

IPALMO



Institute for the Relations between Italy and the Countries of Africa, Latin America, Middle
and Far East

**BUILDING CAPACITIES OF PARLIAMENTARY INSTITUTIONS AND
PROMOTING CITIZEN PARTICIPATION IN ARAB COUNTRIES AND
THE MIDDLE EAST**

Pilot Phase

LEBANON – JORDAN – IRAQ

[The Italian Experience on How Parliament Can Fight Corruption](#)

Abstract

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Introduction

Generally speaking, in the recent past, parliamentary action to curb corruption has been relatively weak, while the most significant work has been implemented by the judiciary and/or the executive branch¹. In the last few years, however, a growing awareness among MPs on the importance of fighting corruption seems to have developed worldwide. International cooperation among national parliaments and global and regional networking has spread. Among other initiatives, in 2002, parliamentarians from many different countries met in the Chamber of the Canadian House of Commons and created the Global Organization of Parliamentarians Against Corruption (GOPAC). The main idea is that parliaments, as the core institution for democratic representation, could not anymore maintain an attitude of complacency and fatalism toward a phenomenon which, not only determines direct and indirect economic damages, but also undermines the democratic process, violates social justice and creates distrust in state institutions. The belief that corruption has multifaceted negative effects is increasingly equally shared by a wider sector of international public opinion as well as by experts in political science and economics, supported by a progressively more watchful media. The wrong idea, present in some political and business circles, that corruption is a necessary evil to face the cost of politics and to lubricate some mechanisms of the economy is fortunately losing ground.

One of the reasons why parliaments do not always seem alert in fighting corruption is that corruption is present in their ranks². From this point of view, political corruption can be considered one of the most harmful forms of misbehaviour because: 1. it deprives the legislative branch from the necessary will and strength in fighting a phenomenon which might consequently spread throughout the social fabric; 2. it delegitimizes democratic institutions, putting in danger the foundation of democracy. This happened in Italy prior to 1992; while afterwards a process of healing was evident.

Political Corruption: A Strategic Issue

When it comes to analysing the causes of corruption many misleading ideas generally emerge. This was particularly true in the seventies and eighties when accurate and in-depth studies on the phenomenon were not completed and ideological moralistic points of view, without the support of the analysis and academic research, were prevalent. As far as political corruption in Italy is concerned, a wide range of wrong assumptions were made. Some argued that Catholic and Latin countries were more prone to corruption because of cultural reasons. A conviction later contradicted when facts showed that not only Italy, France and Spain were progressively involved in political scandals but also countries such as Belgium, the Netherlands, Germany, and the UK³.

Others, mainly among the communist ranks, were convinced that capitalism and market economy greed were the main causes of corruption suggesting that a greater control on the private sector would reduce the problem, not considering that in the communist block, corruption was a widespread phenomenon. Worst of all, there were opinions, fortunately limited in numbers, which attributed the problem of corruption to the indulgency of customs ingenerated by democracy and freedom, and advocated draconian repressive rules.

Policy research and academic enquiries, which proliferated in the second half of the nineties, put some clarity in the debate on the root causes of corruption in general. These emphasized that the lack of transparency and accountability, malfunctioning markets, authoritarianism, dysfunctional democracy, cumbersome bureaucracy and unrealistic legal frameworks, are the major determinants of corruption.

¹ Global Organization of Parliamentarians Against Corruption (GOPAC) and The World Bank Institute. *Controlling Corruption: A Parliamentarian's Handbook*. Ottawa, Canada: GOPAC, 2005

² Staphenurst, Rick, Niall Johnston and Riccardo Pelizzo (ed.). *The Role of Parliaments in Curbing Corruption*, Washington DC.: World Bank Institute, 2006

³ Veronique Pujas; Martin Rhodes, *A clash of cultures? Corruption and the ethics of administration in Western Europe Parliamentary Affairs*; Oxford; Oct 1999;

On the one hand, the political dynamics in Italy were characterized in the Cold War period by a blocked democracy. The presence of a strong communist party did not allow a change in the parliamentary majority in leading the country. For nearly 40 years, the same party coalition, with minor changes governed Italy. The uninterrupted staying in power of the centre-left coalition brought about progressive control of the state structure by those political parties (the so-called *stato dei partiti*, namely state of the parties). Clientelistic practices multiplied as well as illegal mechanisms in government procurements, public works, government employment and so forth⁴. The lack of effective democratic checks and balances and the absence of genuine competition among political parties based upon debate on concrete problems (rather than empty ideological confrontation) developed political patronage as the most effective way to gain re-election. There was a deliberate behaviour to determine excessive bureaucratisation as well as bureaucratic inefficiency, so that the provisions of services to individual constituents could be provided by the system of political patronage⁵.

On the other hand, the lack of rules in party funding up until 1974 and an ill-conceived law afterward were the other main causes of political corruption.

Before 1974, bribes on party contracts and supplies, the diversion of public money, incomes from party economic activities and donations from flanking organisations and from abroad, created systemic corruption even though it was not necessarily illegal. The approval of Law No. 195 of May 2, 1974 introduced tight regulations which made donations from public sector companies illegal, required the declaration of contributions from private sources, and provided public subventions for parties receiving more than two per cent of the vote. The law penalised forms of financing that were previously legal, maintained the immunity of members of parliament from prosecution, and created procedures for the publication of party accounts that provided for neither transparency nor effective scrutiny.

After the *Tangentopoli* (Bribe-city) political crisis in 1992, different reforms on political party funding were approved by the Italian Parliament without success, to arrive to the present legislation that, in spite of some weak and insufficient regulations, seems at least to avoid widespread illegal behaviours. The issues related to political party funding represent an interesting subject which has not been so far sufficiently analysed. The choice to be made is between a theoretically “just law” which takes care of the democratic balance (mainly public funding) and a more pragmatic approach which would tend to accept the real balance of power in the society (more private funding). Whichever system is chosen, two conditions should be assured in order to avoid the danger of widespread political corruption: 1. transparency of financial flows, 2. assuring political parties in accessing the funding they need to carry out their functions.

The Italian Parliament’s Action Against Corruption

After the storm of *Tangentopoli*, it was clear that political parties needed to restore public confidence among citizens. On the one hand the fatalism and acceptance of corruption as a normal state of affairs in Italian public opinion was substituted by an acute anger, dangerous for the democratic institutions. On the other hand the action carried out by the judiciary risked to take on a subversive character, since too many individuals in the economic and political environment were formally susceptible to being indicted and prosecuted.

Under these circumstances the Italian Parliament adopted a strategy consisting in: 1. a containment of the judiciary action⁶ and 2. a general reform of the system to eliminate the root causes of corruption.

⁴ Veronique Pujas, *Les scandales politiques en France, en Italie et en Espagne : constructions, usages et conflits de légitimité*, European Un. Institute, PhD theses, 1999

⁵ Antonio Acconcia, *Claudia Cantabene, A Big Push to Deter Corruption: Evidence from Italy*. Working Paper, No. 159, CSEF, May 2007

⁶ On March 5, 1993, the Parliament approved the Amato Government provision which allowed criminal charges for several bribery-related crimes to be replaced by administrative charges instead and

The preventive and indirect measures were preferred. All the classical instruments to fight corruption were adopted such as: analysis of the phenomenon, legislative function and oversight function. It is important to note that some laws, namely those related to some aspect of transparency or to the reform of the bureaucracy were already approved respectively in 1990 before *Tangentopoli* and in 1993 before two parliamentary commissions were instituted to study and make recommendations on the legislative action against corruption.

Analysis of the Phenomenon

In September 1996, the President of the Chamber of Deputies appointed a Committee to study the phenomenon of corruption made up of three authoritative scholars, Cassese, Arcidiacono and Pizzorno, which produced a detailed report in October of the same year⁷. At the same time the Chamber of Deputies also appointed the Special Commission for the Prevention and Repression of Corruption to examine the best-suited projects for laws to fight corruption.

The report prepared by the Cassese Committee analysed dimensions, typology and causes of corruption, outlining the most affected sectors and the conditions which tend to favour the phenomenon.

For the first aspect (affected sectors) the following areas were singled out:

1. public administration expenditures for goods and services offered by the private sector
2. services offered by public administration
3. authoritative powers of public administration (e.g. tax controls)

Regarding the conditions which favour corruption, the committee singled out the following:

1. the overextension of government and public administration in the management of the economy
2. a very cumbersome legal framework which gives a large discretionary power to the bureaucracy
3. the way the administrative decentralization was implemented (e.g. no fiscal accountability for local authorities)
4. political funding
5. confusion within the role of the politicians and bureaucrats
6. weakness and inefficiency of the public administration and of the procedures
7. ineffective system of controls
8. distrust by the citizens in the judiciary
9. economic distortions determined by inefficient markets
10. low prestige of the government officers

The committee provided for a long list of recommendations (23) subdividing them in three categories according to their possible implementation in the short, medium and long term. In the subsequent years, these findings and recommendations were certainly taken into account in public debate and some were also partially translated into actual laws.

The Special Commission, which worked until the end of March 1998, prepared a draft legislation, which was approved unanimously taking into account two “principles of law”: 1. a high level of performance and 2. impartiality in administrative organisation (principles already embodied in Article 97 of the Constitution). The remaining 29 articles contained tough measures designed to prevent or repress corruption in public administration. These included four new provisions⁸:

later the new elected parliament in 1994, with the support of both the Center-right majority and the Center left opposition did not do anything to prevent that many trials could be cancelled due to the expiration of statutory terms

⁷ Camera dei Deputati, *Rapporto del Comitato di Studio sulla Prevenzione della Corruzione, Atti Parlamentari*, Roma, ottobre 1996

⁸ Ufficio Studi della Camera dei Deputati, *Da Tangentopoli ad oggi: i principali interventi in tema di reati contro la pubblica amministrazione*, Roma, maggio 2007

- the introduction of a “Guarantor of Legality and Transparency in Public Administration Work”;
- transparency in political and administrative activity through the publication of the income and assets of everyone holding a political or administrative post;
- the registration and control of associations and companies that do lobbying work;
- the publication of an “Official Bulletin of Contract Work in the Public Administration”;
- the relationship between the penal code and the disciplinary measures affecting public officers.

Legislative Function

The Italian Parliament adopted a strategy of reform in the most affected sectors to eliminate or reduce the conditions that favour corruption rather than working on the side of repressive laws. It is possible to divide the main laws related directly or indirectly with the fight against corruption in three categories:

A. *Laws on areas in which corrupt actions would be likely to occur if the legislation is not “corruption-proofed”* (e.g. procurements and public works). For example, the 1994 Law No. 109 “Framework Law on Public Sector Work” and subsequent amendments provided for the following in relations between public administrators and contractors:

- the setting up of the Observatory for Monitoring Public Sector Work and the Related Authority (*Osservatorio per la vigilanza sui lavori pubblici e la relativa Autorità*), which was assigned specific “obligations to report” (*obblighi di denuncia*);
- a division between planning and the awarding of contracts and concessions;
- measures to limit unlawful behaviour, reduce the instances of collusion and corruption, and make them more easily verified.

Since 2006, the role of the Authority was expanded to all government contracts (*Autorità indipendente per la vigilanza sui contratti pubblici di lavori, servizi e forniture*) and maintains a database with all the contracts and monitors the procedures informing the Cabinet and the Parliament on the matter or on any eventual dysfunction.

B. *Laws aimed at creating a social and legal environment in which corruption is less likely to occur.* Many different laws aimed at the reform of the public administration and at fostering transparency were approved. In 1993, Legislative Decree No. 29 (later embodied in the Law No. 165 of 2001) together with other legislative initiatives approved in the following years, introduced: 1. a sharper distinction between administrative management and direct influence on political power in connection with organisational procedures and public sector work; 2. provided for a general framework of administrative reform including decentralisation, the reorganisation of the state administration, completing the privatisation of the public sector; 3. the simplification of laws and procedures, the speeding up of controls and a radical alteration of the state budget⁹. These laws, which do not have the fight against corruption as an immediate objective, are aimed at fostering administrative impartiality, a high level of performance, and developing a new and direct approach to service and responsibility on the part of the administration towards citizens. In regards to transparency, new legislation was introduced in the '90s which allowed Law No. 241 of August 7, 1990, the basis of the legal mechanism which aims to achieve transparency in administrative activity, to actually be implemented. New provisions were introduced to make it easier for citizens to have access to administrative documents allowing procedural simplification and self-certification. A different set of laws provided for public disclosure of assets and incomes of candidates running for public office, public officials, politicians, legislators.

⁹ *Ibidem*

C. *Laws that punish the corrupt.* After *Tangentopoli*, the Italian Parliament amended some parts of the penal code in matters related to offences committed by public officials and private individuals against the public administration. New legislation was also introduced mainly to fight organized crime (e.g. anti-Mafia legislation and on financial and money-laundering issues). Besides, Law No. 97 of March 27, 2001 on the relationship between the penal code and the disciplinary measures affecting public officers, provided for the immediate transfer of public officers under investigation and their dismissal in case of definitive sentencing. This law was amended afterward and has been recently criticised in the mass-media as a classic example of measures which are not actually implemented (most of the public officers under investigation maintain their positions and even if found guilty are not dismissed). As it happens with other repressive laws, sometimes political constraints, such as the opposition by the trade unions to punish misbehaviour in the public administration, tend to make repressive rules less effective than preventive ones¹⁰.

In the last 15 years, the Italian Parliament produced a wide range of legislation which could positively affect the reduction of the phenomena of corruption. There are still some areas to be addressed such as: 1. conflict of interest laws, separating business, politics, legislation and public service; 2. laws governing lobbying; and 3. laws to fight nepotism and cronyism.

Oversight Function

There is no permanent parliamentary commission in charge of conducting general anti-corruption enquiries or controls. A Commission for Preventing and Fighting Corruption in Public Administration (*Alto Commissario per la prevenzione e il contrasto della corruzione e delle altre forme di illecito nella pubblica amministrazione*) does exist under the control of the executive branch. Parliament as a whole, and individual members, can monitor the work of the public service closely and any member can raise specific matters, using the parliamentary power of inspection (*sindacato parlamentare ispettivo*). They may put official questions, orally or in writing, to the government or individual ministers on any aspect of government activity, including public sector corruption. This power has been used often by parliamentarians, mainly to have more in-depth knowledge of single episodes correlated with corruption, generally emerged by mass media coverage or judiciary actions. Either or both houses may set up special commissions of enquiry, consisting of members of parliament, on matters of public interest including corruption in public life, using the same powers as criminal investigators (as in the Commission of Enquiry into the P2 lodge or the Parliamentary Commission on the Mafia). Parliament has important instruments to control public spending and the management of the public administration. One of these is represented by the important role of the *Corte dei Conti* (Audit Court) in the auditing of the State Budget's management.

Conclusion

Since the 90's, according to international observers¹¹, as well as to scholar analysis¹² corruption in Italy decreased as a whole. The reduction was more evident in the area of political corruption while in other sectors it still seems persistent. One of the most important factors that brought about a great improvement in the former was the change in the political dynamics after 1992. Since 1994, the new political framework allowed a sound competition between two opposing coalitions both entitled to lead the country in case of electoral victory. In this situation, any irregular activity carried out by a single or group of politicians was susceptible to a strong reaction by the media and the judiciary, politically

¹⁰ *Ibidem*

¹¹ Transparency International (TI). *Global Corruption Report* (2003); (2005); (2006). Berlin, Germany: TI

¹² Arnauld Miguet, *Political Corruption and Party Funding in Western Europe An Overview*, London School of Economics April 2004

supported by the opposing party or coalition. In other words, the current political dynamics allow mechanisms of checks and balances due to the harsh competition between the two coalitions. The present legislation regarding political party funding, although susceptible of improvement, seems to work better than those adopted in the past.

With regard to other sectors, where corruption seems still high, one has to consider that general reforms work slowly. In spite of the genuine efforts carried out by our Parliament, many reforms such as the one in the public administration, have suffered because of strong social and political constraints. Since fighting corruption is not a moral crusade, but rather a change in the social environment, time is a key factor. Only with the improvement of the efficiency of the public sector with high management standards based on merit, will it be possible to envisage a turning point.