building and business permits are viewed as some of the higher-risk sectors, underlining a national concern with the often too-close ties between political decision makers and private interests.

-Political (II) will

It's not just a problem of perceptions. A now famous report commissioned by the European Parliament in 2016¹⁰ estimates that corruption

⁹ <https://europa.eu/eurobarometer/surveys/detail/2247>, last accessed 17/09/2021.

¹⁰ Wouter van Ballegooy, Thomas Zandstra, Organised Crime and Corruption: Cost of Non-Europe Report, PE 558.779, European Added Value Unit, March 2016, available at [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA\(2016\)558779](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_IDA(2016)558779), last accessed 17/09/2021.

is responsible for losses ranging from anywhere between EUR 218 and EUR 282 billion annually. For Portugal, the best estimates point to losses of around EUR 18 billion, an annual cost superior to the country's entire Next Generation EU budget. The evaluations of Portuguese anti-corruption policies done by GRECO – the Council of Europe's Group of States Against Corruption¹¹ – also show that progress is slow and inconsistent.

Simply put, the fight against corruption has never been a top priority in Portugal. The Government has only now, for the first time ever, approved a National Anti-Corruption Strategy, that leaves much to be desired (more on that later), and the overall approach to the issue is typically reactive and imposed from the outside – either by the pressure of some corruption scandal making the news, or through EU and other international legislation.

Eduardo Dâmaso, a journalist that has been covering the Justice system and numerous corruption cases for almost 40 years, places the problem squarely as one of lack of political will:

"The basic legal mechanisms are in place. The same cannot be said about the human and material resources of those who are tasked with doing the work and showing results – the

Simply put, the fight against corruption has never been a top priority in Portugal.

¹¹ [https://www.coe.int/en/web/greco/evaluations#\(«22359946»:2\)](https://www.coe.int/en/web/greco/evaluations#(«22359946»:2)), last accessed 17/09/2021.

Judicial Police, the Public Prosecutor's Office and judges. The legislative advances were, typically, imposed from the outside, from the European Union to the various international conventions that we bound ourselves to. But the resources of those three institutions paint a devastating picture. This duality exposes the difficult and contradictory relationship, to avoid saying something worse, of the parties that molded power in Portugal, especially PS [center-left Socialist Party, PSD [center-right Social Democratic Party] and CDS [Christian Democrats], with their obligation to combat corruption. Where is the political power's willingness to fight corruption, after all?"¹²

-Prevention systems – or lack thereof

This political reluctance takes a toll on the effectiveness of the country's integrity system. Amending legislation or creating new laws is always easier than actually reforming institutions or reinforcing the capabilities of law enforcement agencies or preventive bodies within public administration. The result is that, even when legislators pass new laws, not much of them translates into the field.

The duality exposed by Eduardo Dâmaso – condemning corruption in political speeches and legislative packages but dragging the implementation of actual political and

¹² Eduardo Dâmaso, *Corrupção – Breve História do Crime que Nunca Existiu* [Corruption, a Brief History of the Crime That Never Existed], Objectiva, 2019, p- 16-17. Translated by the author.

institutional reforms – cascades down from the heights of political power to the culture permeating the rest of the public sector. Luís de Sousa, Portugal's leading researcher on anti-corruption policies, noted this culture:

"Slow, heavy and disproportionate public administrations feed these kind of [corrupt] practices. An administration that invades almost every activity and event in the private sphere, that is incapable of providing a response or issuing a resolution in a timely manner, that is incapable of providing the goods and services it is tasked with providing, makes the lives of citizens more difficult and unpleasant. 'Pulling strings' is an informal way to overcome the procedures and rigidity of bureaucracy."¹³.

To be fair, a lot has changed in Portuguese public administration in the last 20 or 30 years. The implementation of computerized management systems has not only reduced opportunities for arbitrary decision-making by officials, but also allowed citizens to engage with public institutions online, in a traceable manner – thus limiting the ability of corrupt officials to interfere in administrative processes. This explains the low level of reported practices of bribery in Portugal.

However, in critical procedures, such as public

¹³ Luís de Sousa, "Eu Não Pago Luvas, só Puxo Cordelinhos" [I don't pay bribes, only pull strings], in *Corrupção e os Portugueses – Atitudes, Práticas, Valores* [Corruption and the Portuguese – Attitudes, Practices, Values], Rui Costa Pinto Edições, 2008, p. 95. Translated by the author.

procurement, many risks remain, and proximity to the decision-makers is often considered a crucial advantage when doing business. Despite progress, the default setting of public services – and personal relations in general – is suspicion and lack of trust. This fostered a bureaucratic and legalistic culture where, in order to limit margins of discretion by public officials, legislation dictates intricate procedures for every administrative act or public procurement process, creating an often-labyrinthine system of rules and practices that not only dilutes the responsibility of officials, but creates delays and inefficiencies. To deal with those delays, laws and regulations then must provide escape valves – exceptional procedures, shortcuts to be used when necessity dictates the circumventing of the usual slow, cumbersome processes. Obviously, it then become quite easy and fairly common for the exception to become the rule, and shortcuts to be used with wide margins of discretion. It's the worst of both worlds.

This obsession with form over substance creates ample opportunities for officials to abuse their public powers for private benefit. Critical issues such as the regulation of real, potential or perceived conflicts of interest simply isn't a part of the institutional culture in the public sector (and in most of the private sector, for that matter). Public integrity is perceived, by public officials and the general public alike, as a matter of the personal integrity of those in positions of power, and not an issue of institutional design or good

governance.

True, Portugal established a Council for the Prevention of Corruption¹⁴ in 2008, with responsibilities to ensure public administration offices, establish prevention plans for corruption and other related offences, but it is under-resource, lacks independence (it's housed as an office of the Court of Accounts) and suffers from an institutional timidity very common in Portuguese checks and balances. As a result, its approach is merely bureaucratic and reactive, as noted researcher Luís de Sousa:

“There is no global strategy to prevent corruption in public administration. Risk areas are revealed through the eruption of some scandal or another. There is no preventive action on the structures of opportunity for corruption. The concern is solely to repress individual wrongdoers.”¹⁵

Without a clear notion of organizational risks and structured, preventive approaches, it falls to the criminal justice system to punish wrongdoing when it occurs. The last level of defence against corruption becomes the only level of defence.

The last level of defence against corruption becomes the only level of defence.

¹⁴ <https://www.cpc.tcontas.pt/>, last accessed 17/09/2021.

¹⁵ Luis de Sousa, *Corrupção [Corruption]*, Fundação Francisco Manuel dos Santos, 2011, p. 86. Translated by the author.

-Repression systems: the power(lessness) of the courts

“The administrative control mechanisms that should be in place upstream from the intervention of the criminal justice institutions have done little to nothing of their jobs, and now all expectations, once again, fall on the justice system. We are obligated to satisfy, practically alone, the expectations of ethical regeneration in Portuguese society”¹⁶.

This lamentation from public prosecutor Euclides Dâmaso, interviewed by journalist Luís Rosa, is a good measure of the challenges facing the Portuguese justice system. The legal framework, as we’ve seen, evolved slowly, without a commensurate increase in the resources and capabilities of law enforcement agencies and while preventive mechanisms and administrative controls evolved virtually nothing at all. The results on the repression side reflect this bottleneck.

Writes Luís de Sousa: “The image the justice system projects to public opinion is that of a repression apparatus that, from the investigation phase to the judicial ruling, is unable, in a considerable number of cases, to ensure a swift, effective and consequential enforcement of the law. Mega-cases¹⁷ ending

¹⁶ Luis Rosa, *45 Anos de Combate à Corrupção [45 Years of the Fight Against Corruption]*, Fundação Francisco Manuel dos Santos, 2021, p. 117.

¹⁷ The “mega-case” is a well-known Portuguese judicial institution. It refers to corruption and organized crime cases with dozens of defendants, being charged with dozens of crimes in the same judicial proceeding, that then involves dozens of lawyers and potentially hundreds of witnesses. The investigation and prosecution of these cases – as opposed to a strategy of charging each defendant separately in different proceedings – often creates unmanageable “mega-cases” that drag in the courts for years or even decades.

up in dismissals due to statutes of limitations or in acquittal in the upper courts (because the crimes listed in the criminal charge were not the ones that best fit the facts of the case), as well as dismissal decisions without criminal charges being brought, in which the prosecutors allege they didn’t have enough time to perform crucial investigative inquiries collide with any basic notion of responsibility.”¹⁸

De Sousa identifies a number of structural problems in the justice system: lack of resources of law enforcement authorities; insufficient specialization of prosecutors and judges; excessive bureaucratization of the criminal investigation itself, often demanding a cascade of judicial authorizations to deploy needed investigative tools, such as phone taps or surveillance; excessive concentration of judicial power when it comes to investigating high-level officials, who, by law, need to be investigated by magistrates from the higher courts; the fact that sentences in lower courts are not enforced until all appeals are exhausted, creating an incentive for endless appeals and litigation on technicalities; the lack of well-collected and organized data in public administration, which would be useful in detecting wrongdoing and producing evidence in court; and, lastly, the fact that sentences are often too lenient, diminishing their dissuasive effect and degrading citizens’ trust in the justice system itself¹⁹.

¹⁸ Luís de Sousa, *Op. Cit.*, p. 65. Translated by the author.

“There was a time in our courts, perhaps now in the past, when there was only a conviction if there had been a confession. That time left a mark in our penal system, which still falters when asked to provide an effective and timely response to this type of criminality.

There were countless corruption cases on trial in which the court demanded the same kind of evidence provided in cases of crimes against property or people, ignoring the specifically ‘mafioso’ way in which corruption phenomena take place. The acquittals resulting from this approach left imprints in the system that, indirectly, ended up feeding the growth of the problem and the uncontrolled development of corruptive practices to this day”, write Maria José Morgado and José Vegar²⁰.

To be sure, there have been improvements, both on the national and international level. Judicial cooperation mechanisms have been vastly improved in recent years, allowing for investigations to more easily trace money flows across borders. A lot of the legal tools have been put in place, even if mostly through external pressure from the EU or other international organizations. And since 2012 (which coincided with the Eurozone crisis and the Portuguese bailout that raised popular awareness to the costs of corruption), the Prosecutor’s Office has been more diligent in the pursuit of grand corruption. But the system

¹⁹ Id., *Ibid.*, pp. 66-71.

²⁰ Maria José Morgado, José Vegar, *Op. Cit.*, p. 104. Translated by the author.

remains very ineffective, and it is still very much an open question whether Portugal can significantly improve its ability to prevent, detect and punish corruption.

-EU Funds: what went wrong

“The EU funds that started pouring into Portugal after it joined the EEC were an enormous blessing to the country. However, that blessing began as a gigantic mud pit of fraud, especially in the European Social Fund (ESF), between 1986 and 1988.

Between 1986 and 2013, Portugal received EUR 53 billion from the ESF and the European Regional Development Fund (ERDF). With Europe’s money, Portugal built motorways, bridges, hospitals and modernized the country’s main infrastructures. But it wasted many millions that should have been invested in the training and education of the Portuguese people and in combatting inequalities between the coastline and the hinterland of the country. The many millions of those first three years (1986 to 1989) evaporated and created private fortunes or fattened fortunes that already existed. All converged into digging one of the deepest pits in the Portuguese swamp”²¹.

This is how journalist Eduardo Dâmaso sums up Portugal’s first experience with EU funds. In

²¹ Eduardo Dâmaso, *Op. Cit.*, p. 163. Translated by the author.

a country lacking proper administrative controls or a culture of integrity, with a justice system that was, at the time, even less aware and effective in the fight against corruption than it is today, it didn't take much to get away with fraud, sometimes on a massive scale.

"Unfortunately, a vast share of the funds never financed the goals the money had been assigned to: professional training, creation of private enterprise, development of the country in all sectors, especially agriculture, industry and services.

What in fact largely happened was that companies would be created, in collusion with public officials who knew the EEC's legal procedures, with the sole purpose of submitting applications and having projects approved for funding. After approval and allocation of the funds, the companies would not deliver on the projects and, obviously, the interests the State and the EEC pursued by allocating those funds never materialized", recalls prosecutor Maria José Morgado²².

"The criminals benefited, still in the 1980s, from an auspicious legislative confusion about whether such conduct was criminal, or merely constituted civil violations. The proliferation of a theory under which these actions were not criminal, but illicit acts punishable only under civil law caused even more hesitation and the undesirable sleepiness of the penal action in

these cases. As if this wasn't enough, in the 1990s, after some, very few, criminal convictions, the hundreds of pending cases were stricken by such a gigantic judicial slowness that almost all ended up running the statute of limitations [...]. This despite statistical evidence showing the damage of corrupt practices reaching huge financial amounts. The lack of action from the courts in order to ensure the sound management and the recovery of funds illegally obtained or embezzled, the tiny number of criminal convictions, the penal justice's inability to react in a timely manner generated a climate of impunity that forever scarred Portuguese society and it is still visible today in the cloning of these types of behaviours and in an incipient economic development. [...] In short, corruption and the institutional and judicial laxity have made us all poorer."²³

It wasn't just a case of smart criminals against an ineffective judiciary. The links between some of the most prosperous beneficiaries of EU funds and high-level politicians were obvious and have also been well documented – in 2011, when journalist António Sérgio Azenha exposed the cases of 15 former politicians who enriched themselves immediately after leaving office, often by going into business with the interest groups they had dealings with while in power²⁴. Another

With a justice system that was, at the time, even less aware and effective in the fight against corruption than it is today, it didn't take much to get away with fraud.

²² Maria José Morgado, José Vegar, Op. Cit., p. 65. Translated by the author.

²³ Id., Ibid., p. 65. Translated by the author.

²⁴ António Sérgio Azenha, Como os Políticos Enriquecem em Portugal [How Politicians Get Rich in Portugal], Lua de Papel, 2011.

journalist, Gustavo Sampaio, also chronicled a culture of conflicts of interest and revolving doors between politics and big business that remain untouched until today²⁵. That promiscuity was key to establish the legislative confusion and institutional inertia that allowed that weed of impunity to take root.

“The cases became veritable pachyderms bogged down in the judicial system and in a labyrinth of decisions, appeals and annulments. With the passing of time, they lost their current-ness and drained any notion of timely justice, softening or even eliminating any sense of sanctioning. Why? Because the justice system was not prepared to face investigations of this magnitude. Political criteria, therefore, took precedence. The Portuguese State did not want to investigate these cases for a simple political and budgetary reason: it would be forced to give the money back to the Brussels’ coffers. So, it ended up closing its eyes to a climate of generalised fraud that enriched a great number of people”, writes Eduardo Dâmaso²⁶.

To be clear, in some cases, money was eventually returned to the EU, which was more effective at protecting their financial interests than the Portuguese State – or the EU itself, for that matter – in protecting the rule of law. Since the 1980s, some of the zeal of the EU bureaucracy contributed to changing the

²⁵ Gustavo Sampaio, *Os Privilegiados* [The Privileged Ones], Lisbon, A Esfera dos Livros, 2013.

²⁶ Eduardo Dâmaso, *Op. Cit.*, p. 167. Translated by the author.

efficiency of controls by managing authorities in Portugal. But the scars of a culture of impunity and promiscuity remain alive today, showing up in specific cases with some regularity and are clearly perceived by the public.

“Citizens perceive the justice system as operating inefficiently and with dual criteria, which feeds a sentiment of social injustice and impunity. To a majority of citizens, the heavy hand of justice falls only on the common man but remains impotent against other sovereign powers. Every time the justice system goes against cases involving public figures, namely political office holders or candidates, political parties or persons and organizations from the world of business, the power of the law gives way to the power of influence”, writes Luís de Sousa²⁷.

In this context, the creation of the European Public Prosecutor’s Office (EPPO) is a welcomed addition to the control infrastructure. But even that EU body was marred by suspicion as to the process appointing its Portuguese chief prosecutor. The Portuguese Government ignored the recommendation of the independent panel convened to evaluate a shortlist of three candidates, and instead, it made a political appointment to the job, which the EU Council accepted. When the issue was exposed, the Portuguese Government argued it had only

²⁷ Luís de Sousa, *Op. Cit.*, p. 63. Translated by the author.

followed the recommendation of Portugal's body with oversight functions over the Prosecutor's Office. However, it was never explained how that oversight body, which is composed of prosecutors and politically nominated members, reached its recommendation – there were reports that the criteria for evaluation was changed in the middle of the recruitment process, so as to benefit the prosecutor that was ultimately appointed. Not an auspicious start for Portugal's participation in EPPO, but a clear indication that the temptation of political control over law enforcement remains strong in Portugal.

Part II:

Will this time be different?

The governance of the next round of EU funds

Inefficient repression, non-existent prevention and a poor track-record on the management of EU funds: this is Portugal's starting point at the beginning of the Next Generation EU programme and the next round of Structural and Investment Funds. Can this time be different? Only time will tell, of course. What can and should be debated is whether the governance structure and the public policy options associated with the famous "bazooka" are well structured and able to provide transparency, oversight and operational integrity. In order to assess this, we will look

into the governance of Portugal's Recovery and Resilience Plan. Due to its obvious relevance for the matter, we will start by looking into Portugal's newly adopted National Anti-corruption Strategy.

-New strategies, old tactics: Portugal's proposed National Anti-Corruption Strategy

For years, experts and civil society activists have been pushing for a national anti-corruption strategy as the basis for an effective fight against corruption.

"The main weakness in the fight against corruption in our country is the lack of a national strategy that encompasses a clear set of defining principles; a diagnosis of the risk areas, signalling priorities and different degrees of intervention; a diagnosis of existing resources, focused on their performance and coordination and listing the reforms that are needed for their improvement; a definition of goals to be achieved and the strategic actions to be implemented; the definition of a clear work agenda and the needed steps to achieve those goals; the mapping out of the different stages of implementation; and the creation of a system to monitor progress and evaluate its results", wrote Luís de Sousa²⁸.

Ten years after this how-to guide was published, the Portuguese Government finally approved the first national anti-corruption

²⁸ Id., Ibid., p. 83

strategy. The move followed a campaign by the Portuguese chapter of Transparency International, through a petition submitted to Parliament in 2019 calling for a strategy organizing the prevention, detection and repression of corruption. The National Strategy Against Corruption 2020-2024²⁹, approved in September 2020, was the political response.

The strategy sets seven priorities:

- A) To improve the knowledge, training and institutional practices in the area of transparency and integrity;
- B) To prevent and detect corruption risks in the public sector;
- C) To involve the private sector in preventing, detecting and repressing corruption;
- D) To strengthen communication and collaboration between public and private institutions;
- E) To ensure a more effective and uniform implementation of repressive legal tools, to improve the response time of the justice system and to ensure the adequacy and effectiveness of punishment;
- F) To produce and regularly publish reliable information on corruption;
- G) To cooperate on the fight against corruption on international level.

However, most of the operational details needed to translate these “priorities” into achievable advances in the fight against

²⁹ <https://justica.gov.pt/Estrategia-Nacional-de-Combate-a-Corruptacao-ENCC>, last accessed 17/09/2021.

corruption are missing from the Government’s plan. Transparency International Portugal issued an evaluation of the proposed strategy³⁰, highlighting its most relevant shortcomings: “The National Strategy Against Corruption 20-24 presented by the Government is vague, insecure and timid, excessively legalistic and very unambitious. It doesn’t define clear and specific principles or the strategic or foundational goals of a future implementation plan, lacking in diagnosis, indicators or metrics about what we aim to combat and achieve. It doesn’t state or cite facts, data, scientific studies or statistical, administrative or technical reports, nor does it make any evaluation of previous anti-corruption measures. The strategy, in face of its own emphasis on prevention and context, is insufficient and exclusionary, as it downplays critical corruption areas such as political officials, political financing, money laundering or public procurement. The fight against corruption is, by definition, a political responsibility, not an administrative one, since all powers of the State are political powers”³¹.

In practical terms, the Government strategy is mostly a set of benevolent aspirations but lacking a clear road map for success. Where specifics are presented, the focus is squarely on public sector “petty corruption” by low or mid-level officials and not on political

In practical terms, the Government strategy is mostly a set of benevolent aspirations but lacking a clear road map for success.

³⁰ https://transparencia.pt/wp-content/uploads/2020/10/TI-PT_Contributos_ENCC20.24_Out2020.pdf, last accessed 17/09/2021.

³¹ Contributos para uma Estratégia Nacional de Combate à Corrupção 20.24 - Resposta à Consulta Pública, Lisbon, Transparência e Integridade, 2020, p. 2. Translated by the author.

corruption, where most of the public perceptions and expert analysis place the main problems. Some proposals are made to revise the Criminal Code and the Code for Criminal Procedure, in order to facilitate the justice system's response. But not only these proposals lack specific details needed to evaluate their effectiveness – which will need to be assessed and debated as specific legislation is proposed to Parliament – but, once again, the Government relies too heavily on a legislative approach, similar to those that have taken place over the years, without great success.

Little of value is also proposed in terms of prevention – that should include key policies such as access to information and accountability mechanisms –, beyond creating a legal obligation for private enterprises, as well as public entities, to develop prevention plans or codes of conduct – a persistence on a “tick-the-box” approach similar to that of the Council for the Prevention of Corruption, which has yielded very little results in the public sector.

The hope is that the drafting of a national anti-corruption strategy has helped put the issue on the political agenda, and that Parliament will assume a leading role in designing and monitoring specific, effective measures to increase Portugal's public integrity infrastructure. As a workable plan, the Government's strategy is lacking, but it may nevertheless be useful as a tool to commit political and public administration institutions

to a clear and ambitious reform agenda. Again, the issue is one of political will.

-A closed-circuit Recovery and Resilience Plan

Portugal's Recovery and Resilience Plan³² (RRP) is the operational component of a national strategy³³ drafted to guide the country's post-pandemic recovery. While most EU countries gathered a diverse panel of economists, social scientists and civil society experts to draft their recovery strategies, in Portugal that task was entrusted by personal invitation of the prime-minister to a single man – António Costa Silva, a former oil executive. Instead of a larger, more inclusive group of experts, one single citizen, who does not occupy any elected office or public administration position, produced a national strategy that was then submitted to a short process of public comments and translated into the RRP.

Regardless of the merits of the vision proposed by Costa Silva (which is not our purpose to evaluate), this process creates a fundamental problem of legitimacy, as the crucial strategic vision for the RRP was not developed and discussed with ample participation from experts and interested parties from all relevant

³² <https://recuperarportugal.gov.pt/wp-content/uploads/2021/09/ficheiro-PRR.pdf>, last accessed 17/09/2021.

³³ <https://www.portugal.gov.pt/pt/gc22/comunicacao/documento?i=visao-estrategica-para-o-plano-de-recuperacao-economica-de-portugal-2020-2030>, last accessed 17/09/2021.

fields, and so does not necessarily encompass the consensus of Portuguese society about the road ahead. Further, this closed-circuit methodology distances citizens, and even managing authorities, from the vision on which the RRP is founded – which increases the risks of mismatching funded projects to the country's overall strategy. Portugal's strategic vision for the future, intelligently as it may have been drafted, may never become more than ink on paper.

Our analysis will not focus on the political priorities and investments of the RRP – not only because the aim is to evaluate the governance structure, but also because the plan submitted by the Government for public discussion lacked proper cost-benefit analysis of the economic rationale for its policy choices and priorities. This is a problem of not just lack of transparency, which limits debate and scrutiny, but also of preparedness: an economic plan lacking clear metrics and expected outcomes risks being little more than a set of aspirations, based not on sound data, but on “wishful thinking”.

The RRP's governance model is based on principles of “simplification, transparency and accountability, participation, centralized management and decentralized implementation, segregation of duties and result-orientation”³⁴. There are four levels of

coordination and execution:

- 1) Political coordination, headed by the prime-minister and involving the ministers of Economy, Foreign Affairs, Presidency of the Council of Ministers, Finance, Planning and Environment;
- 2) Monitoring, which will be done by a National Monitoring Committee made up of representatives of relevant institutions in the fields of business, science and technology, social policies and territorial cohesion policies;
- 3) Technical coordination, entrusted to an ad hoc management authority called “Recuperar Portugal [Recover Portugal]”, created specifically for this purpose and working in partnership with the national development and cohesion agency and the Planning Office of the Ministry of Finance;
- 4) Audit and control office, performed by an ad hoc Audit Committee, presided by an official appointed by the Inspector-General for Finances and including a representative of the Development and Cohesion agency, as well as a third member, co-opted by the first two.

The governance structure seems to establish a useful segregation of functions – political, administrative, audit and monitoring. However, there was no open and transparent process for the selection and appointment of the

³⁴ Recuperar Portugal, *Construindo o futuro – Plano de Recuperação e Resiliência*, Lisbon, Ministério do Planeamento, 2021, p. 26

leadership in the managing authority, or for the selection of the persons and institutions represented in the Monitoring Committee. All of these were, in essence, political appointments made by the Government, which puts in question their independence and ability to perform their duties without prejudice or political pressures.

There are also no specific procedures or guidelines in place to regulate the relationship between the managing authority and local or regional institutions implementing programmes under the Recovery and Resilience Plan. The “Recover Portugal” office will contract the implementation of funds with local authorities, negotiating those arrangements in an ad hoc fashion and with a wide margin for arbitrary decision-making in the selection of local partners and in the drafting of the contractual relationship. Here, too, the risk for political favouritism and deficient oversight is problematic.

Faced with these risks, the National Monitoring Committee will need to keep a close look on the management of EU funds. Unfortunately, the format and composition of this National Monitoring Committee are also worrying. Besides the lack of transparency and participation in the appointment of its members, the Committee is itself designed to include public, private and civil society entities that have a direct interest in having access to EU funding. This means the monitoring body is itself a conflict-of-interest committee – a corporatist governance structure, where

interested parties can gather in a formal setting to decide who gets what share of the pie.

Clearly, the role of civil society and the media will be crucial in monitoring the implementation of the EU funded programmes. In April 2021, the Government launched a transparency website³⁵ with information on the national budget and EU funds. The website makes an effort to communicate in an effective and approachable way, accessible to non-experts. It is also useful that data can be downloaded in open formats – a valuable feature for journalists, academics or civil society activists. However, the information available seems to be limited to brief summaries of funded projects and their beneficiaries. Crucial data about the selection of funded projects is lacking, as are implementation and monitoring reports. This means citizens can know what is getting funded, and for how much, but not how and why the projects were selected, what other candidacies were considered, how the decision was reached and how the projects are progressing. This means the website, in its current format, will not be a strong enough tool to ensure active public monitoring.

The governance model of Portugal’s Recovery and Resilience Plan creates more doubts than assurances. The segregation of functions is questionable, if all actors are chosen by, and report to, the political leadership. There is a

The risk for political favouritism and deficient oversight is problematic.

³⁵ <https://transparencia.gov.pt/>, last accessed 17/09/2021.

confusion between political and administrative functions (an old vice in Portugal) and not only are there no effective mechanisms for managing conflicts of interest, but the configuration of the managing and monitoring authorities institutionalize conflicts of interest up and down the chain. Successful implementation of the programme will demand critical attention from civil society, but the information made available that scrutiny needs to be much improved. Effective oversight, transparency and accountability will have to be strongly reinforced, if the Recovery and Resilience Plan is not to be another missed opportunity.

Brace for impact: a conclusion

The next round of EU funds will create opportunities for growth and prosperity, but also for corruption and mismanagement. The way the EU and each Member-State manage and monitor the funds will determine which opportunities are seized and which are wasted. In Portugal, it's difficult to be optimistic. The country has a poor record of fighting fraud and corruption – particularly political corruption and State capture. The justice system has made improvements over the years, but still suffers from a chronic lack of resources and specialization.

The Public Prosecutor's Office is aware of the risks and has set up a Think Tank dedicated to monitoring corruption and fraud risks related

to EU funds³⁶. Hopefully this body, which includes prosecutors, criminal investigators, academics, professional experts and civil society activists, will be able to provide useful expertise to management authorities, or assist with investigations as needed. Hopefully also, such advice will be welcomed by those tasked with managing and overseeing the recovery programmes.

It's not just about preventing fraud risks – the criminal conduct of providing false information in order to obtain a subsidy or diverting funds for uses other than those contracted. The EU's and national managing authorities' monitoring and information systems should be able to keep this type of criminality fairly in check. The real risk is the political capture of the decision-makers. The danger is that politicized managing authorities will allocate funds not on the merits of projects or their ability to contribute to the social and economic development of the country, but according to party allegiances or for the benefit of politically connected private interests.

This is the graver risk, not only for its huge potential economic impact, but because of the destructive effect it would have on public trust and on the quality of Portuguese democracy. Unfortunately, neither Portugal's track record nor the specific governance systems in place for the Next Generation EU funds offer minimal assurances of integrity – in fact, they

³⁶ <https://thinktank-fundosue.ministeriopublico.pt/>, last accessed 17/09/2021.

facilitate collusion, promiscuity and political interference in the allocation and management of funds provided for by the efforts of EU taxpayers.

This should be a particular concern for the EU institutions. The border between national sovereignty and EU oversight has always been a tense one. But it's clear that Europe is experiencing not just a public health pandemic, but a public trust one – and, more than that, a crisis in the quality of our institutions and democratic systems.

The EU has failed to stop the erosion of public trust and effectively monitor Member-States' commitments and obligations to defend the rule of law and fight corruption³⁷ – we need only point to the short-lived European Commission's Anti-Corruption Report, published in 2014 and immediately discontinued. We must do better. In this context, tying access to Next Generation EU funds to the ability to spend the money under an arbitrary deadline creates an incentive for Member-States to expedite decisions without properly evaluating projects or exercising controls.

It is a licence for waste, mismanagement and corruption.

If the next round of EU funds is to be the dawn of a new era of shared prosperity,

environmental balance and social cohesion among all Member-States, EU institutions need to exercise effective controls over the public resources being invested. Disbursement of funds need to come with conditionalities regarding respect for the rule of law and institutional reforms to improve integrity and ensure an effective fight against corruption. Where political will lacks on national level, it needs to be present on EU level. Complicity with waste or abuse is not an option.

Europe is experiencing not just a public health pandemic, but a public trust one – and, more than that, a crisis in the quality of our institutions and democratic systems.

³⁷ https://ec.europa.eu/home-affairs/what-we-do/policies/organised-crime-human-trafficking/corruption/anti-corruption-report_en, last accessed 17/09/2021.

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- 6) <https://justica.gov.pt>
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SECTION II

A continental point of view



Chapter 4

From the East to the West: New approaches to counteraction of corruption in Georgia, the Republic of Moldova and Ukraine.

Alisa Muzergues

Chapter 5

The Hungarian systemic corruption

György Folk

From the East to the West: New approaches to counteraction of corruption in Georgia, the Republic of Moldova and Ukraine

Alisa Muzergues

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CHAPTER 4

Chapter 4

From the East to the West:

New approaches to counteraction of corruption in Georgia, the Republic of Moldova and Ukraine

Alisa Muzergues

Introduction

Corruption erodes public trust in governments, undermines the rule of law and ultimately delegitimizes the state. To a certain extent corruption exists in all countries around the world, but its spread and negative influence on countries in transition is particularly harmful, as it undermines their democratization process and prevents sustainable development.

This chapter looks into three Eastern European emerging democracies: Georgia, the Republic of Moldova and Ukraine, who celebrate this year the 30th anniversary of their independence after the collapse of communism. While these countries share a Soviet heritage, they also share common European (Euro-Atlantic in the case of Georgia and Ukraine) aspirations and participate in the EU's Eastern Partnership initiative (EaP). Under

this cooperation framework, they have established political association and economic integration with the European Union (EU) through the Association Agreements (AA), which includes a Deep and Comprehensive Free Trade Area (DCFTA). These Agreements became the roadmaps and drivers for reforms not in the least in the field of preventing and combating corruption. Fight against corruption is mentioned several times in the AA text, including in its general principles and in the Justice, Freedom and Security chapter.

This comparative study of diffusion of corruption in three Eastern European countries and their institutional arrangements and methods to combat this malaise is aimed at providing an assessment of the efficiency of different approaches and tools implemented by national governments with the support of international and local civil society actors. The findings of these case-studies can be extrapolated for the design of anti-corruption programs and measures in other countries in transition, but also western democracies, as pro-active policies in these countries allowed them to leapfrog in key areas to provide more transparent processes and services for their citizens.

The State of Corruption

Despite three decades of state-building efforts and millions of euros provided through international development assistance, Eastern

To a certain extent corruption exists in all countries around the world, but its spread and negative influence on countries in transition is particularly harmful, as it undermines their democratization process and prevents sustainable development.

Europe is still perceived as highly corrupt both internationally and by national populations.

However, corruption's scope, diffusion, as well as economic, political and social factors greatly vary between countries, its origins can be traced back to the countries' communist past, erosion of institutions, chaotic privatization amidst lack of rule of law and emergence of oligarchs. In the early 2000s' the World Bank coined a new term "state capture" to characterize the endemic corruption in Eastern Europe and Central Asia during their transition from the Soviet Communist era. The term was used to describe the efforts of private firms, and individuals (also known as oligarchs) to shape and influence the underlying rules of the game (i.e. legislation, laws, rules, and decrees) through private payments to public officials¹.

The simultaneous transition processes of building new political and economic institutions after the collapse of Soviet Union in the midst of a massive redistribution of state assets have created fertile ground for state capture and administrative corruption².

The Washington Consensus, which prescribed privatization as a magic pill for developing countries in their transition to market

economy, didn't take into account the fragile state of institutions, the high-level of corruption inherited from the Soviet "nomenklatura" and the weak civil society without any available instruments to control the process. In Ukraine, an industrial country very rich in natural resources, this led to the monopolization of some of the key sectors of economy, in particular energy and raw materials sectors, thus creating a class of "oligarchs" who after abusing the process of market liberalization, in fact, prevented its completion. According to the Economist Crony-Capitalist Index, conducted in 2016, 85 percent of Ukraine's billionaires' wealth came from crony sectors of the economy dominated by rent-seeking³. While the situation with the origin and scope of oligarchy in Georgia and Moldova is quite different and smaller in scale than in Ukraine, also due to the smaller size of the countries and their respective economies, there are a lot of common features. In order to preserve their influence and prevent reforms which would reduce their monopoly and extraction of resources, oligarchs have also extended their influence on political sector, media and judiciary, thus creating a vicious circle of corruption, supported by extractive institutions.

1 Hellman, Joel S.; Jones, Geraint; Kaufmann, Daniel; Schankerman, Mark, Measuring governance, corruption, and State capture - how firms and bureaucrats shape the business environment in transition economies (English). Policy, Research working paper ; no. WPS 2312 Washington, D.C. : World Bank Group, 2000.

2Anderson, James; Hellman, Joel; Jones, Geraint Paut; Moore, Bill; Muller, Helga W.; Pradhan, Sanjay; Ryterman, Randi Susan; Sutch, M Helen. Anticorruption in transition : a contribution to the policy debate (English). Anticorruption in transition Washington, D.C. : World Bank Group, 2000
<http://documents.worldbank.org/curated/en/825161468029662026/Anticorruption-in-transition-a-contribution-to-the-policy-debate>

3 The Economist, Our Crony Capitalist Index, 7th May 2016, <https://www.economist.com/international/2016/05/07/the-party-winds-down>

This in turn has eroded trust in national governments, providing grounds for political instability, which is even more dangerous considering these countries' insecure neighborhoods and Russia's revanchist ambitions aimed at further destabilization of these countries and increase of its influence in the so-called "near abroad". In its report "Corruption as Statecraft", Transparency International (TI) described how Russia has been using corrupt practices as a foreign policy tool to shape its influence over Ukraine⁴.

The dissatisfaction with elites and state capture has led to public uprisings, notable the 2003 "Rose Revolution" in Georgia and 2004 "Orange Revolution" in Ukraine. While the President of Georgia Mikheil Saakashvili successfully implemented a number of innovative radical reforms, which led to the almost total eradication of petty corruption (more of which in the last chapter) they also led to the political concentration of power in one hand. On the contrary, in Ukraine, the absence of any tangible results in the fight against corruption brought back to power Viktor Yanukovich, the very same person who falsified results in the Presidential elections of 2004, which prompted the "Orange Revolution". Under Yanukovich's Presidency, the level of corruption and lawlessness reached new levels. State capture by his close circle, known as the "family", coupled with the

⁴ Dr Karolina MacLachlan, Transparency International, CORRUPTION AS STATECRAFT: Using Corrupt Practices as Foreign Policy Tools, UK, 2019, p. 3, https://ti-defence.org/wp-content/uploads/2019/11/DSP_CorruptionasStatecraft_251119.pdf

geopolitical turn towards Russia, led to massive "EuroMaidan" protests all-round the country, later known as the Revolution of Dignity, which ousted Yanukovich and his associates, most of whom found an exile in Russia. The exact amount of money alleged to have been stolen by Yanukovich and his circle for four years remains unknown. The estimated damage to the state budget varies from \$40 to \$100 billion⁵. In Moldova, the country's richest oligarch and former leader of the Democratic Party (PDM) Vlad Plahotniuk was involved in the 2014 bank fraud which stripped the country of 12 percent of its GDP. This led to protests and a political "revolution", which brought to power a reformist anti-corruption Party of Action and Solidarity (PAS) founded by President Maia Sandu, who was elected President in 2020. Ms. Sandu and the newly formed government have a historic opportunity to break the vicious circle of corruption in Moldova, but as the experience of Georgia and Ukraine shows, the window of opportunity is quite narrow, and it requires decisive radical reforms from the very beginning.

Public perception of corruption

For a while, Georgia stood out among the three researched countries, however, while the administrative corruption remains low, recent

⁵ EU Sanctions Watch, Viktor Yanukovich, <https://sanctionswatch.cifar.eu/people/ukraine/viktor-yanukovich/>

The window of opportunity is quite narrow, and it requires decisive radical reforms from the very beginning.

years were characterized by democratic backsliding. At the same time, national surveys, conducted in the Republic of Moldova and Ukraine, show that corruption is still regarded as one of the top problems which undermine state development. Thus, according to surveys conducted on behalf of the International Republican Institute in the respective countries, 22% of respondents cited corruption as a top problem in Moldova⁶ and 45% of respondents in Ukraine⁷ named corruption as the most important issue facing the country.

Experts' perception of the extent of corruption in the public sector confirms finding of the public surveys. The TI's Corruption Perception Index 2020 ranks Georgia among the top 50 least corrupt countries out of 180 ranked with scores of 56, while both Moldova and Ukraine find themselves in the second hundred, with scores of 34 and 33, respectively. While the rating is based on perception and not the objective data and is limited in its scope, it provides an opportunity to track changes over time.



6 IRI, With Early Elections Undecided, New IRI Poll Shows Moldovans Are More Optimistic About Future, 2021. <https://www.iri.org/resource/early-elections-undecided-new-iri-poll-shows-moldovans-are-more-optimistic-about-future>

7 IRI, New Ukraine Poll Suggests High Levels of Interest in Upcoming Election, 2019. <https://www.iri.org/resource/new-ukraine-poll-suggests-high-levels-interest-upcoming-election>

Figure 6 The CPI uses a score from 0 to 100 (0 - highly corrupt, 100 - very clean). Due to the change of methodology in 2012, only the CPI results from 2012 onwards can be compared. More on the TI CPI's methodology: <https://www.transparency.org/en/cpi/2020/inde>

At the same time, it is important to assess more comprehensive data, related to the state of the rule of law and the independence of judiciary, as they are crucial in the fight against corruption. World Justice Project Rule of Law Index® measures how the rule of law is experienced and perceived worldwide by public, as well legal practitioners and experts, based on the national survey. Here again, while Georgia has been a clear champion in the room, the trend is reversing now – both Moldova and Ukraine have a positive tendency, Georgia has been losing its performance score.



Figure 7 Country Performance is assessed through 44 indicators organized around 8 themes: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice

Success stories from the East

Despite the gloomy picture in the case of grand corruption, the situation remains very dynamic in all these countries. While undergoing a complex process of reforms, they also became an object of constant progress monitoring by their international partners. Together with the vibrant local civil societies they create a common (so called) “sandwich effect” to pressure governments in implementing crucial reforms, in particular, in the anti-corruption sphere.

The eradication of corruption requires a strong political will from the elites and a whole-of-society approach. At the same time, strategies are needed to curb corruption at different levels, and some of them have proved remarkably effective. Here are the examples of actions and tools which have proved to be successful in curbing corruption on different levels and improving the functioning of the state institutions:

-Establishment of specialized anti-corruption agencies;

This involves the creation of a system of specialized agencies with the capacity and mandate to prevent, investigate and (importantly) prosecute cases of corruption, including the ones which involve high-level officials. The development of such agencies allows the creation of strong independent institutions vetted by local and international

stakeholders with the capacity to conduct effective and efficient anti-corruption activities. In addition, this also sends a strong signal to society about the priority of the government in rooting out corruption. At the same time, the creation of such institutions requires political will, significant financial resources and time.

In the aftermath of the Euromaidan, Ukraine has been working with its international partners on the establishment of an effective anti-corruption infrastructure. This includes such institutions as the National Agency for Corruption Prevention (NACP), the National Anti-Corruption Bureau of Ukraine (NABU), the Specialized Anti-Corruption Prosecutor’s Office (SAPO), and the High Anti-Corruption Court (HACC). Despite strong resistance from the establishment and the ever-present risks of rollback, the advocacy and launch of these institutions represent a success story of the synergy between local civil society actors and the international donor community. According to the public report of the NABU, only in the first six months of 2021, the economic effect of their activities reached record UAH 1.85 billion (approximately 59 million euro). These are funds and assets returned to the state-owned enterprises voluntarily and as a result of lawsuits, confiscated by court, as well as those whose embezzlement was prevented⁸.

⁸ Economic effect of NABU, SAPO work in 2021 first half reaches UAH 1.85 billion, 10th August 2021.
<https://nabu.gov.ua/node/6170>

-Deregulation and de-bureaucratization of public processes;

Bureaucratic red tape, complicated rules and poor public services have been a source of petty corruption and bribing in all post-Soviet states. After coming to power in Georgia, Mikheil Saakashvili and his reformist team announced a war against regulation. They slashed business regulations, eliminating entire agencies that served no legitimate purpose or were unable to implement their mission because of capacity constraints⁹. In the latest edition of the annual World Bank's report on the Ease of Doing Business 2020, Georgia ranks seventh in the world, compared to a ranking of 112th in 2004. In 2011, they opened the first four Public service halls, in Batumi, Kutaisi, Mestia, and Rustavi, - innovative modern hubs with newly hired trained staff, where citizens had access to numerous state services, including through self-service areas for simple operations. All the processes were automated and the procedure was transparent. The idea is to have all the administrative processes centralized in one agency (a one-stop-shop), where all citizens' administrative requests will be treated – thus limiting the number of agents in charge of different tasks which could be traded for a service.

After Euromaidan, Ukraine followed the successful example of Georgia's public sector

9 Fighting corruption in public services : chronicling Georgia's reforms (English). Directions in development : public sector governance Washington, D.C. : World Bank Group. <https://documents1.worldbank.org/curated/en/5118301468256183463/pdf/664490PUB0EPI0065774B09780821394755.pdf>

reform and elimination of petty corruption, by opening similar one-stop-shop Public Service Centers in all the major cities, where citizens are able to receive more than 450 services in one place in an easy and transparent way.

-Prevention of corruption through digitalization of public processes and open government initiatives;

Another parallel approach seeks to provision the transformation of state institutions processes by the digitalization of public processes. This doesn't only make the relations between citizens and the state much more efficient, but it also increases the accountability of state institutions and excludes a human (and thereby corruptible) intermediary in bureaucratic processes. The digitalization of public processes has already a proven track-record of efficiency, including in raising public trust in institutions.

In 2012, a unified digital services portal <http://my.gov.ge/> was launched in Georgia. It provides 700 fully transactional digital services designed for both citizens and businesses from registering a new business and requesting a certificate of ownership for a property or business registration to sending an official correspondence to a government institution (the latter being the most used service). Through the portal, citizens can apply for a service, pay for it, and receive an official electronic document signed with a digital

Bureaucratic red tape, complicated rules and poor public services have been a source of petty corruption and bribing in all post-Soviet states.

signature¹⁰.

In Ukraine, President Zelenskyy made digitalization one of the priority topics of his electoral campaign, with the motto of "State in a smartphone". After winning the elections and subsequently forming a government when his party secured a Parliamentary majority in 2019, he kept on the promise and established a Ministry of Digital Transformation, which was charged with transferring all the bureaucratic services online within the next five years. In 2020, the state officially launched a mobile application "Diia" (which translates as "action" in Ukrainian), designed to provide Ukrainians access to digital documents, including digital driving license and e-passport which has the same status domestically as a paper one. The application provides a set of state services, including registration of a newly born, registration and closure of business, application for licenses, digital green-pass, etc. As of May 2021, one-fourth of the Ukrainians, that is 10 million people, uses "Diia" and its products, which shows high interest in society, especially among the younger population.

-Fighting grand corruption through E-procurement.

Probably one of the most successful examples of the anti-corruption efforts in post-

¹⁰ World Bank, GovTech for Georgia: A Whole of Government Approach as a Key Foundation for the Digital Economy in Georgia. World Bank, Washington, DC. © World Bank, 2021

Euromaidan Ukraine is the launch of the e-procurement platform "ProZorro" (means "transparently" in Ukrainian - <https://prozorro.gov.ua/>), and the elimination of old paper-based transactions, which used to fuel grand corruption. It is a hybrid electronic open source government e-procurement system created as the result of a partnership between business, government and civil society¹¹. The project, which was initially developed by some anti-corruption activists in 2014, grew into a national platform which covers all the country's procurement. The legislation which made obligatory for all contracting entities to use e-procurement for all purchases, above- and below-threshold came into force in August 2016. According to the Prozorro portal, about UAH 600 billion (approximately EUR 20 billion) worth of goods and services are transacted annually with the help of tenders. It is estimated that ProZorro may be responsible for up about 10% of the overall public spending savings due to increased competition and better transparency.

Conclusion

Georgia, Moldova and Ukraine are going through a complex process of transformation in a complicated security environment, fighting internal as well as external destabilizing influence. Nevertheless, as the

¹¹ Prozorro portal <https://prozorro.gov.ua/en>

examples show, these countries and their innovative products have made remarkable progress in fighting against their inner enemies, and their successes in reducing petty corruption and making administrative and tender processes more transparent can serve as an inspiring example for anti-corruption solutions not only to other developing countries, but also western societies.

At the same time, some important lessons on anti-corruption reform programming can be drawn from thirty years of the countries' transformation efforts and international development aid assistance.

Corruption and rule of law are interdependent. Independent judiciary and rule of law are crucial in a fight against corruption. Enhancing judicial capacity and integrity, as well as the development of a judicial code of conduct is essential in this process. Despite the international donor community has been providing strong support to enhance professional capacity of judges in the region via the conduct of tailored judicial training, sharing of best international practices, exchange initiatives and preparing the networks of national judges-trainers, the independence of judiciary still remains a major issue. Therefore, a much spoken "de-oligarchizing" process, which is crucial for counteraction of grand corruption, still remains unfinished.

Strong legislation requires strong institutions to implement it. For many years, international development assistance focused on helping

countries in transition to draft new legislation which would meet international standards without taking into account local realities and peculiarities of the political systems. It turned out that without strong institutions willing and capable to implement the legislation and withstand the pressure from the opposing interest groups, the reform progress remains very limited. There is no one-size-fits-all approach to enhancing rule of law and fighting corruption, therefore it requires a country specific solution developed in cooperation with national independent experts and adapted to national realities.

Local ownership of the reform agenda is crucial for success. As the analysis shows, in order to achieve tangible results in fighting corruption and get societal trust in the reform process, political will of the national elites and strong involvement of civil society are crucial. In order to achieve sustainable change in building institutions, enhancing rule of law and fighting corruption, a comprehensive national approach, which also foresees behavioral and cultural change, is required. Therefore, the raising of public awareness through public campaigns, media and trainings on the governmental efforts as well as available instruments to monitor their accountability, is of great importance for gaining public trust in the reform process.

Corruption and rule of law are interdependent. Independent judiciary and rule of law are crucial in a fight against corruption.

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The Hungarian systemic corruption

György Folk

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CHAPTER 5

Chapter 5

The Hungarian systemic corruption

György Folk

Introduction

Hungary historically was on the border of East and West Europe, and as such switched alignment with neighbouring powers and political systems numerous times.

During the Soviet era, Hungary was part of the Eastern bloc; as a result, the 1989 democratic turn, in Hungary, started to build democracy on a weak civil society, low level of political awareness and lack of proper accountability, where the absence of strong democratic institutions, the lack of traditions for civil control and the lack of well-enforced checks and balances resulted in an unfair wealth redistribution through the privatisation process that blew up in the country¹. Social inequality skyrocketed in the country after the fall of the Iron Curtain, a small minority part of the society – winners of the democratic transition and privatisation spread – thrived, while the majority of the population was left behind. Moreover, starting from the early 1990s,

consecutive governments showed little willingness to address this situation and by avoiding doing so, they contributed to a major disillusionment of parties and political powers around 2006 ca. Undoubtedly, all the above-detailed circumstances contributed to the landslide absolute majority winning of Fidesz in the 2010 parliamentary election². Since then, several experts on the field claim that Hungarian democracy by all measures suffered a major setback: its judges and court system are less free, media freedom and free speech decreased, state bodies and institutions – including major ones like the Curia and the country's competition authority – are in the hands of political loyalists³. All these elements resulted in a major setback in transparency and corruption-tackling.

In this section, several specific traits and concrete experiences of corruption in the country will be discussed in detail; furthermore, it will be explained what are the social, economic, historical and political factors that led to the current highly prevalent corruption levels in Hungary (compared to other European countries)⁴, to the extent that corruption in the country became a “systemic corruption” throughout the last decade. As András Láncki, political scientist and president of the government-financed think tank Századvég Foundation, said in a 2015 interview

In the absence of strong democratic institutions, the lack of traditions for civil control and the lack of well-enforced checks and balances resulted in an unfair wealth redistribution through privatisation in the country.

1 <https://www.e-ir.info/2021/01/12/hungarys-democratic-backsliding-as-a-threat-to-eu-normative-power/>

2 <https://www.princeton.edu/~jmueller/DISSENT-Hungary-JWmueller.pdf>

3 <https://europeanjournalists.org/blog/2019/12/03/new-report-hungary-dismantles-media-freedom-and-pluralism/>

4 <https://freedomhouse.org/country/hungary/freedom-world/2021>

for the government leaning Magyar Idők daily: «What is called corruption is practically Fidesz's main policy»⁵.

Fraud practices and controlled distribution of public funds is a deviant act everywhere. In the case of Hungary, however, they also create an ideology that comes with it, that is, the formation of a national bourgeoisie – as pointed out by Zoltán Nagy, chairman of the board of trustees of Transparency International Hungary, former head of the Hungarian Competition Authority in an interview with the daily paper Népszava⁶.

Indeed, there is a general consensus among moderate political scientists in Hungary around the perception of Fidesz's key political drives. They argue that: Prime Minister Viktor Orbán considers his role as the engine behind yet another elite change⁷; The narrative of Fidesz often focuses on contradictive and incoherent statements, such as following the same steps that Fidesz itself used to criticize (while Fidesz argued that after the Second World War the communists whipped out the previous elite, and the capitalists replaced in the early 1990's the communists, in the last decade a similar process took place in Hungary)⁸;

Fidesz relies on corruption as a key tool to create its own elite after the bitter experiences of the governing party that lost in 2002 against the opposition⁹;

PM Orbán's alleged statement according to which it was not enough for Fidesz to win elections, but necessary to build its own loyal media, economic elite and intellectual strongholds to preserve its government positions¹⁰.

In conclusion, several political scientists stress how it is thanks to this narrative that by today in Hungary the lines are quite blurred between state and private funds, public state and government communication, and the independence of the media and free speech in the country lowered – this, of course, leads to the ultimate weakening of the checks and balances system, thus lowering the people's trust in public institutions and politics in general¹¹.

Others argue – with even more emphasis – that in line with authoritarian leaders like Putin, Orbán successfully “spread the value” of being proud to push national economic interests, even at the price of obvious corruption and systemic misuse of public funds¹². Despite

5 <https://www.magyaridok.hu/belfold/lanczi-andras-viccpartok-szinvonalan-all-az-el-lenzek-243952/>

6 <https://nepszava.hu/tag/nagy-zoltan/>

7 <https://visegradpost.com/en/2018/07/30/say-goodbye-to-the-entire-elite-of-68-the-new-project-of-viktor-orban-full-speech/>

8 <https://www.iri.org/why-and-how-we-won/1/assets/basic-html/page38.html>

9 <https://www.euractiv.com/section/justice-home-affairs/opinion/a-brief-history-of-graft-in-orbans-hungary/>

10 <https://www.indexoncensorship.org/2017/09/viktor-orban-campaign-against-journalists/>

11 https://www.iri.org/sites/default/files/wysiwyg/hungary_poll_presentation.pdf

12 <https://balkaninsight.com/2020/12/08/how-eu-fraud-schemes-work-in-orbans-hungary/>

recalling the need of applying a “Western model” in Central-Eastern countries (for instance: in Germany, German companies build highways, so as in France, French companies do), such oversimplifying and fundamentally contradicting arguments on European democratic values, according to several journalists, eventually serve a basis to undermine political and economic developments in Hungary¹³. In this section, these claims will be examined through the mirror of corruption.

In the first part of the article, we will discuss the social perception of corruption in Hungary and shed light on the mechanisms the government and authorities apply to discourage civil society from uncovering it; in the second part we will focus on a wider regional context, providing a cross-comparison between Hungary, its neighbouring countries, and other EU countries that joined EU in 2004.

Despite the current corruption level in the country, there are a handful of civil society organisations and initiatives that, along with the Hungarian independent press, regularly cover corruption cases – although it is noteworthy to say that their messages and findings only reach a fraction of the Hungarian population¹⁴.

13 <https://www.boell.de/en/2015/06/02/why-hungarian-voters-are-turning-away-from-desz-and-towards-jobbik>; but also <https://www.vox.com/policy-and-politics/2018/9/13/17823488/hungary-democracy-authoritarianism-trump> and <https://www.sciencespo.fr/cepi/fr/content/dossiersducepi/politics-worst-practices-hungary-2010s>

The findings and conclusions of this report on Hungary are based on data, investigations and data leaked by whistle-blowers. Data from Transparency International, from the EU's Public Prosecutor, OLAF, EU internal reports and Freedom House reports are quoted here. For the sake of objectivity, it must be mentioned that besides local civil society groups by now the European Commission and other EU bodies regularly express their corruption concerns regards Hungary for example in the latest rule of law 2021 EU27 report¹⁵. Likewise, the European Anti-Fraud Office (OLAF) in its annual report warned that Hungary was the worst-performing EU member state regarding the misappropriation of EU funds, and nearly 4 per cent of EU-provided funds were misused during its 2015–19 reporting period¹⁶. Furthermore, Hungary in recent years has fallen in rankings of annual reports of Transparency International, Amnesty International, World Press Freedom Index among others in comparison to other CEE EU countries. Hungarian NGOs like the TASZ, Helsinki Bizottság, K-Monitor, CRCB, or publications like the Átlátszó, Direkt 36 or 444.hu are essential to document, uncover and systematically report about the corruption situation in the country concerning both individual public fund misuse cases and larger

Despite the current corruption level in the country, there are a handful of civil society organisations and initiatives that, along with the Hungarian independent press, regularly cover corruption cases.

14 <https://www.theparliamentmagazine.eu/news/article/time-to-address-the-decline-of-independent-media-in-hungary>

15 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report_en#:~:text=The%202021%20Rule%20of%20Law%20Report%2C%20including%20ts%2027%20country,related%20to%20checks%20and%20balances.

16 https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2020_en.pdf

overarching tendencies.

Corruption Kills

Corruption in Hungary is mostly monitored by civil society organisations. Among them, one with the most structured and systemic approach is done by the Corruption Research Center Budapest (CRCB¹⁷). When corruption and political researchers talk about “Corruption Kills” they usually discuss it within an African context¹⁸. However, a recent study¹⁹ by CRCB deals in the context of Hungary with the impact of political (grand) corruption and the measures adopted by the government the pandemic, in order to assess the COVID mortality rate – a study undertaken relying on publicly available EU27 datasets and OECD statistics. They worked with 2 key datasets: the share of the positive tests within all tests that are considered as an indicator of government measures’ impact based on World Bank and Our World in Data datasets. The prior is combined with political corruption datasets from the World Economic Forum Executive Opinion Survey; the latter is used to presenting corruption connected to imports and exports, public utilities, tax payments, awarding of public contracts and licenses, obtaining

17 <http://www.crcb.eu/>

18 <https://www.afdb.org/en/news-and-events/corruption-does-not-invest-in-the-future-it-kills-the-future-akinwumi-adesina-at-world-peace-summit-of-global-leaders-18990>

19 http://www.crcb.eu/wp-content/uploads/2021/06/2021_research_notes_02_210608_.pdf

favourable judicial decisions. CRCB²⁰ explains in the report that corrupt institutions affect pandemic management and, indirectly, somehow impact the severity of COVID through two mechanisms:

- 1) Where political corruption is more widespread and prevalent, governments and state institutions are less able to make rational and effective decisions best serving public interests.
- 2) Secondly, trust in a State infected with corruption is way less and, accordingly, the lack of trust from citizens in authorities, healthcare, and politics results in less compliance to the measures needed in pandemic times.

As an effect, both the State, its bodies, and the citizens, will be less able to respond effectively to the shock the pandemic generated. According to the results of the CRCB “no statistical relationship between the pre-pandemic mortality rate and the level of grand corruption when the impact of other factors (e.g., economic development, age composition, and health status of the population) is considered”.²¹ In sharp contrast, the results of the study do actually indicate a significant positive relationship between the level of political corruption, the rate of positive tests, and the Covid-19 mortality rate (number

20 <http://www.crcb.eu/>

21 <https://www.crcb.eu/?p=2854>

of fatalities per million people). As a conclusion, the CRCB researchers state that in countries with high levels of political corruption and where the government did not take appropriate actions against the pandemic (lack of appropriate testing) the mortality rate was significantly higher. Hungary is clearly such a case, argues the lead author of the study Toth István²².

Perception of corruption

The results of the above-detailed CRCB research show mortality statistics were higher, and in general the effects of COVID in Hungary were more severe while the government response was less effective compared to other EU countries. Still, although people felt on their skin the effects of the pandemic, public pressure to make things better did not rise since early 2020. A fresh report²³ about European Union countries by the Global Corruption Barometer shows that 69 per cent of the Hungarian citizens consider corruption a serious problem. Over half of the responders consider the government responses to corruption as inefficient, and declare they are afraid of possible consequences of corruption.

A key concern of Hungarians is the “everyday corruption” in the form of bribes in the

healthcare system²⁴. In an unexpected turn since January 2021, the Hungarian government criminalized the so-called “hálapénz” (in literal translation “gratefulness money present”) at all levels of the healthcare system. This represents a sort of payment for doctor visits, jumping lines for operations, to nurses, and for better service while hospitalized – only to name a few typical situations. According to recent Transparency International data²⁵, about one fifth of hospitalised Hungarian citizens paid “hálapénz”.

The criminalization of healthcare bribes was advocated for years priorly by international organisations and civil society organisations, but the government – probably fearing that the criminalisation would accelerate the migration of doctors from Hungary – did not intervene on this side²⁶. Finally, after years of unsuccessful efforts made by the healthcare sector workers, in early 2021 the government realized a significant raise in doctors and healthcare professionals’ salaries, and in parallel made the bribes illegal punishable with prison sentences²⁷. Paradoxically, about half of the Hungarian society considers these healthcare bribes acceptable, while 41 per cent of them see them as a natural element of the health care system²⁸.

A key concern of Hungarians is the “everyday corruption” in the form of bribes in the healthcare system.

22 <https://www.crcb.eu/>

23 <https://www.transparency.org/en/publications/gcb-european-union-2021>

24 <https://link.springer.com/article/10.1007/s10551-012-1600-3>

25 <https://www.transparency.org/en/cpi/2020/index/hun#>

26 <https://www.boell.de/en/2018/05/31/vulnerability-and-chaos-hungarian-healthcare-system>

27 <https://hungarytoday.hu/hungary-health-care-professionals-workers-wages/>

COVID-19 and Corruption in Hungary

The COVID-19 and handling the pandemic in the country became a two-edged sword for the government. Last year, between the first Hungarian COVID-19 cases in March and the end of December, 322.000 people were tested positive (a figure often claimed to be low because of low numbers and slow testing) and over 9500 people died. Some claim that the pandemic was used as a tool for the government to justify the introduction of ruling by decree, without parliamentary oversight and any time limitation²⁹. The introduction of the rule by decree was followed in spring 2020 by passing a criminal code amendment that broadened the offence of “scaremongering” to include the intentional spreading of false or disinformation during a state of emergency, punishable by a five-year prison sentence – and this may appear like an attempt to silence critics of the government’s COVID-19 crisis handling. As a result of the rule by decree, transparency NGO K-Monitor, based on a number of public data requests compiled a list³⁰ of over 40 companies to which Foreign Minister Péter Szijjártó granted an exemption from public procurement procedures.

28 <https://www.theguardian.com/world/2021/jun/15/one-in-five-people-in-parts-of-eu-pay-bribes-for-healthcare-survey-finds>

29 <https://www.parlament.hu/irom41/09790/09790.pdf>

30 Szijjártó dönthetett a koronabeszerzések mentesítéséről - K-Blog

Along with this, independent media outlets of Hungary reported a number of high-value state contracts to buy – through freshly setup intermediary shadow companies – Chinese COVID-19 vaccine, dozens of planes full of face masks or the largest value scandal of ventilators³¹. Of latter, the government ordered 16.000 items at a massively overpriced price tag of 280 million euros to the existing 2500 ventilator units priorly available in the country (a price that, according to the media, is as high as ten times the price Italy paid and fifty times the price Germany paid per kilogram³²). In another case related to the acquisition of China-produced Sinopharm COVID-19 vaccines, according to the investigative team Direkt36³³ a middleman company named Syntonite Med Zrt, freshly founded in November 2020, bought for the Hungarian state 5 million doses of vaccines net worth 153 million euros.

Besides these top COVID-related corruption cases, the Hungarian media outlets reported dozens of other misuse cases. According to the estimates³⁴ of K-Monitor all related public procurements worth hundreds of millions of euros were approved by foreign minister Péter Szijjártó since the rule by decree was introduced, including over 100 contracts of

31 https://hvg.hu/itthon/20200626_lelegeztetogep_koronavirus_jarvany_kina_beszerez_furkesz_portyazo

32 <https://www.bmj.com/content/371/bmj.m4153>

33 <https://www.direkt36.hu/csak-egy-bukdacsolo-cege-volt-eddig-annak-az-amator-jeghoki-edzonek-aki-most-feltunt-az-55-milliardos-kinai-vakcinauzlet-mogott/>

34 <https://www.k-monitor.hu/article/20210219-from-exception-to-norm-corruption-and-resistance-in-the-shadow-of-emergency-rule-in-hungary>

the Foreign Ministry signed for itself.

Where is the acceptance of corruption rooted in Hungary?

The country-specific findings of the Global Corruption Barometer³⁵ suggest that the apathy of the Hungarian citizens towards corruption practices is grounded on three main aspects:

- 1) Personal experience. 36 per cent of the respondents in Hungary rely on personal connections when it comes to access to public services or in situations when something needs to be arranged – as high as 41 per cent when it comes to access to healthcare services. Prior figure along with the 17 per cent of responders who paid for services in the last 12 months is still the highest among the EU27 together with Lithuania, Romania and Bulgaria – the latter two head-to-head in corruption with Hungary based on results of the Corruption Perception Index.
- 2) Reluctance and general approach of Hungarian state institutions and bodies when it comes to tackling corruption. Simply speaking, the citizens' lack of trust in State authorities: 53 per cent of those participating in the poll replied that the

government addresses corruption “badly” or “very badly” and only 4 per cent of them consider its efforts “very good”. Another telling figure is that 40 per cent of the Hungarians perceived that though the last decade the level of corruption has risen and only according to 15 per cent it has lowered.

3) A third key-aspect of corruption perception in the country is derived from the paradox that while over half of the responders agree that average citizens could take action against it, 48 per cent think that people should be afraid to report corruption cases and that it could have direct negative consequences on their life if they do so.

Another related incoherency in the perception of corruption of Hungarian citizens worth mentioning is that while 54 per cent of the responders agreed with the statement that instead of the public good and benefit, the governments' politics primarily serve the interest of a few large business actors and oligarchs, 45 per cent agree with the statement that the government transparently handled the COVID-19 pandemic. According to the TI researchers, though, the answer to the above-detailed incoherency lies primarily in growing political polarisation among Hungarian voters.

³⁵ <https://www.transparency.org/en/gcb/eu/european-union-2021>

How did Hungary get there in Corruption?

Political reasons – and the politics recent developments – are among the key reasons why corruption is rooted in the Hungarian system. Since Fidesz came to power in 2010 – for its second mandate after the first in 1998 – the Orbán government (holding the absolute majority in the Hungarian parliament) de facto rewrote of the country's legal system including a new Constitution³⁶, dozens of new cardinal laws, reshaped the mandates of local and regional politics and representation, rewrote the election law and renovated electoral maps, rewrote the media law as well as rules under which civil society organisations can operate and finance themselves. This, just to highlight the most important legal changes. Along with such a legal renovation, most of the previously existing supervision and authority bodies were reshuffled, several mandates extended – for example, in the case of the president of the National Office for Judiciary, the office was extended up to 9 years.

As a result, key bodies like the National Media and Info Communication Authority practically suffered of the indirect influence of the government, thus becoming somehow reluctant to investigate cases the government is uncomfortable with³⁷. Since 2010, international organisations repeatedly

expressed their serious concerns around the independence of the judiciary and of the Curia. Besides, critics were seriously concerned about the selective approach the Prosecutor General, Dr Péter Polt, chooses to investigate – or avoid prosecution towards – corruption and other misuse cases, depending on the political interests of Viktor Orbán and his entourage³⁸.

At the same time, several new laws did represent an obstacle for independent civil society organisations and, on the other hand, mechanisms for the civil society to handpick supported NGOs were enacted³⁹. Likewise, new laws brought to a reformation of the financing of higher education – and this eventually resulted in a major setback in educational and academic freedom. Same happened with churches and religious organisations. Moreover, data show how the news broadcasted in the public television, radio, and news agency were less likely to report about key international news, rather focusing on news concerning the government and its actions⁴⁰. Such potential lack of the media independence is indeed particularly worrisome, considering that the public broadcaster MTVA (itself alone) costs over 30 million euros annually for Hungarian taxpayers⁴¹.

Political reasons and the politics recent developments are among the key reasons why corruption is rooted in the Hungarian system.

³⁶ https://www.constituteproject.org/constitution/Hungary_2011.pdf

³⁷ <https://ipi.media/hungary-press-freedom-threatened-as-orban-handed-new-powers/>

³⁸ <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/hungary/>

³⁹ <https://www.cscce.gov/international-impact/publications/restrictions-civil-society-hungary>; see also <https://www.euractiv.com/section/justice-home-affairs/news/hungarian-civil-society-raises-alarm-over-ngo-law-change/>

⁴⁰ <https://rsf.org/en/hungary>

Since 2010, criticisms from the EU bodies (namely the European Parliament, European Commission, CJEU⁴² and lately growingly from the European Council) are prevalent around the European perception of Hungarian politics. Furthermore, the Council of Europe bodies like the Organization for Security and Co-operation in Europe (OSCE), the Venice Commission, and the European Court of Human Rights, are giving sobering feedback, frequently calling to address non-compliance with democratic values and fundamental rights with little success⁴³. Despite the frequent international criticism, no new legislation has been adopted on the points.

Overall, some political scientists consider how the government's

communication technique focuses on matters concerning personal rights' issues, so that the media mostly focus on such issues rather than reporting about the new laws and regulations that often end up favouring business and political interests of government loyalists, or politicians⁴⁴.

Let here stand only one concrete example of the European Anti-Fraud Office criticism. The 2020 OLAF annual report⁴⁵ warns that Hungary

was the worst-performing⁴⁶ European Union member state when it comes to the misappropriation of EU funds. OLAF concluded 43 probes into Hungarian misuse of fund cases to recommend the European Commission to recover some 3.93 per cent of payments made to Hungary. EU money earmarked for structural and regional funds, independent funds and agriculture are similarly affected. Almost 4 per cent of EU-provided funds were misused during its 2015–19 reporting period. In comparison with all other member states, the recommended rate of recovery of EU money is below one per cent, with the EU average at 0.36 per cent. In its public reaction to the findings of the above detailed OLAF report, the General Prosecutor's Office cynically noted that Hungary prosecutes more OLAF cases than the EU average.

Another clear sign of the Hungarian governments' reluctance when it comes to tackling corruption (and in particular, state corruption) is related to the recently established European Prosecutors Office. Hungary, with a handful of member states – like the populism intrigued Slovenian government –, is refusing to send its national prosecutor and join in the work of the European Prosecutors Office officially. This has beyond a clear political message – that PM Orbán and his government does not want to play by the common rules – despite agreeing to do so priorly when joining the European

41 <https://www.resetdoc.org/story/distortion-propaganda-hungarian-media-interview-sandor-orban/>

42 Court of Justice of the European Union

43 Among others, see [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)015-e)

44 <https://voxeurop.eu/en/viktor-orbans-ten-year-war-on-the-media-in-hungary/>

45 https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2019_en.pdf

46 <https://euobserver.com/justice/149405>

Union and embracing European democratic values. Furthermore, other EU bodies and agencies recently expressed growing concerns⁴⁷. For instance, European Parliament called upon further explanation about the current status of media concentration, media freedom, access to information, freedom of education – fields that to a larger or lesser extent are related to the current corruption situation in the country⁴⁸.

Two concrete OLAF cases uncovered

-Case I

Hungarian independent investigative editorial team Átlátszó identified a Hungarian fraud example highlighted in OLAF's annual report. Átlátszó⁴⁹ claims that "in all likelihood" that telecom companies related to the Kecskemét-based Opticon Group consumed up about half the budget of two rural broadband internet development projects financed by EU funds at the total value of 12 million euros – their own investigation based on the 2018 annual OLAF report concluded. OLAF, as a body without the power to initiate national criminal proceedings, and dependent on cooperation with the national authorities, does not usually publish its findings of individual cases. Still, sometimes

47 <https://www.theguardian.com/world/2021/jul/07/eu-urged-suspend-funds-hungary-breaches-rule-of-law-viktor-orban>

48 <https://www.politico.eu/article/eu-report-to-blast-hungary-over-corruption-media-freedom-concerns/>

49 <https://english.atlatszo.hu/2019/09/10/atlatzo-identified-the-hungarian-fraud-example-highlighted-in-olafs-annual-report/>

cases uncovered by OLAF - which have not been disclosed by the member state authorities or by the parties involved - do not reach the European public sphere. One such case mentioned in the 2018 OLAF report⁵⁰: detailing the organization's fight against complex systems developed by fraudsters, in the subchapter entitled "Shell companies and fake business transactions", on page 16 of the report, this example is given:

"In another case, OLAF received allegations concerning two closely related companies which had received European Regional Development Funds to implement two projects aimed at developing circular broadband networks in rural Hungary. The total value of the two projects, including the ERDF grant and the contributions of the two companies, was approximately EUR 12 million. OLAF investigators discovered that both beneficiaries subcontracted 100% of the works to the same general construction company. This contractor further subcontracted both jobs through a complex chain involving four layers. OLAF established that this complex chain was used to disguise the transfer of EUR 4.9 million back to one of the original beneficiaries in Hungary through a third party in another Member State. In this way, the two beneficiaries created artificial circumstances in order to increase the project value and to receive undue EU funding. OLAF recommended that the European Commission

50 https://ec.europa.eu/anti-fraud/sites/default/files/olaf_report_2018_en.pdf

EU bodies and agencies recently expressed growing concerns.

Directorate-General for Regional and Urban Policy recover the misused amount of roughly EUR 3.6 million. OLAF issued a judicial recommendation to the competent national authorities to initiate criminal proceedings⁵¹.

The OLAF report concluded about that in the above-quoted case, the 12 million euros development was overpriced by 4.9 million euros and EU investigators were able to trace back the transactions through a five-step company network.

Though the report did not name the companies involved, Átlátszó, thanks to the available details – among them the year of investigation, the involvement of ERDF grants and binding the missing dots with the use of government databases – led them to conclude that “there were only two projects worth more than one billion forints under this scheme, supporting the development of local broadband networks operated by Opticon Kft., headquartered in Kecskemét, owned by Béla Körmöczi (HUF 1.04 billion), and a similar development by the affiliated company Optanet Kft. (HUF 1.67 billion)”⁵². Átlátszó reported⁵³ that the two companies merged into Vidékháló Kft. in 2016, under the leadership of previously senior manager position holding lawyer, György Barna

51 <https://english.atlatszo.hu/2019/09/10/atlatszo-identified-the-hungarian-fraud-example-highlighted-in-olafs-annual-report/>

52 <https://english.atlatszo.hu/2019/09/10/atlatszo-identified-the-hungarian-fraud-example-highlighted-in-olafs-annual-report/>

53 <https://english.atlatszo.hu/2019/09/10/atlatszo-identified-the-hungarian-fraud-example-highlighted-in-olafs-annual-report/>

Csontos. The successor company, Vidékháló Kft. since the merge won HUF 2 billion 42 million in European Union subsidies in ten projects. However, in a sudden turn in April 2019, eleven managers of the company were taken into custody accused of financial fraud in a criminal organization by the Criminal Directorate of the National Tax and Customs Authority. Later that year, the Kecskemét District Court ordered the pre-trial detention of the suspects.

-Case II

Another far more widely publicly discussed case is related to István Tiborcz, son-in-law of the prime minister Viktor Orbán. In 2017, an OLAF investigation concluded possible irregularities related to 35 lighting projects co-financed by the Hungarian Environment and Energy Operational Program and the European Cohesion Funds. As an investigative team, Direkt36 reported⁵⁴ that the involved company (Elios at the time) where the alleged irregularities took place, was co-owned by István Tiborcz. Elios and Tiborcz have maintained their positions, claiming that the lightning projects were conducted properly. The scandal became visible outside the Hungarian public sphere when the Hungarian police dropped the case stating the investigation⁵⁵ triggered by the OLAF

54 <https://www.direkt36.hu/en/hat-dolog-amit-a-direkt36-tart-fel-tiborcz-cegerol-es-ami-az-eu-csalas-elleni-hivatalanak-is-gyanus-lett/>

report was closed, with the police finding no evidence that a crime was committed.

“OLAF’s investigation revealed not only serious irregularities in most of the projects but also evidence of conflict of interest,⁵⁶ an OLAF spokesperson told to Politico, adding that “even if no criminal case is opened at the national level, this does not invalidate OLAF’s findings and evidence with regard to financial recovery”. Furthermore, the European Commission opened a case in order to determine whether Hungary will have to pay back funds to the EU or not⁵⁷.

These two detailed cases are giving a good example about how corruption in Hungary is unfortunately not only tolerated, but often taking place with the active support of the government and its decision-makers.

How effective are transparency rules in Hungary and how does enforcement work?

According to the majority of transparency experts, the root of corruption-related issues in Hungary lies in the fact that high-level government corruption is often not properly investigated⁵⁸. Prosecutors are reluctant to

investigate long-standing allegations of the public misuse of development funds disbursed by the EU. The government, despite the severe nature of the problem, has a broad and de-facto (without opposition) control over a broad range of auditing and investigative bodies like the State Audit Office (Állami Számvevőszék-ÁSZ).

A dedicated international body, the Group of States against Corruption (GRECO) in its 2020 report⁵⁹ concluded that Hungary has been complying very poorly with its recommendation on implementing anti-corruption measures with regards to prosecutors, judges and ministers. This argument is underpinned by the Hungarian Transparency International team’s findings, according to which a number of companies with close ties to the government are supported primarily by public funds⁶⁰. Indeed, there is in fact evidence showing how hundreds of billions of Hungarian Forints moved into privately governed Public Foundations (whose board members are supposedly loyal to Orbán Viktor and his government). All this could actually represent an attempt to build a “deep state” and maintain the strong grip in view of the upcoming 2022 parliamentary elections⁶¹.

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55 <https://www.politico.eu/article/hungary-launches-fraud-probe-into-eu-funded-projects-viktor-orban-olaf/>

56 <https://www.politico.eu/article/hungary-launches-fraud-probe-into-eu-funded-projects-viktor-orban-olaf/>

57 https://www.europarl.europa.eu/doceo/document/E-8-2018-005747_EN.html

58 <https://www.refworld.org/docid/55bf50df4.html>

59 <https://rm.coe.int/21st-general-activity-report-greco-2020/1680a2173c>

60 <https://www.transparency.org/en/news/is-hungarys-assault-on-the-rule-of-law-fuelling-corruption>

61 <https://www.bloomberg.com/news/articles/2021-04-27/hungary-to-shift-billions-in-funds-in-move-decried-as-theft>

What rules and law support openness and transparency in Hungary?

In the early 2000's Hungary had one of the most progressive transparency and freedom of information acts in the country, but recent political development practically led to a substantial weakening of such regulations. After such amendments, the currently (inconsistently enforced) Freedom of Information Act contains numerous exemptions, allowing agencies to charge fees for the release of information⁶². In practice, this not only end up preventing most of the citizens and civil society organisations from attempting to request public data, but also prevents (by the imposition of large fee sums) those who still try to get information out of agencies, ministries and public institutions.

Frequently, information is only made available as a result of litigation. In November 2020, the parliament amended the Fundamental Law's definition of what constitutes public funds. A new narrower definition was introduced that can render public oversight of a large amount of public money practically impossible.

In addition, even major legislations and their frequent amendments are rushed through the parliament literally overnight, without giving the public any real chance for consultation⁶³. Important amendments are hidden into so

called "salad bills" or long omnibus-laws, while even the journalists are curtailed from delivering on their investigative work while reporting about parliamentary work in Budapest. To show the extremity of the situation, media is basically banned from most of the parliament corridors, audio and video recordings prohibited surrounding the plenary chamber, entrances, and on-site cafeterias since October 2019⁶⁴.

Along with the COVID-19 rule by decree situation coming into force in April 2020, the government significantly extended the deadline for fulfilling freedom of information requests. Critical public reactions warned that the extension is unconstitutional and hinders effective public policy actions while at the same time lowers public trust in pandemic related government measures seriously reducing liberties and freedom rights of the Hungarian citizens.

Fidesz outside the Parliament

Investigative journalists' findings show how the Prime Minister's son-in-law earned 39 billion HUF (108 million euros) in the last decade, and almost 9 million euros only last year⁶⁵.

Likewise, Lőrincz Mészáros (a childhood friend

62 <http://www.freedominfo.org/regions/europe/hungary/>; see in detail <https://naih.hu/freedom-of-information>

63 <https://freedomhouse.org/country/hungary/freedom-world/2021>

64 https://fom.coe.int/accueil?p_p_id=sojdashboard_WAR_coesoportlet&p_p_lifecycle=0&p_p_col_id=column-3&p_p_col_count=7&sojdashboard_WAR_coesoportlet_alertPK=96138159

65 <https://www.wsj.com/articles/eu-fraud-office-finds-irregularities-in-projects-linked-to-hungarian-leaders-son-in-law-1515744340>

of Prime Minister Orbán, born in the same village Felcsút), a gas pipeline mechanic, possesses a fortune 455 billion HUF (1,266 billion EUR) that grew only last year over half a billion euros⁶⁶. With such growth, Mészáros surpassed in 2021 the richest Hungarian business for the first time since the 1990s, Sándor Csányi head of OTP Bank among other key business interests⁶⁷.

According to a 2021 list of top richest Hungarians published by the Hungarian edition of Forbes⁶⁸, there are a large number of Fidesz affiliated businessmen among the top 100. László Szijj (493 million EUR), Dániel Jellinek (474 million EUR), István Garancsi (177 million EUR), Gábor Emőri (162 million EUR), Benjamin Lakatos (122 million EUR) are just a few names on the Forbes Hungary list associated with the government. A significant proportion of the top 100 richest Hungarian businessmen in the country gained their wealth since Fidesz came to power the second time in 2010. The top rich though are just the tip of the iceberg, among the “less rich” there are people like Ádám Matolcsy, son of the president of the Hungarian National Bank, accused of several dubious State-related contracts⁶⁹, and businessmen like Gellért Jászai, with 72 million euros earning thanks to 4iG Nyrt⁷⁰ – a

company with exceptional “success” in State telecom and info-communication tenders. Furthermore, Jászai successfully bidding for the internet and cable tv company Digi’s takeover. The above-listed examples are in fact just a small fraction of close-to-government wealth generations of which the remains of Hungarian independent media reported through the last decade. What is even more telling is that only a tiny fraction of suspicious enrichments was investigated or led to court cases let alone be imprisonments and, as a consequence, the general public is only aware of a minority fraction of all corruption and misuse cases in the country⁷¹.

Public Foundations as the apex of State corruption

While the beginning of the Fidesz government was marked with scandals (nationalising private pension funds, centralising and giving licences to local loyalists to run the National Tabak Stores, taking out of multinationals the cafeteria voucher system, redistributing gambling and casino licenses, and so on) in the last months the value of the privatised State capital/land/concessions has increased majorly.

66 <https://corpwatchers.eu/en/investigations/know-your-billionaires/god-good-luck-and-viktor-orban-the-story-of-l%C5%91rinc-meszaros?lang=en>

67 <https://english.atlatszo.hu/2019/01/17/the-meszaros-empire-won-public-tenders-worth-e826-million-last-year-93-percent-of-which-came-from-european-union-funds/>

68 <https://forbes.hu/extra/50-leggazdagabb-magyar-2020/1>

69 <https://hungarianspectrum.org/2016/05/02/developments-in-the-hungarian-national-bank-corruption-case/>

70 <https://dailynewshungary.com/microsoft-hungarian-software-businesses-were-the-models-for-corruption/>

71 <https://kafkadesk.org/2019/08/05/oecd-concerned-over-hungarys-lack-of-bribery-investigations-and-prosecutions/> and <https://www.transparency.org/en/blog/gcb-eu-2021-corruption-survey-hungary-polarisation>

In recent months, a growing number of media reports about a huge privatisation wave by the government⁷².

Following the public trusts performing public functions has been codified: thus, the possibility for the boards of trustees of foundations to supervise thousands of billions of Forints of assets and perform important public tasks without substantive control or accountability was created, a structured “outsourcing” of state capital and assets was started. As a result, almost all higher education institutions were outsourced to such public trust foundations⁷³. As well as many state tasks and resources that the current ruling party wants to keep under its own influence, in an attempt to prepare for a possible election loss in 2022. Likewise, thousands of billions of Forints (hundreds of millions of euros) state assets were provided to these foundations completely free of charge, effectively giving control to government loyalists in a harsh attempt to maintain control of many state functions⁷⁴.

One of the most discussed⁷⁵ of such moves is related to the Hungarian campus of Fudan University in China. The government’s partners

72 <https://hungarytoday.hu/orban-govt-place-hungary-motorway-network-private-hands-concession/#:~:text=According%20to%20the%20government's%20plans,of%20a%2035%2Dyear%20concession.&text=The%20concession%20entails%20the%20planning,net-work%20for%20an%20annual%20fee.>

73 <https://www.reuters.com/world/europe/orban-seen-entrenching-right-wing-dominance-through-hungarian-university-reform-2021-04-26/>

74 <https://euobserver.com/democracy/153134>

75 <https://euobserver.com/democracy/151701>

discussed inaccuracies about the location and size of the campus - the involved municipality learned only from the bill about the chosen location of the Fudan University Budapest campus. Although, as a result of the public protests, the Hungarian government announced that the project would not be decided until the 2022 elections and that the law was not amended. It is worth reminding the reader that the area involved would be given free of charge to the public trust fund, which oversees the Fudan project.

More widely speaking about public foundations, the process affects dozens of highly valuable properties, the southern part of the Hajógyári Island hosting the annual Sziget festival, key ports and properties around the Lake Balaton, 280 million euros worth of MOL state oil company stocks, Millenáris park and cultural venues complex in Budapest downtown, the land of Budapest Student City, twenty-one state universities, the Csillebérce Pioneer camp’s huge land and properties, Budapest Thalia Theatre, cultural complex Klebelsberg Kuria in the second district of Budapest, the Makovecz Campus in the city of Piliscsaba, and the list goes on⁷⁶ – K Monitor compiled.

Lastly one of the latest moves⁷⁷ of the government is its attempt to give before the end of 2021 away for 35 years concessions of

76 <https://k.blog.hu/2021/07/17/kekva>

77 <https://www.napi.hu/magyar-vallalatok/fekete-gyor-egy-rogan-kozeli-ceg-kapja-majd-meg-a-gyorsforgalmi-uthalozat-kezeleset.731399.html>

As a result, almost all higher education institutions were outsourced to such public trust foundations.

2000 kilometres of speedways and highways across the country. As a result of this unseen sized “privatisation” wave, the room for manoeuvre of any future governments without Fidesz would be extremely limited hence significantly weakened in its politics and effectiveness.

How did corruption levels change in Hungary compared to other EU countries?

Compared to other countries in the region (especially those joining the EU in 2004), a recent research paper⁷⁸ conducted by the Corruption Research Center Budapest shows how Hungary is far from being in line with countries considered to be as “exemplary country”, as Austria. According to the CRCB paper conclusions, Austria represents an example country that other Member States wish to reach in their corruption levels based on Transparency International measuring methods. One of the key findings of the report is that the best performing Baltic country Estonia already in 2010 has had much lower corruption levels than in any of the Visegrad countries.

Another important and striking result of the paper that is striking is that Hungary was already at the bottom of the line in 2010, the

furthest from the Austrian level. In the last eleven years, all the countries improved their corruption situation and got closer to the Austrian level except for Hungary. Likewise, the level of perceived corruption has also decreased significantly in the other Visegrad countries and Estonia – but not in Hungary.

This concludes in the need to face the sobering reality that over a decade long governance of Fidesz resulted in Hungary becoming one of the most corrupt countries within the European Union, with no clear perspective on how this trend could be turned around in the years to come⁷⁹.

Conclusions

Seven months ahead of the next Hungarian parliamentary elections there is no clear path for the country to exit its self-fulfilling corruption conundrum. Any future opposition government’s chances to tackle the systemic corruption the three consecutive Fidesz governments built will be extremely challenging hence loyalists from key positions are called back. First time since Fidesz passed its election law in 2011, the opposition parties (populist right to left-liberal) are now on the path to run joint candidates – giving real chance for an election victory of an opposition

⁷⁸ <https://g7.hu/adat/20210318/egyedulallo-a-ner-korrupcios-utja-kozep-europaban/>

⁷⁹ <https://tradingeconomics.com/hungary/corruption-rank>; see also <https://euob-server.com/economic/150758>

coalition. Still, in the absence of an absolute majority, the chances of a democratic reordering are slim. A number of key institutions (among them the Curia, the head of the Chief Prosecutor's office, the head of the National Media and Info communication Authority and the head of the Hungarian Competition Authority) need to be led by independent professionals to give teeth the checks and balances in the country.

Furthermore, civil society organisations are in bad need of independent financing from the recent years' "applied model" in which typically parallel "pro-government" civil society organisations and financing structures were set up and distributed large sums resulting in the drying up of financial sources for social services and cultural institutions.

Hungarian public media services have to be deliberated from their current overwhelmingly propaganda mode driven by self-censorship. Likewise, government spending on the media advertisement market has to be redistributed since currently all this spending are directed into public publishers and broadcasters loyal to the government.

In case the above-detailed changes come to the realisation after a possible government change, the newly elected MPs have to rebuild trust in democratic institutions through a thorough and just investigation of corruption cases that surfaced in the recent years but never properly investigated by prosecutors and brought to impartial courts. Likewise, the

politically motivated "privatisation" through the above detailed public foundations has to be investigated by independent courts.

Still, in the absence of an absolute majority, the chances of a democratic reordering are slim.

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- 66) <https://english.atlatszo.hu/2019/01/17/the-meszaros-empire-won-public-tenders-worth-e826-million-last-year-93-percent-of-which-came-from-european-union-funds/>
- 67) <https://forbes.hu/extra/50-leggazdagabb-magyar-2020/1>
- 68) <https://hungarianspectrum.org/2016/05/02/developments-in-the-hungarian-national-bank-corruption-case/>
- 69) <https://dailynewshungary.com/microsoft-hungarian-software-businesses-were-the-models-for-corruption/>
- 70) <https://kafkadesk.org/2019/08/05/oecd-concerned-over-hungarys-lack-of-bribery-investigations-and-prosecutions/> and <https://www.transparency.org/en/blog/gcb-eu-2021-corruption-survey-hungary-polarisation>
- 71) <https://hungarytoday.hu/orban-govt-place-hungary-motorway-network-private-hands-concession/#:~:text=According%20to%20the%20government's%20plans,of%20a%2035%2Dyear%20concession.&text=The%20concession%20entails%20the%20planning,network%20for%20an%20annual%20fee.>
- 72) <https://www.reuters.com/world/europe/orban-seen-entrenching-right-wing-dominance-through-hungarian-university-reform-2021-04-26/>
- 73) <https://euobserver.com/democracy/153134>
- 74) <https://euobserver.com/democracy/151701>
- 75) <https://k.blog.hu/2021/07/17/kekva>
- 76) <https://www.napi.hu/magyar-vallalatok/fekete-gyor-egy-rogan-kozeli-ceg-kapja-majd-meg-a-gyorsforgalmi-uthalozat-kezeleset.731399.html>
- 77) <https://g7.hu/adat/20210318/egyedulallo-a-ner-korrupcios-utja-kozep-europaban/>
- 78) <https://tradingeconomics.com/hungary/corruption-rank>; see also <https://euobserver.com/economic/150758>

SECTION III

The northern approach



Chapter 6

Maan tapa ("When in Rome")

Fredrik G. Malmberg

Maan tapa ("When in Rome")

Fredrik G. Malmberg

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CHAPTER 6

Chapter 6

Maan tapa ("When in Rome")

Fredrik G. Malmberg

Introduction

May 27th, 2021, just a few days before work began on this chapter, the Government of Sanna Marin approved Finland's first national anti-corruption strategy. According to Minister of Justice, Anna-Maja Henriksson, "the aim of the strategy is to intensify the fight against corruption in the short term, and in the long term to build a society where corruption has no chance of success".¹ In the Government's press release, it is also stated that this strategy, which was prepared by an anti-corruption cooperation network, builds on international recommendations aimed at Finland concerning the intensification of anti-corruption work.

But is this strategy really needed? Finland (along with the rest of the Nordic countries) is after all world famous for its low levels of corruption and "clean politics",² strong rule of

law, and high-quality public services, despite its (in a global perspective) very large and intrusive public sectors, which would in theory present ample opportunities for rent seeking.³ In Transparency International's (TI) renowned Corruption Perceptions Index (CPI), for instance, Finland's constantly ranked among the top six least corrupt countries since 1995, when they began compiling data on this topic (see Table 1).⁴ Moreover, according to TI's other famous corruption indicator, the Global Corruption Barometer (GCB), only around one percent of public service users in Finland claim to have paid a bribe in the past year.⁵ However, if you ask the Finns themselves about their direct or indirect experiences of corruption without specifying its exact form or nature, around 18 percent claim to have encountered it at work or in their spare time.⁶ Still, one must conclude that petty, bureaucratic, or "street-level" corruption, especially within the public sector, is very rare in these kinds of contexts. Likewise, it would seem like Finland's liberal democratic political system is continuing to perform in a very stable and otherwise well-functioning manner, although disappointment with its performance and politics in general

That Finland does extremely well in international comparisons does not necessarily mean that corruption is not a problem here. However, what it might indicate is that corruption is a different kind of problem here.

3 G.S. Becker, 'If You Want To Cut Corruption, Cut Government', Bloomberg, 11 December 1995, <https://www.bloomberg.com/news/articles/1995-12-10/if-you-want-to-cut-corruption-cut-government> (accessed 31 July 2020).

4 Transparency International, Corruption Perceptions Index [website], <https://www.transparency.org/en/cpi/2020/index/nzl#>, (accessed 31 May 2021).

5 Transparency International, Global Corruption Barometer 2021, Finland [website], <https://www.transparency.org/en/gcb/eu/european-union-2021/results/fin>, (accessed 8 July 2021).

6 V. Muttilainen, J. Rauta, and M. Vuorensyrjä, 'Kansalaisten arvioita korruptiosta vuoden 2020 Poliisibarometrissa', in V. Muttilainen, N. Ollus, and A. Salminen (eds.), *Empiirisiä katsouksia korruption vaaran vyöhykkeille* [Empirical reviews of the risk zones of corruption], Publications of the Government's analysis, assessment and research activities 2020:46, Prime Minister's Office, 2020, p. 59.

1 Ministry of Justice, Comprehensive and long-term approach to combat corruption [press release], 27 May 2021, <https://oikeusministerio.fi/en/-/comprehensive-and-long-term-approach-to-combat-corruption>, (accessed 27 May 2021).

2 D.C. Zook, 'The Curious Case of Finland's Clean Politics', *Journal of Democracy*, vol. 20, no. 1, 2009, pp. 157-168.

has recently been somewhat on the rise, like in so many other affluent Western democracies.⁷

CPI	2000	2005	2010	2015	2020
Denmark	2(9.8)	4(9.5)	1(9.3)	1(91)	1(88)
Iceland	6(9.1)	1(9.7)	11(8.5)	13(79)	17(75)
Norway	6(9.1)	8(8.9)	10(8.6)	5(88)	7(84)
Sweden	3(9.4)	6(9.2)	4(9.2)	4(89)	3(85)
Finland	1(10)	2(9.6)	4(9.2)	3(90)	3(85)

Table 5 CPI-rankings and -scores (in the parentheses) for the Nordic countries 2000-2020

Source: Transparency International

The jury is therefore still out on the question if Finland truly is in need of a national anti-corruption strategy and more extensive (and costly) measures against corruption. That Finland does extremely well in international comparisons does not necessarily mean that corruption is not a problem here. However, what it might indicate is that corruption is a different kind of problem here. Some scholars argue that there is a special “Nordic flavor” of corruption, which takes more discreet forms characterized by (often perfectly legal, but unethical) violations of the norm of impartiality.⁸ Furthermore, many have pointed

out that the international ratings, which are often mainly based on the assessments of foreign businesspersons and experts,⁹ also depend on the reputation of a specific country, and that there is therefore the risk that a good reputation continues to feed the “illusion” of that corruption is not a problem in Finland.¹⁰

Before diving deeper into the essence of Nordic style corruption, we first need to acquire a better understanding of the slippery concept of corruption. In essence, one can describe the phenomenon of corruption as a social construct. Different groups (e.g., societies, elites, non-elites, etc.) across different eras understand corruption in different ways, although often with the same core meaning.¹¹ While some associate corruption almost exclusively with bribery within the public sector, others prefer very broad definitions that cover a wide array of practices that seem to violate key ethical values in some way, regardless of their formal legal status or the sector where they take place. The following three commonly agreed values viewed as central to good governance are often said to be violated by corrupt practices: [1] Integrity (e.g., honesty, impartiality, independence), [2] openness (e.g., transparency, access to information, fair

7 R.J. Dalton, *Democratic Challenges, Democratic Choices: The Erosion in Political Support in Advanced Industrial Democracies*, Oxford: Oxford University Press, 2004.

8 G.Ó. Erlingsson and G. Kristinsson, ‘All that glitters... a closer look at the Nordic “exception”’, in A. Mungiu-Pippidi and P.M. Heywood (eds.) *A Research Agenda for Studies of Corruption*, Edward Elgar Publishing, 2020, p. 92.

9 S. Andersson and P.M. Heywood, ‘The Politics of Perception: Use and Abuse of Transparency International’s Approach to Measuring Corruption’, *Political Studies*, vol. 57, no. 4, 2009, pp. 746-767.

10 A. Salminen, ‘Control of Corruption: The Case of Finland’, in J.S.T. Quah (ed.), *Different Paths to Curbing Corruption: Lessons from Denmark, Finland, Hong Kong, New Zealand and Singapore*, First edition, Emerald, 2013, p. 60.

11 B. Rothstein and A. Varraich, *Making Sense of Corruption*, Cambridge University Press, 2017.

competition), and [3] accountability (political, financial, managerial, etc.).¹² Here, I have chosen to utilize Michael Johnston's definition of corruption as 'the abuse of public roles or resources for private benefit',¹³ which naturally leaves open to debate the exact meanings of "abuse" and "private benefit". In practice, however, it can be extremely difficult to know exactly where to draw the line between "mere" malfeasance and corruption. Hence, it would perhaps make more sense to speak of "bad governance" as a whole rather than merely corruption.

In order to get a better perspective of the kind of corruption challenges that Finland faces today, this chapter begins by summarizing the findings of historical studies that have analyzed how the Nordic countries managed to establish a firm rule of law and get corruption and maladministration to such a large degree under control. Here, the chapter also examines the historical and institutional characteristics (e.g., national crises, sequencing, professionalization, and the welfare ethos) that several scholars posit to be the underlying explanations for the reductions in the prevalence of corruption during the modern period. Thereafter, it focuses on describing what characterizes corruption in Finland today. What are the "typical" manifestations of

corruption in Finnish society and what are the ostensible weaknesses in corruption control? After we have acquired a sense of the current situation in Finland, and how we got to this point, the chapter discusses the proposed measures that could strengthen corruption control in Finland. What could be done about the current anti-corruption blind spots and weaknesses? In the concluding section, key points from the preceding sections are summarized.

Getting to Finland

In the good governance and international development literature, you often read the notion of "getting to Denmark", i.e., musings on how the Nordic countries got where they are today and what lessons other (often developing) countries could learn from this process.¹⁴ Existing historical evidence suggests that corruption was relatively common in the Nordic countries up until the latter half of the 19th century. For instance it has been shown that the business community, particularly the so-called "timber industry bourgeois", made attempts to influence government decision-making processes by giving gifts and buying government posts in 18th century Finland, which was then still a part of Sweden.¹⁵ The

It would perhaps make more sense to speak of "bad governance" as a whole rather than merely corruption.

12 A. Salminen and V. Mäntysalo, 'Epäeettisestä tuomittavaan: korruptio ja hyvä veli-verkostot Suomessa', Vaasan Yliopiston julkaisuja, selvityksiä ja raportteja 182, University of Vaasa, 2013, pp. 10-11.

13 M. Johnston, *Corruption, Contention, and Reform: The Power of Deep Democratization*, Cambridge University Press, 2014, p. 24.

14 A. Mungiu-Pippidi, *The Quest for Good Governance: How Societies Develop Control of Corruption*, Cambridge University Press, 2015, p. 72.

15 M. Kuisma, *Kauppasahojen perustaminen Suomessa 1700-luvulla: Tutkimus päätöksentekoprosessista (Establishment of Trade Saws in Finland in the 18th century: A study of the decisionmaking process)*, Ph.D. diss., Helsinki, Societas Scientiarum Fennica, 1983, p. 150.

governance regime was characterized by what Alina Mungiu-Pippidi calls “particularism”, i.e., that the treatment of individuals differs according to certain ties or criteria (e.g., kinship, patron-client relations).¹⁶ In other words, there was no real separation between the public and private spheres.

Towards the end of the 19th century, however, the Nordic countries (except perhaps Iceland) somehow managed to transition from a particularistic governance order to one based on “ethical universalism”, or equal treatment to everyone no matter which group they belonged to.¹⁷ According to Bo Rothstein, this happened through what he calls the “big bang” approach to corruption control, which refers to a long line of government reforms that were carried out in Sweden in a relatively short period between 1860 and 1865.¹⁸ Similar reforms were also implemented in Denmark around the same period.¹⁹ The trigger for this change is argued to have been traumatic major losses in wars that put national sovereignty at risk and led to economic crises.²⁰ Sweden for instance lost its eastern half (Finland) in the war against Russia in 1808-9, which sparked the “Revolution of 1809” and gave rise to a new constitutional order.²¹ The

military defeats were seen at least partly as a result of the old patronage-based systems that produced incompetent officers, and therefore needed to be reformed in order to build a more professional officer corps.

However, some point out that this process towards a greater corruption control already began much earlier with the creation of the absolute monarchies in Denmark and, albeit to a lesser degree, Sweden in the late 17th century.²² Power was centralized in the capital and the king gradually replaced the traditional aristocracy in the crown administration with bourgeois bureaucrats who swore loyalty directly to the king and were reliant on the income that their public office generated. This process led to an interdependence between the king and his civil servants, which in turn spurred the king to take measures to increase the efficiency of his tax collectors and other officials. Later on, ideas of Enlightenment also contributed to inspiring the king to create a relatively well-organized bureaucratic state based on more egalitarian norms. Following the previously discussed hard military losses and economic crises, absolute rule was abolished in both Denmark and Sweden, and constitutional monarchy combined with a representative-elected government took its place. In the words of Mungiu-Pippidi, “corruption control thus evolved through a succession of equilibria which took more than a century, as the modernization of the state by

16 Mungiu-Pippidi, *The Quest for Good Governance*, p. 31.

17 Mungiu-Pippidi, *The Quest for Good Governance*, p. 30.

18 B. Rothstein, ‘Anti-corruption: The indirect ‘big bang’ approach’, *Review of international political economy: RIPE*, vol. 18, no. 2, 2011, pp. 228-250.

19 M. Frisk Jensen, *Korruption og embedsetik: Danske embedsmænds korruption i perioden 1800 til 1886*, Odense, Syddansk Universitetsforlag, 2013.

20 J. Teorell and B. Rothstein, ‘Getting to Sweden, Part I: War and Malfeasance, 1720–1850’, *Scandinavian political studies*, vol. 38, no. 3, 2013, pp. 217-237.

21 Teorell and Rothstein, ‘Getting to Sweden, Part I’, p. 233.

22 Mungiu-Pippidi, *The Quest for Good Governance*, p. 87.

an enlightened despot was followed by a gradual transition to a more inclusive political society'.²³

Progress in Finland was very similar to the one in Sweden up until 1809 when it became a Grand Duchy of Russia.²⁴ In this new era of Finnish history (1809-1917), Finland's politico-administrative system was strongly influenced by its complicated relationship to Russia. The extensive autonomy that Finland received on the premise of loyalty to the Russian Emperor Tsar Alexander favored the emergence of a civil servant state where bureaucrats constituted a central elite group. Furthermore, the Tsar also promised to upkeep the prevailing laws in Finland that originated from the time of the Swedish rule.²⁵ Indeed, despite, or perhaps at least partly because of, attempts at "Russification" of the Finnish government system, after independence, in 1917, the new Finnish constitution from 1919 was based on the old Swedish one and the fundamental laws from the end of the 18th century. Both the experiences from Russification and the civil war of 1918 are said to have contributed to a demand for a strict regulation of the public administration and a strong rule of law.²⁶

Hence, the common denominator of Finland,

Sweden, Denmark, and Norway, which separated from Denmark in 1814 and entered a union with Sweden, was the existence of a well-established system of rule of law and a professional, meritocratic, and autonomous Weberian bureaucracy prior to the emergence of democracy and mass politics. Iceland, meanwhile (while similar to the rest of the Nordic countries in other regards) lacked a strong and autonomous bureaucracy because the servants of the Danish Crown did the administration of the country until the establishment of Home Rule in 1904.²⁷ This is claimed to have resulted in that Iceland became the sole Nordic country to acquire a clientelism-based party system, which is in turn argued to have contributed to the corruption that surfaced in Iceland after the financial crash in 2008 (see Table 1). Clientelistic parties can rely on their access to public sector jobs and other goods to "buy" political support, resulting in a more particularistic political culture that is conducive to various forms of corruption. However, this avenue is blocked if there is an autonomous bureaucracy already in place before mass mobilization, which means that the parties must rely on promising policy changes and public goods, such as social benefits, rather than specific "club goods" in return for popular support.

Another key piece in the puzzle to explaining the low levels of corruption in Finland is

The parties must rely on promising policy changes and public goods, such as social benefits, rather than specific "club goods" in return for popular support.

23 Mungiu-Pippidi, *The Quest for Good Governance*, p. 87.

24 Erlingsson and Kristinsson, 'All that glitters... a closer look at the Nordic 'exception'', p. 94

25 A. Blom, *Maan tapa murroksessa, Kunnallissalan kehittämissäätiön Polemia-sarjan julkaisu nro 111*, Keuruu, Otavan Kirjapaino Oy, 2019, p. 1

26 P. Tiihonen, 'Good Governance and Corruption in Finland', in S. Tiihonen (ed.), *The History of Corruption in Central Government: L'histoire De La Corruption Au Niveau Du Pouvoir Central*, Amsterdam, IOS Press, Ohmsha, 2003, pp. 105-106.

27 Tiihonen, 'Good Governance and Corruption in Finland', p. 95.

argued to be the distinctive Finnish administrative culture that builds on Russian and Scandinavian traditions.²⁸ These traditions include the legalistic tradition and the Scandinavian welfare state tradition. The former is recognized by the fact that lawyers and legal professions have had dominating roles in the civil service and the Finnish political system, while the latter is characterized by an extensive state and commonly shared values that emphasize compassion and uniformity. Finland is described as a country where the central and local governments are traditionally governed more by law than by any ethical codes. Finnish administrative culture is said to have a tendency to think that legal is unequivocally the same as ethical, which clearly is not always the case.²⁹ The mix of legalism and a strong welfare state ethos means in practice that there is an 'emphasis on the values of moderation, personal constraints, and the common good'.³⁰ A good example of this is the rather modest lifestyles of politicians in the Nordic countries.³¹ Finns generally tend to show an extremely low tolerance of unethical conduct³² and any perceived abuse or waste of public resources among politicians and civil servants, as demonstrated by the recent

"Breakfastgate"-scandal, which has been characterized as "a storm in a glass of water" when viewed from abroad.³³ Another possible contributing factor to this uncompromising attitude towards malfeasance is the high level of visible taxation in the Nordic countries, which stimulates a sense of "ownership" of the state and its resources, which in turn increases the demand for accountability.³⁴

The large universalistic welfare state is furthermore argued to be a key factor in explaining the low levels of inequality and high levels of social trust that can be found in the Nordic countries today, factors that are conducive to political stability and corruption control.^{35 36} Without a relatively uncorrupt and impartial bureaucracy already in place, however, it would probably have been much more challenging, if not impossible, to build this welfare state in the first place, since fewer would have been willing to part with the resources needed to maintain this apparatus in the form of high taxes to a seemingly corrupt and inefficient bureaucracy. Towards the end of the 20th century, however, the Nordic countries faced a number of complex challenges, not least related to the high costs

28 A. Salminen, O-P. Viinamäki, and R. Ikola-Norrbacka, 'The control of corruption in Finland', *Administratie si Management Public*, Bucharest Iss. 9, 2007, p. 85.

29 A. Salminen, *Rehellisyys Maan Perii: Tutkimus Hyvästä Hallinnosta Ja Korruption Torjunnasta*, Helsinki, Edita, 2018, p. 168.

30 J.S.T. Quah, 'Different paths to curbing corruption: A comparative analysis', in J.S.T. Quah (ed.), *Different Paths to Curbing Corruption: Lessons from Denmark, Finland, Hong Kong, New Zealand and Singapore*, First edition, Emerald, 2013, pp. 243.

31 Quah, 'Different paths to curbing corruption: A comparative analysis', p. 247.

32 Zook, 'The Curious Case of Finland's Clean Politics', pp. 163-164

33 A-F. Hivert, 'En Finlande, les petits déjeuners de la première ministre Sanna Marin deviennent une affaire politique', *Le Monde*, 31 May 2021, https://www.lemonde.fr/international/article/2021/05/31/le-scandale-des-petits-dejeuners-de-la-premiere-ministre-secoue-la-finlande_6082231_3210.html (accessed 8 July 2021).

34 A. Persson and B. Rothstein, 'It's My Money: Why Big Government May Be Good Government', *Comparative Politics*, vol. 47, no. 2, 2015, pp. 231-249.

35 S. Kumlin and B. Rothstein, 'Making and Breaking Social Capital: The Impact of Welfare-State Institutions', *Comparative Political Studies*, vol. 38, no. 4, 2005, pp. 339-365.

36 E.M. Uslaner, *Corruption, Inequality, and the Rule of Law: The Bulging Pocket Makes the Easy Life*, Cambridge University Press, 2008.

of running such an enormous universal welfare state.³⁷ The governments in these countries hence had to look to alternative and more cost-efficient solutions in the form of a greater involvement of the private and third sectors in the production and delivery of public services and goods such as healthcare, in addition to the adoption of market-inspired techniques and mechanisms in public organizations.³⁸

While the public sector still dominates in many areas of Finnish society, market values such as profitability, risk-taking, managerialism, and contractualism 'have gradually been replacing the welfare state values [...and] become part of the national agenda'.³⁹ Increasingly blurred boundaries between the different sectors represent a clear challenge for official accountability as market values may come to displace values of public interest and citizenship.⁴⁰ Along with this process comes new potential problems and risks related to such areas as corruption and loss of democratic control. Researchers in Sweden for instance raise the potential accountability issues involved in the growing number of Municipally Owned Enterprises (MOEs) where politicians often have dual roles as both principals (representatives for the citizens) and agents (board members of the MOEs).⁴¹

37 Erlingsson and Kristinsson, 'All that glitters... a closer look at the Nordic "exception"', p. 94.

37 Erlingsson and Kristinsson, 'All that glitters... a closer look at the Nordic "exception"', p. 96.

38 The so-called "New Public Management" (NPM) philosophy.

39 Salminen, 'Control of Corruption: The Case of Finland', p. 60.

40 S. Andersson and F. Anechiarico, *Corruption and Corruption Control: Democracy in the Balance*, Abingdon, Oxon, New York, Routledge, 2019, p. 34.

41 A. Bergh et al., 'Municipally Owned Enterprises as Danger Zones for Corruption? How

Likewise, they argue that the conversion or transfer of public activities into independent subsidiary companies or private hands entails less transparency and public control, which might also engender new danger zones for corruption.^{42 43}

Besides being a country with a democratic political system, a professional and independent public administration, a competitive market economy, and an extensive welfare sector, present-day Finland is furthermore characterized by a strong local self-government.⁴⁴ This means that the municipalities have traditionally been responsible for organizing the majority of the welfare services. The increasing use and complexity of public-private partnerships (PPP) in small local economies may hence increase the risk of dual roles and conflicts of interest in formal decision-making.⁴⁵

Corruption in a Finnish context

As we saw in the introduction, Finland has gained a strong reputation as one of the least corrupt countries in the world. This reputation is further supported by the fact that cases of

Politicians Having Feet in Two Camps May Undermine Conditions for Accountability', *Public Integrity*, vol. 21, no. 3, 2019, pp. 320-352.

42 G.O. Erlingsson et al., 'Public Corruption in Swedish Municipalities - Trouble Looming on the Horizon?', *Local Government Studies*, vol. 34, no. 5, 2008, p. 605.

43 A. Bergh et al., 'What happens when municipalities run corporations? Empirical evidence from 290 Swedish municipalities', *Local Government Studies*, 2021, p. 1-24.

44 Salminen, 'Control of Corruption: The Case of Finland', p. 58.

45 A. Salminen et al., 'Ethical Codes in Local Government: the Problem of Gifting. Views of Finnish councillors', *Scandinavian Journal of Public Administration*, vol. 20, no. 1, 2016, p. 4.

bribery, the classic form of corruption, are relatively rare in Finnish criminal courts.⁴⁶ Bribery involving street-level civil servants such as police officers, doctors, teachers, health inspectors, and other public administrators is especially rare in Finland.

If we ask the Finnish citizens, however, almost 60 percent believe that corruption is very or quite common in business and among political decision-makers on the national level, while a quarter believes the same when asked about the country in general.⁴⁷ Likewise, domestic experts in public administration and other related fields believe that the corruption cases that have surfaced in the media and been put to trial are only the tip of the iceberg when it comes to the actual occurrence of corruption in Finland.⁴⁸ But what does corruption actually look like in modern day Finland? This section will begin by very briefly looking at some high-profile cases from recent years of what Heidenheimer calls “black corruption”, plus a few smaller cases of malfeasance, before turning to the more elusive and sophisticated kinds of “gray corruption”.⁴⁹ The chosen cases are not intended to be representative of all corruption cases in modern day Finland,

rather, they are chosen more for their impact on recent public discourse concerning issues related to corruption and for their value as “typical” examples of the kinds of challenges that Finland is currently facing.

Generally, Finland cannot be said to be a pioneer in acting against corruption, although the country has been quite active in ratifying international and European anti-corruption conventions.⁵⁰ Kimpimäki argues that this is at least partly due to an unwillingness to enact certain types of anti-corruption legislation because the legislator does not view corruption as a major domestic problem and because of a fear of making legitimate influence in the democratic process more difficult. Recently, however, Finland has received some criticisms from the OECD concerning bribery cases involving foreign officials.⁵¹ The OECDs Working Group on Bribery raised concern regarding the fact that all five court proceedings led to the acquittal of all parties for foreign bribery and no further enforcement efforts by Finland. Similar cases of corruption connected to international business or “exported corruption” have also been observed in the other Nordic countries, a fact that has shocked the whole region due to its image as a “no-bribe zone”.⁵²

Generally, Finland cannot be said to be a pioneer in acting against corruption.

46 M. Kimpimäki, ‘Corruption in a Non-corrupt Country: What Does Corruption Look like in Finland?’, *International Journal of Comparative and Applied Criminal Justice*, vol. 42, no. 2-3, 2018, pp. 233-252.

47 Kunnallissalan kehittämissäätiö, ‘Kansalaisten arvio: liike-elämä ja valtakunnan tason poliittiset eniten alttiita korruptiolla – tuomioistuimet, veroviranomaiset ja poliisi vähiten’, 1 February 2020, <https://kaks.fi/uutiset/kansalaisten-arvio-liike-elama-ja-valtakunnan-tason-poliittiset-eniten-alttiita-korruptiolla-tuomioistuimet-veroviranomaiset-ja-poliisi-vahiten/>, (accessed 8 July 2021).

48 Salminen and Mäntysalo, ‘Epäeettisestä tuomittavaan’, p. 48.

49 A. Heidenheimer, *Political Corruption: Readings in Comparative Analysis*, New York, Holt, 1970.

50 Kimpimäki, ‘Corruption in a Non-corrupt Country: What Does Corruption Look like in Finland?’, p. 249.

51 OECD, ‘Implementing the OECD Anti-Bribery Convention Phase 4: Two-Year Follow-Up Report: Finland’, OECD Working Group on Bribery, <https://www.oecd.org/corruption/Finland-phase-4-follow-up-report-ENG.pdf>, (accessed 26 May 2021).

52 Kimpimäki, ‘Corruption in a Non-corrupt Country: What Does Corruption Look like in Finland?’, pp. 240-243.

According to experts, danger zones in Finland include the construction sector, public procurement and contracting, community planning, and politics.⁵³ Various non-profit companies and associations used to transfer public funds are also often singled out as particular risk zones.⁵⁴ While instances of both petty (street-level) and grand corruption in the form of bribery and embezzlement are relatively rare in Finland, there are still some prominent relatively recent cases that garnered much media attention.

One highly influential case that began back in 2008 involved revelations of political corruption and irregularities concerning election funding, which caused quite a stir and led to reforms.⁵⁵ A group of businessmen with interests in regional and local land use and construction established an association with the purpose of influencing the composition of the coming Finnish Government.⁵⁶ Campaign funding was thus canalized through this association during the local and national elections. Just prior to this reveal and after the 2007 general election, the Council of Europe's anti-corruption body GRECO⁵⁷ had criticized Finland for the apparent loopholes and weaknesses in the Finnish election funding

legislation.⁵⁸ Another case that began in 2013 featured the now ex-Helsinki drug squad chief Jari Aarnio, who was sentenced to 13 years in prison and a fine of 1.3 million euros due to several offences involving drug trafficking, bribery, and official misconduct.⁵⁹ A third quite recent case involved the former head of IT at Helsinki's Education Department who was suspected of ordering IT equipment for several millions of euros on behalf of the city and reselling them to private individuals (mostly kinsmen) during the period of 2006-2016. According to the police, 'the suspect had broad powers to make procurements due to his senior position and, especially, because he was able to utilize his senior position to conceal the offences'.⁶⁰ It is estimated that this embezzlement contributed to a significant delay in the digitalization of the education sector in Helsinki.⁶¹ Still, corruption cases of this magnitude are quite few and far between, which of course strengthens Finland's reputation as a relatively non-corrupt country.

A more common occurrence is scandals of a lesser magnitude revolving around the careless use of public funds and undue benefits that

53 Anti-Corruption.fi, Anti-corruption strategy [website], <https://korruptiontorjunta.fi/en/anti-corruption-strategy>, (accessed 8 July 2021).

54 T. Tamminen, *Menetelmiä korruption kokonaisvaltaiseen seurantaan* (Methods for comprehensive monitoring of corruption), Publications of the Government's analysis, assessment and research activities 2020:45, Prime Minister's Office, 2020, p. 18.

55 Tamminen, *Menetelmiä korruption kokonaisvaltaiseen seurantaan*, p. 17.

56 Salminen, 'Control of Corruption: The Case of Finland', pp. 73-74

57 'The Group of States against Corruption' (GRECO)

58 Kimpimäki, 'Corruption in a Non-corrupt Country: What Does Corruption Look like in Finland?', pp.243

59 'Corrupt ex-police chief Jari Aarnio begins 13 year sentence as court upholds guilty verdict', Yle uutiset, 27 June 2019, https://yle.fi/uutiset/osasto/news/corrupt_ex-police_chief_jari_aarnio_begins_13_year_sentence_as_court_upholds_guilty_verdict/10850501, (accessed 8 July 2021).

60 A. Teivainen, 'Police wrap up investigation into corruption at Helsinki Education Department', Helsinki Times, 25 July 2018, <https://www.helsinkitimes.fi/themes/themes/education/15702-police-wrap-up-investigation-into-corruption-at-helsinki-education-department.html>, (accessed 8 July 2021).

61 'Helsinki Education Dept employee suspected of embezzling millions', Yle uutiset, 19 January 2017, https://yle.fi/uutiset/osasto/news/helsinki_education_dept_employee_suspected_of_embezzling_millions/9411797, (accessed 8 July 2021).

still manage to trigger an uproar, at least in traditional and social media. Recent notable cases include the aforementioned “Breakfastgate” involving the Prime Minister⁶² and the much more serious scandal centered on the National Audit Office (VTV),⁶³ Finland’s supreme audit institution with a key role in monitoring the use of public funds and election funding.⁶⁴ ⁶⁵ Reports in the media revealed among other things that the head of the VTV (the Auditor General) had spent thousands of euros of public funds on beauty services and travel, which led to her suspension pending official investigations of these and other alleged cases of malpractice at the VTV. This scandal also eventually led to the Auditor General being unanimously dismissed by Parliament or Eduskunta.⁶⁶ However, there were also reports suggesting that there had been less auditing activity during the Auditor General’s mandate period.⁶⁷ It was alleged that the VTV had gradually transformed more into a kind of “consulting agency” rather than a pure audit institution.

In the “VTVgate” case, which is especially

62 T. Sequeira, ‘Breakfastgate, decreasing emissions and smoking: Finland in the world press’, *Helsinki Times*, 5 June 2021, <https://www.helsinkitimes.fi/world-int/world-news/finland-in-the-world-press/19345-breakfastgate-decreasing-emissions-and-smoking-finland-in-the-world-press.html>, (accessed 9 July 2021).

63 ‘Committee chair calls for answers over auditor general’s expenses’, *Yle uutiset*, 2 April 2021, https://yle.fi/uutiset/osasto/news/committee_chair_calls_for_answers_over_auditor_generals_expenses/11869130, (accessed 9 July 2021).

64 Salminen, ‘Control of Corruption: The Case of Finland’, p. 71.

65 For a similar case, see the case of the Swedish National Audit Office in Andersson and Anechiarico, *Corruption and Corruption Control*, pp. 121-124.

66 ‘Parliament unanimously decides to dismiss Auditor General’, *Yle uutiset*, 30 June 2021, https://yle.fi/uutiset/osasto/news/parliament_unanimously_decides_to_dismiss_auditor_general/12002806, (accessed 9 July 2021).

67 ‘Committee chair calls for answers over auditor general’s expenses’, *Yle uutiset*.

noteworthy due to the prominent anti-corruption role of this particular institution and because it marked the first time the Eduskunta dismissed such a high-ranking civil servant,⁶⁸ we can arguably find elements of both individual and institutional corruption.⁶⁹ The individual corruption covers the above-mentioned suspicions of embezzlement and maladministration, while one could argue that the indicated shift from the institution’s core activities of auditing to more of an advisory role (known as “goal displacement” in organizational theory [OT]⁷⁰) could meet at least some of the characteristics of institutional or governance corruption.⁷¹ External pressures or influences to modernize the organization to “keep up with the times” through private sector-inspired reforms may bring some benefits to the organization, such as better relations to the target organizations that the VTV is supposed to inspect or increased efficiency, however, it also risks to undermine legitimate institutional procedures. In institutional corruption, the involved actors often lack a clear corrupt motif (e.g., greed and career advancement), they tend to act openly, sincerely thinking that they are simply “doing their job” simultaneously as they are diverting the institution from its constitutional duties and normative standards or expectations (known as “normalized deviance” in OT⁷²). Both

68 ‘Parliament unanimously decides to dismiss Auditor General’, *Yle uutiset*.

69 D.F. Thompson, ‘Theories of Institutional Corruption’, *Annual Review of Political Science*, vol 21, no. 1, 2018, pp. 502-505.

70 Andersson and Anechiarico, *Corruption and Corruption Control*, p. 31.

71 Andersson and Anechiarico, *Corruption and Corruption Control*, p. 31.

individual and institutional corruption erodes citizen confidence in the institution, but institutional corruption can have much more far-reaching consequences if it means that the institution's ability to perform its core functions (auditing and corruption control in this case) weakens.

The earlier mentioned scandals connected to election funding in the early 2000s triggered a lively discussion concerning what is commonly referred to in Finnish as "maan tapa", which can be translated into "the custom of the country" referring to the rather sophisticated nature of Finnish corruption. Maan tapa often refers to cases where individuals or groups are used to acting in a certain manner that is considered ethically unacceptable even though it is legal or extralegal.⁷³ In other words, it refers to what is often called structural corruption, i.e., corruption that takes place within formal legal structures. Those who involve themselves in this kind of corruption tend to justify their actions by rationalizing that "this is the way things have always been done here, why bother criminalizing it now?". The phrase "maan tapa" is often used in conjunction with the formal norms regarding conflict of interest and dual roles, which are claimed to be considerably more lenient in Finland than in many other countries.⁷⁴

72 Andersson and Anechiarico, *Corruption and Corruption Control*, p. 33.

73 Salminen, *Rehellisyys Maan Perii*, p. 114.

74 Salminen, *Rehellisyys Maan Perii*, p. 114.

The most typical manifestations of corruption in Finland are said to involve the so-called "old boys' networks" (hyvä veli- verkostot) and various kinds of conflicts of interest and favoritism. Population-wise, Finland is a small country with a relatively homogenous population of just under 5.6 million.⁷⁵ The political, administrative, and economic elites are hence quite small, especially in many of the 300+ municipalities, which naturally increases the prevalence of dual or even triple roles where a person can simultaneously sit for instance in a local council and on the board of a cooperative or a trust. This practice is often defended by referring to the added expertise that experienced politicians, civil servants, or other elites bring with them to their other roles as board members or even chairs.⁷⁶ Likewise, it is common in Finland that Members of Parliament (MPs) also run as candidates in local elections, and that even ministers sit in local councils with dual mandates.

The relative smallness of elite circles in Finland is furthermore conducive to the "revolving door" phenomenon where individuals move across different sectors, bringing with them their social networks, knowledge, and expertise from previous jobs or appointments. This phenomenon is judged to have become more common due to the growing importance of lobbying in EU Finland where there is said to have been a "silo-fication" in

75 CIA, *The World Factbook: Finland* [website], <https://www.cia.gov/the-world-factbook/countries/finland/#people-and-society>, (accessed 9 July 2021).

76 Salminen, *Rehellisyys Maan Perii*, p. 115.

... In Finnish as "maan tapa", which can be translated into "the custom of the country" referring to the rather sophisticated nature of Finnish corruption.

the ways that the government works.⁷⁷ In recent years, for instance, there has been much discussion around the fact that a number of prominent politicians, such as the outgoing Mayor of Helsinki,⁷⁸ have joined consulting agencies specialized at lobbying policymakers.⁷⁹ Furthermore, it was also reported that he would be acting as a part-time advisor for a Danish real estate investment firm that is noted to be a major player in the city's real estate market.⁸⁰ The news about the Mayor's plans brought to the fore a discussion regarding if there should be a cooling-off period for municipal officials before they can move on to the private sector, a practice that already exists on central government level.⁸¹

Networking across different organizations and sectors is nothing bad per se. On the contrary, it is a central part of modern governance strategy.⁸² Societal structures have simply moved on from the stale hierarchical bureaucratic structures of the past towards more flexible network-styles of governance and networking. However, it is important to

separate healthy networking from unhealthy distorting networking, although the difference between them can be rather miniscule in some cases. The modus operandi of old boys' networks, which belong to the latter category, is to pursue and parcel out undue benefits such as election funding, loans, grants, tax relief, contracts, and jobs to active members, often by exploiting loopholes in the legislation.⁸³ Furthermore, it is done in secret, away from the public eye, and the members tend to show each other loyalty based on reciprocity and debts of gratitude. The purpose of these networks is also said to be to parcel out the assets of others for the network's own purposes and that of its members. Lastly, unhealthy networks are characterized by the fact that the public or common good is substituted by private benefits.

The research on old boys' networks in Finland suggests that the most obvious forms of black corruption are relatively rare, but the core values of good governance are violated in many other ways instead.⁸⁴ These violations include, among other things, a tendency towards unnecessary secrecy and unhealthy loyalties in public decision-making, a disregard concerning the fair distribution of seats and positions of power, more or less (in)formal benefits that are distributed to personal favorites based on customary practices (maan tapa), and various dual roles in decision-

77 A. Blom, *Veljeskunta: Lobbaus Suomen poliittisessa järjestelmässä*, Helsinki, Gummerus, 2018, p. 271.

78 He is also a former Minister of Economic Affairs, Minister of Housing, and Minister for Nordic Cooperation.

79 'Outgoing Helsinki Mayor taking on advisor role at Miltoon marketing group', *Yle uutiset*, 20 May 2021, https://yle.fi/uutiset/osasto/news/outgoing_helsinki_mayor_taking_on_advisor_role_at_miltton_marketing_group/11940114, (accessed 9 July 2021).

80 'Paper: Helsinki Mayor Vapaavuori hired as advisor at Danish real estate outfit', *Yle uutiset*, 11 May 2021, https://yle.fi/uutiset/osasto/news/paper_helsinki_mayor_vapaavuori_hired_as_advisor_at_danish_real_estate_outfit/11926773, (accessed 9 July 2021).

81 T. Valtanen, 'Pitäisikö yrityksiin siirtyville kuntajohtajille asettaa karenssi? Konsultiksi ryhtyvä Vapaavuori: «Varmaan tämä on asia, joka on hyvä selvittää»', *Yle uutiset*, 20 May 2021, <https://yle.fi/uutiset/3-11940638>, (accessed 9 July 2021).

82 Salminen, *Rehellsisyys Maan Perii*, p. 112.

83 Salminen, *Rehellsisyys Maan Perii*, pp. 123-124.

84 Salminen, *Rehellsisyys Maan Perii*, p. 127.

making bodies in municipalities, trusts, cooperatives, MOEs, etc. Small circles are especially conducive to the corrupting influence of old boys' networks, and established practices in Finland facilitate the fact that the representatives of different elites sit in multiple positions that increase the risk of conflicts of interest.⁸⁵ What makes these forms of "white collar corruption" especially hard to expose or even identify is that they are 'woven into the fabric of business and public-private sector dealings and [...] less likely to come to the attention of the authorities'.⁸⁶ Members of these networks are unlikely to "blow the whistle" on any unethical or even illegal practices since they all tend to benefit from the membership in one way or another.

What can be done about it?

There are no "silver bullets" for corruption control.⁸⁷ What works in one specific context might be of less use in another. Anti-corruption strategies must always be tailored to local conditions in order to take into account specific institutional, historical and cultural features that might affect the diffusion and nature of various types of corruption within different organizations and sectors. This lesson also applies to the Nordic countries,

which are often automatically lumped together as representatives of "Nordic exceptionalism" although previous studies have pointed at significant differences within this region.^{88 89}

Finland's reputation as a low-corruption country, combined with high levels of social and institutional trust, can potentially be problematic if it means that individuals and institutions are lulled into the (false) belief that there are no corruption problems in Finland, and hence feel that there is no real urgency to increase oversight or carry out certain reforms. One of Finland's greatest strengths when it comes to corruption control is undoubtedly the strong administrative culture of legalism. Finns are generally very law abiding⁹⁰ and formal norms provide the bare minimum standards of good governance. However, this strong reliance on laws, regulations, and codes of conduct might also have the negative side effect that actors put less weight on other ethical considerations.⁹¹ Laws and regulations are all fine and good, but they cannot anticipate or cover every possible situation or ethical dilemma, especially as society is in a constant flux. Besides, formal norms are often inadequate for checking the corrupt behavior of politicians since they are not restricted by

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⁸⁵ Salminen and Mäntysalo, 'Epäeettisestä tuomittavaan', p. 32.

⁸⁶ A. Graycar, 'Corruption: Classification and Analysis', *Policy & Society*, vol. 34, no. 2, 2015, p. 88.

⁸⁷ M. Johnston and S. Fritzen, *The Conundrum of Corruption: Reform for Social Justice*, Abingdon, Oxon, New York, Routledge, 2021.

⁸⁸ Erlingsson and Kristinsson, 'All that glitters... a closer look at the Nordic 'exception'', p. 105.

⁸⁹ Erlingsson and Kristinsson refer to the Icelandic case and the fact that Swedes seem to have a tendency to perceive higher levels of corruption than the people in neighboring countries.

⁹⁰ Zook, 'The Curious Case of Finland's Clean Politics', p. 158

⁹¹ A. Salminen et al., 'Ethical Codes in Local Government: the Problem of Gifting. Views of Finnish councillors', *Scandinavian Journal of Public Administration*, vol. 20, no. 1, 2016, p. 3.

them to the same degree as bureaucrats whose duties tend to be carefully regulated.⁹² Too much red tape can also have unforeseen consequences and do more harm than good. Intensive external control can for example obstruct creative problem-solving by hindering interactions between civil servants and the public.⁹³ One of the greatest anti-corruption challenges that Finland faces is thus how to limit undue influence and distorted networking without inflicting too much harm on legitimate policymaking processes and healthy networking.

Still, there are plenty of measures related to formal norms and institutions that can be taken, especially on the local government level where both the norms themselves and their supervision are often considerably weaker than on the central level. The measures mentioned in the newly adopted anti-corruption strategy include, among other things, increased transparency, awareness raising, facilitation of whistleblowing activities, improvements to the legislation on bribery offences, and the promotion of research on corruption.⁹⁴ Currently, for instance, there is preparation underway for a transparency or lobbyist register that in its first stage will concern only the central government level.⁹⁵ Later, however,

92 M.E. Warren, 'What Does Corruption Mean in a Democracy?', *American Journal of Political Science*, vol. 48, no. 2, 2004, pp. 328-343.

93 Andersson and Anechiarico, *Corruption and Corruption Control: Democracy in the Balance*, p. 182.

94 Anti-Corruption.fi, *Anti-corruption strategy* [website], <https://korruptiontorjunta.fi/en/anti-corruption-strategy>, (accessed 8 July 2021).

95 Ministry of Justice, *Preparation of transparency register begins* [press release], 12 March 2020, <https://valtioneuvosto.fi/en/-/1410853/avoimuusrekisterin-valmistelu-alkaa>, (accessed

it could (and probably should) be extended to also cover local and regional levels. The planned legislation will obligate organizations and individuals engaged in lobbying activities to register themselves, ideally without hindering grassroots civic engagement and the representative duties of MPs. Another action would be to consider tightening the regulation around the "revolving door". There should be a sufficiently long cooling-off period for persons in notable positions in order to prevent the formation of corruptive inner circles.⁹⁶ Active steps should also be taken to better safeguard against the potential new danger zones engendered by the increasing encroachment of the private and third sectors on traditional public sector turfs. These developments are not necessarily a bad thing in and of themselves; however, they should be followed with the appropriate measures guaranteeing that expectations of good governance are sufficiently met.⁹⁷

However, what matters is not just if a specific practice is legal or not, but how it appears when viewed from an outside perspective. Just because something is legal does not necessarily mean that it is an ethically acceptable practice. Many of the practices that are illegal or heavily regulated today, such as certain types of election campaign contributions, have been legal (or at least extralegal) at some point in recent history. If

9 July 2021).

96 Blom, *Veljeskunta: Lobbaus Suomen poliittisessa järjestelmässä*, p. 362.

97 Johnston and Fritzen, *The Conundrum of Corruption*, p. 125.

broad layers of society perceive a certain practice as corrupt even though the elites themselves do not see it as problematic, at least from a legal perspective, then it is likely to spell trouble, especially in the long run, if it means that more and more people lose confidence in democratic processes. One example concerns appointments to public office. Formally, only few posts are reserved for political nominations in Finland. However, according to Salminen, the number of appointments on political basis is in reality considerably higher, which can be explained by the leading political parties' desire for power.⁹⁸

What public actors really need to weigh their actions upon is not just its formal legal status, but how it might affect the actor's and his/her organization's reputation and trustworthiness. They are required to consider the ways in which an action might shape perceptions of integrity and the possibility that it can endanger trust and impartiality.⁹⁹ For this purpose, Salminen recommends putting a greater emphasis on ethical codes and ethical training within the public sector. Ethical codes have traditionally been reserved for various professional fields, while they have been less common in politics and public administration.¹⁰⁰ Moreover, a relatively recent study suggests that recognition of ethical

codes is low among Finnish municipal council members simultaneously as the demand among the councilors for more detailed guidance seems to be quite high.¹⁰¹ One of the best ways to prevent corruption is by combining a rigorous legal framework with an internalized ethical code that gives guidance on the ethical standards and regime values that facilitate a behavior that can stand intense external scrutiny.¹⁰² In order for ethical codes to make a real difference however, they need to be well known and widely applied in local governance practices.¹⁰³ The internalization of ethical codes through training facilitates recognition of unethical behavior, but it could also be supplemented with an ethical expert council that supports decision-making processes by providing ethical reviews.¹⁰⁴ Furthermore, the increasingly blurred line between the different sectors implies that this strengthening of public ethics should apply to all bodies who receive public funding or exercise public power in one shape or form.

The strong emphasis on formal norms and public authorities in Finnish administrative culture further suggests that there has been less attention paid to the role of civil society, ordinary citizens, and other grassroots actors in corruption control.¹⁰⁵ Inclusion and more extensive participation is argued to contribute

Strengthening of public ethics should apply to all bodies who receive public funding or exercise public power in one shape or form.

98 Salminen, 'Control of Corruption: The Case of Finland', p. 68.

99 Salminen, 'Control of Corruption: The Case of Finland', p. 73.

100 Salminen, 'Control of Corruption: The Case of Finland', p. 75.

101 Salminen et al., 'Ethical Codes in Local Government', p. 4.

102 Salminen, *Rehellisyys Maan Perii*, p. 140.

103 Salminen and Mäntysalo, 'Epäeettisestä tuomittavaan', p. 47.

104 Salminen and Mäntysalo, 'Epäeettisestä tuomittavaan', p. 44.

105 Salminen, 'Control of Corruption: The Case of Finland', p. 74.

to the prevention of different types of corruption 'by bringing the eyes and voices of the public into each stage of the policy-making process and by including the experience and values of rank-and-file public employees into the ethics rule-making and enforcing process'.¹⁰⁶ All those with a stake in and direct knowledge of a specific policy area should be given an opportunity to propose the relevant dimensions of ethical conduct, thereby increasing the chance that it will become part of the organizational culture. Citizens could participate in this process through deliberative forums where they have a chance to interact with professionals, present their own views on good and bad practices within a certain organization or institution, scrutinize specific decisions and actions, and listen to the assessments and justifications of experts and policymakers.^{107 108}

Unethical practices are often said to thrive in a culture of secrecy and silence. Improvements to transparency and openness should therefore be very high on the reform agenda, and the aim should be to open up closed and encrypted practices in all parts of society, not just public organizations. Blom for instance proposes reforms that would increase the openness of parliamentary committee proceedings.¹⁰⁹

106 Andersson and Anechiarico, *Corruption and Corruption Control: Democracy in the Balance*.

107 Salminen, *Rehellisyys Maan Perii*, p. 170.

108 M. Setälä, 'Advisory, Collaborative and Scrutinizing Roles of Deliberative Mini-Publics', *Frontiers in Political Science*, vol. 2, 2021.

109 Blom, *Veljeskunta: Lobbaus Suomen poliittisessa järjestelmässä*, p. 361.

One problem with transparency though is that it is often selective, officials release only that which the law requires them to release, the rest is kept hidden behind a veil of secrecy even when there are no real legitimate reasons for it.¹¹⁰ This secrecy is in itself a violation of the principles of good governance and contributes to perceptions of corruption and the erosion of public trust. The media and investigative journalists have often played a decisive role in the uncovering of both minor and major cases of malfeasance, but many relatively minor scandals could probably have been at least partly avoided if the authorities had been more forthcoming from the beginning instead of "drip-feeding" the public with new information.¹¹¹ Another challenge lies in making the information more accessible and useful to the media, civil society organizations, ordinary citizens, and other "watchdogs". Otherwise, there is the apparent risk that the so-called "transparency professionals" will only use the illusion of openness for subterfuge and other more nefarious goals.¹¹² Johnston and Fritzen, for example, suggest a move towards "positive transparency", i.e., the practice whereby public and private organizations aggressively publicize data and recruit stakeholders to analyze it.¹¹³

A comprehensive legislative framework, ethical codes and training, and improvements to

110 Salminen, *Rehellisyys Maan Perii*, p. 168.

111 For an example, see the "Breakfastgate" scandal.

112 Tamminen, *Menetelmiä korruption kokonaisvaltaiseen seurantaan*, p. 17.

113 Johnston and Fritzen, *The Conundrum of Corruption*, p. 125.

participation and transparency cannot however fully compensate for the combination of extensive discretion and lack of oversight of top-level officials and institutions, including those tasked with overseeing other institutions.¹¹⁴ In the words of the poet Juvenal: ‘Who will guard the guards themselves?’¹¹⁵ In the VTV case, for instance, evidence indicates that the Eduskunta’s monitoring of the situation at the VTV was far from adequate. Moreover, there seems to have been quite a bit of confusion regarding exactly who at the Eduskunta had the power to recommend the Auditor General’s eventual dismissal.¹¹⁶ The other example cases of grand corruption that I briefly summarized earlier also involved high-level officials with considerable discretion who managed to abuse their positions undetected, or at least largely unhindered, by other authorities for several years. In the Aarnio case, for instance, three former police chiefs have been charged for their alleged failure to address problematic practices concerning informants at the Helsinki Police Department.¹¹⁷ It is speculated that the strong trust that characterizes Finland and the other Nordic countries also has the sometimes-negative side effect of reducing the perceived need for a closer surveillance.¹¹⁸

114 Tamminen, *Menetelmiä korruption kokonaisvaltaiseen seurantaan*, pp. 18-19.

115 *Quis custodiet ipsos custodiet?*

116 R. Niemonen and T. de Fresnes, ‘Eduskunnassa ei tiedetä, kuka saisi ehdottaa Tytti Yli-Viikarin erottamista – lue tästä, mitä erikoinen pattitilanne merkitsee’, *Yle uutiset*, 18 April 2021, <https://yle.fi/uutiset/3-11890223>, (accessed 12 July 2021).

117 A. Teivainen, ‘Three former police chiefs charged with violation of official duty’, *Helsinki Times*, 3 May 2018, <https://www.helsinkitimes.fi/finland/finland-news/domestic/15507-three-former-police-chiefs-charged-with-violation-of-official-duty.html>, (accessed 12 July 2021).

Nevertheless, there is a need for clearer guidelines concerning the responsibilities of monitoring and addressing potential problems in the practices of top-level officials. This scrutiny furthermore needs to be more active during an official’s mandate period rather than after when much of the harm is already done. An independent anti-corruption actor or agency (ACA) could potentially play an important role in strengthening surveillance of officials in leading positions who tend to function as important role models for others and prime representatives for their organizations.

Presently, Finland has no centralized ACA and relies instead on other institutions such as the Ombudsman, Chancellor of Justice, VTV, and an anti-corruption cooperation network consisting of relevant authorities and stakeholders to keep corruption at bay. The Ombudsman and the Chancellor of Justice are singled out as two particularly prominent institutions when it comes to explaining the low level of corruption in Finland.¹¹⁹ This well-functioning system has contributed to the view that Finland has no need for an ACA because ‘establishing [such] a new agency would require additional resources, with no guarantees of effectiveness.’¹²⁰ Nevertheless, the need for a designated anti-corruption actor or agency with ‘sufficient resources for

There is a need for clearer guidelines concerning the responsibilities of monitoring and addressing potential problems in the practices of top-level officials.

118 Tamminen, *Menetelmiä korruption kokonaisvaltaiseen seurantaan*, p. 16.

119 Quah, ‘Different paths to curbing corruption: A comparative analysis’, p. 226.

120 Quah, ‘Different paths to curbing corruption: A comparative analysis’, p. 240.

coordinating, supporting, following and initiating anti-corruption measures' is in fact recognized in the newly approved anti-corruption strategy.¹²¹ The high quality of the Finnish public administration should provide a good premise for the successful commissioning of this new tool for strengthening integrity and controlling corruption, just as it has contributed to the perceived successes of the Ombudsman and the Chancellor of Justice. In other words, Finland has just the right institutional environment for an effective ACA intervention,¹²² as long as there is the political will to provide it with the necessary resources.

Conclusions

The aim of this chapter has been to give an overview of the current corruption situation in Finland, how we got there, and what could potentially be done to improve it.

While the situation in Finland is undoubtedly better than in many other places, there are still several important measures that can and should be taken to preserve and strengthen public integrity and corruption control, as demonstrated by the recently approved anti-corruption strategy. As Tiihonen has cautioned, while the current good governance

121 Anti-Corruption.fi, Anti-corruption strategy [website], <https://korruptioinjunta.fi/en/anti-corruption-strategy>, (accessed 8 July 2021).

122 Johnston and Fritzen, *The Conundrum of Corruption*, p. 104-105.

system was built over a relatively long period of time this does not mean that it is indestructible.¹²³ On the contrary, various parts of it can be quite fragile and sensitive to changes in its environment (e.g., processes related to globalization, administrative reforms,¹²⁴ economic and climate crises, or even global pandemics) and is therefore in need of constant (re)evaluation, maintenance, and updating. Perhaps the biggest challenge for a low-corruption country like Finland, however, lies in how to make corruption and public ethics-related issues, an essential part of the political agenda. Is it possible to muster up the political will and pressure needed for these reforms without any great shocks such as the financial crisis, which exposed the problematic practices on Iceland and caused a dramatic drop in its CPI score from 2007 onwards? Can we really stay satisfied with the current situation just as long as the wheels of the economy keep on turning unobstructed by the grabbing hand of extorting bureaucrats?

Controlling corruption in a mature welfare state setting must be viewed as an inseparable part of the considerably broader policy area of integrity promotion and the regulation of appearances of corruption.¹²⁵ Corruption is so

123 Tiihonen, 'Good Governance and Corruption in Finland', p. 117.

124 What impact will for example the planned overhaul of the social welfare and health care services system (the "Sote" reform), which transfers responsibility for organizing social and healthcare services from 310 municipalities to 21 new regional authorities and the city of Helsinki, have on corruption risks? 'Finland launches new health and social care reform drive', Yle uutiset, 13 October 2020, https://yle.fi/uutiset/osasto/news/finland_launches_new_health_and_social_care_reform_drive/11592641, (accessed 12 July 2021).

125 M.E. Warren, 'Democracy and Deceit: Regulating Appearances of Corruption', *American Journal of Political Science*, vol. 50, no. 1, 2006, pp. 160-174.

much more than just “giving and taking bribes”. Even seemingly minor deviances from the principles of good governance and well-intended goal displacements can result in a slippery slope towards growing distrust in public authorities and more serious forms of black corruption, exclusion, and other organizational pathologies. Comprehensive formal norms provide a necessary, but ultimately insufficient, base level of ethical conduct, since they often prove to be inadequate for dealing with the more sophisticated structural forms of corruption found in “influence market” societies such as Finland.¹²⁶ Here, the value of acquiring personal contacts within various policymaking bodies is great, because once decisions have been made, one can be quite sure that they will be carried out minutely thanks to the high-quality public administration.

New tools in the form of ethical codes and training, extended participation, improved transparency and openness, and more effective monitoring systems are needed in order to prevent unhealthy reciprocity and distorting networking in politics, public administration, and business that enable the abuse of public resources and power for private benefit. Now it is high time for Finland and the rest of the Nordic countries to set their aim for the “next stage” in corruption control, and the new anti-corruption strategy is a good first step in that direction.

¹²⁶ Johnston, *Corruption, Contention, and Reform*, pp. 203–206.

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CONCLUDING REMARKS AND POLICY RECOMMENDATIONS

The quality of institutions is important for both the society and the economy. There is no doubt that corruption is one of the major pathologies that often affects the functioning of institutions weakening the foundations of democracy, undermining the trust of citizens in the policy-makers, dismissing the principles of good government. Corruption is a severe obstacle to economic growth: it harms competition, produces uncertainty thereby making the economic transactions more costly and inefficient, penalizes healthy and small firms, disincentives domestic and foreign investments, creates distortions in labor supply, misallocates public resources, exacerbate social inequalities increasing the price of the public services.

For all these reasons, in the last decades corruption has been at the forefront of the academic and political debate worldwide as in several developing and developed countries the gravity of the phenomenon has greatly contributed to the delegitimation of politics and to the slowing down of the economy.

A departure point when we discuss about corruption is its measurement. Since the nineties the research on measurement methodologies has greatly developed in accordance with the priority assumed by the fight to corruption at international, european and national level. However, corruption is difficult to be identified because of its latent and multifaceted nature and therefore it is not easily and directly observable. One may be interested in measuring the hidden or emerged corruption, the petty or grand corruption, the deviation from the social norms or from the legal ones and this makes a difference. Therefore, in order to get a complete and clear representation of the phenomenon different types of indicators (behavioral, juridical, ex post, ex ante) have been developed by scholars and institutions, at both



national and regional level. In particular, subjective indicators are based on survey data about corruption perceptions and/or direct experiences and are available for large samples of countries and time spans. The Corruption Perception Index by Transparency International, the Corruption Control Index by World Bank, the Freedom from Corruption by Heritage Foundation, the Global Corruption Barometer by Transparency International, the Quality of Government Indicators, by the University of Goteborg are the most consolidated and well-known. The objective indicators are either the judicial measures such as the number of corruption-related prosecutions and convictions of public officers that capture the emersion of corruption or the economic indicators based on sectors with measurable outputs (schools, hospitals, infrastructures) that measure corruption indirectly, through proxies. Moreover, the experimental research on corruption has developed measures based on the direct observation of the phenomenon in a controlled environment created in a laboratory, which provide hints about the individuals and firms attitudes toward corruption and their reactions to different institutional contexts and rules. All these indicators measure corruption ex post, i.e. once the corrupt event has already occurred. More recently a strand of research developed ex ante indicators of risk of corruption that signal anomalies to prevent the insurgence of corrupt conduct. Each of these indicators captures a specific aspect of the phenomenon, resulting in significant discrepancies among them. None is exhaustive since there are difficulties related to the definition of corruption adopted, lack of objective data, risk of under-reporting or over-reporting, measurement errors and the preference for a measure mainly depends on what interests us the most. Hence, on the one hand, the awareness of the shortcomings of the indicators may result in an attitude of discomfort by the policy makers and by the public opinion towards the reliability of the data on corruption; on the other hand, such awareness pushes forward the quantitative research in order to guarantee the relevance, objectivity and availability of the existing statistical indicators, enlarge the production of such indicators on a systematic basis, both sectorial and territorial and develop new methodologies. And these advancements are important not only for scientific reasons but also

because they provide the policy makers with a large stock of information that can be used to design more adequate and effective anti-corruption strategies.

It is worth noting that measurement matters also for the empirical analyses of the determinants and the effects of corruption which allow a deeper understanding of the phenomenon. A quantitative analysis of corruption that develops from its measurement represents a necessary complement to the qualitative studies and allows to provide rigorous answers to the following questions: What is the explanatory power of factors such as level of income, income distribution, size of the public sector, openness to trade, education, social capital – just to mention only some of the several economic, socio-cultural, politico-institutional, legal determinant of the diffusion and persistence of corruption across countries? What is the direct or indirect impact of corruption on the economic growth of a country or a geographical area? Does corruption grease or slow down the wheels of growth?

If we take a look at Europe we find evidence that the diffusion of corruption in Nordic, Mediterranean and Eastern countries is heterogeneous and rooted in different factors, as highlighted by the contributions of the volume. The economic literature on the determinants of corruption offers a rigorous framework to interpret the experience of each country and/or geographical area and may play a relevant role in shaping the design of the anti-corruption policies based on the prevalence of some determinants. For example, the empirical evidence recalled in the preface, that a high level of corruption is associated with a large and inefficient public sector, suggests a thorough review and reconsideration of the policy making mechanisms that drive the expenditure policies undertaken by several European governments, far from being accountable. Maybe one could find the seeds of corruption there.

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